

# LAW No. 26/2022 (in force 16.03.2022)

## on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors.

### AMENDED

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

In order to increase the integrity of future members of the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and prosecutors and overall in the justice system, the Parliament adopts this Organic Law.

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## CHAPTER I GENERAL PROVISIONS

### Article 1. Object of the Law

This law regulates the legal relations related to the procedure of assessing the integrity of candidates to the position of members of the Superior Council of Magistracy, the Superior Council of Prosecutors and members to their specialized bodies, as a mandatory stage of the process of selecting candidates and electing or appointing them to the respective positions.

### Article 2. Subjects of the law

(1) The provisions of this Law shall apply to candidates for the position of member of:

- a) Superior Council of Magistracy,
- b) Board for the selection and evaluation of judges;<sup>1</sup>
- c) ~~- repealed~~;<sup>2</sup>
- d) Disciplinary Board of judges;
- e) Superior Council of Prosecutors;
- f) Board for the selection and evaluation of prosecutors;<sup>3</sup>
- g) ~~- repealed~~;<sup>4</sup>
- h) Disciplinary and Ethics Board under the Superior Council of Prosecutors.

(2) The evaluation of the candidates referred to in para. (1) herein includes a verification of the assets of candidates' close persons, as defined in the [Law No 133/2016](#) on the Declaration of Assets and Personal Interests, as well as of the persons referred to in Article 33(4) and (5) of the [Law No 132/2016](#) on the National Integrity Authority.

(3) Candidates for the positions of members in the bodies referred to in Article 2(1)(a) and (e) shall be assessed as a priority over the other candidates.

## CHAPTER II EVALUATION OF CANDIDATES

### Article 3. The Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors

(1) The Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors (hereinafter – *the Evaluation Commission*) shall assess the integrity of the candidates referred to in Article 2(1).

(2) The Evaluation Commission shall be set up for the period of evaluating candidates for the positions of members in the bodies referred to in Article 2(1), vacant at the date of entry into force of this Law or which will become vacant within 7 months from the date of entry into force of this Law. The Evaluation Commission shall be chaired by a chairperson elected by secret ballot of commission members, with the majority vote of commission members. In the absence of the Evaluation Commission chairperson, his/her duties shall be exercised by a Commission member appointed by him/her.

(3) The Evaluation Commission chairperson has the following duties:

- a) coordinate the work of the Evaluation Commission;
- b) convene meetings of the Evaluation Commission;
- c) chair the meetings of the Evaluation Commission;
- d) represent the Evaluation Commission in relations with other individuals and legal entities of public or private law;

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<sup>1</sup> Art.2, para. (1), lit. b) as amended by [Law 147 of 09.06.23](#), in force as of 21.06.23.

<sup>2</sup> Art.2, para. (1), lit. c) repealed by [Law 147 of 09.06.23](#), in force as of 21.06.23.

<sup>3</sup> Art.2 para. (1), lit. f) as amended by [Law 200 din 31.07.23](#), in force as of 04.08.23.

<sup>4</sup> Art.2 para. (1), lit. g) repealed by [Law 200 din 31.07.23](#), in force as of 04.08.23.

e) carry out other duties provided by this Law and the Rules of Procedure of the Evaluation Commission.

(4) The members of the Evaluation Commission referred to in Article 5(1)(a) shall receive a monthly allowance equivalent to twice the basic salary of a judge of the Supreme Court of Justice with the length of service in the position of judge of more than 16 years.

(5) The Evaluation Commission shall have a secretariat, which is a non-legal structure, established ad-hoc, independent of any public authority, that operates exclusively to assist the Evaluation Commission in exercising its tasks. The modus operandi and staffing of the Evaluation Commission's Secretariat shall be approved by the Commission. The staff of the Evaluation Commission's Secretariat shall be contracted by development partners. The activity of the Evaluation Commission's Secretariat shall be coordinated by the Head of the Secretariat. In their work, neither the Head nor the staff of the Secretariat are subordinated to development partners, being independent in decision-making and reporting exclusively to the Evaluation Commission and its chairperson.

(6) The activity of the Evaluation Commission and of its Secretariat shall be financed from and within the limits of the funds approved in the annual budget law, and from other sources not prohibited by law.

(7) At the request of the Evaluation Commission chairperson and/or Head of Secretariat, public authorities and institutions shall second/delegate temporarily the persons requested by the Commission to assist in its work, including by derogation from the provisions of the special laws on the functioning of the respective public authorities and institutions, as well as from the laws governing the status of certain categories of civil servants.

(8) *repealed.*<sup>5</sup>

#### **Article 4. Independence of the Evaluation Commission**

(1) The Evaluation Commission shall have functional independence and decision-making autonomy from any individual or legal entity, irrespective of their legal form, as well as from political factions and development partners that participated in appointing its members.

(2) In its activity, the Evaluation Commission shall comply with the [Constitution of the Republic of Moldova](#), this Law and other legal acts regulating related areas. The Evaluation Commission operates on the basis of its Rules of Procedure, approved by it.

(3) The Members of the Evaluation Commission and the secretariat 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 are instituted by the Prosecutor General, with the consent of the Evaluation Commission. In the case of *flagrante delicto*, the consent of the Evaluation Commission is not required.

[Art.4 para. (3) introduced by LP353 of 24.11.23, OG465-467/07.12.23 art.804; in force as of 07.12.23]

#### **Article 5. Membership of the Evaluation Commission**

(1) The Evaluation Commission consists of 6 members, appointed as follows:

- a) 3 members, citizens of the Republic of Moldova – at the proposal of parliamentary factions in observance of the proportional representation of the majority and the opposition, approved with the vote of 3/5 of the elected MPs;
- b) 3 members – at the proposal of development partners, approved with the vote of 3/5 of the elected MPs.

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<sup>5</sup> Para. (8) "The Evaluation Commission shall cease its activity upon completion of the evaluation of the last candidate" in art. 3 repealed by [Law 147 of 09.06.23](#), in force as of 21.06.23

**(2)** To appoint the members stated in para. (1)(a), the parliamentary factions shall submit information on the nominated candidates to the Committee on Legal Affairs, Appointments and Immunities. The Committee on Legal Affairs, Appointments and Immunities shall examine the nominated candidates and, depending on the findings made, shall approve reports on each separate candidate with the majority vote of the Commission members. Draft Parliament decisions shall be developed for each candidate by the Committee on Legal Affairs, Appointments and Immunities and shall be presented in the plenary meeting of the Parliament to be debated and adopted with the majority provided in para. (1)(a).

**(3)** If a parliamentary faction does not nominate a candidate within the prescribed period, the Committee on Legal Affairs, Appointments and Immunities shall forward the draft Parliament decision and the reports for the candidates nominated in accordance with para. (2) for debate in the Parliament plenary meeting.

**(4)** If no candidate has been nominated by a parliamentary faction, and if a candidate nominated by the faction has not been approved with the required number of votes, the Evaluation Commission shall be established and shall operate with the number of members confirmed by the Parliament decision according to para. (6).

**(5)** To nominate the members set forth in para. (1)(b), the development partners shall submit to the Parliament a list with a maximum of 6 eligible persons by means of a jointly signed letter. The Committee on Legal Affairs, Appointments and Immunities shall review the nominated candidates and shall select 3 persons who obtained the highest number of votes at the Parliamentary Committee's meeting, who shall be proposed to the Parliament's plenary for appointment as members of the Evaluation Commission. For that the Parliamentary Committee shall develop a draft Parliament decision, accompanied by a report, which shall be debated in the Parliament's plenary meeting and passed by majority vote as provided for in para. (1)(b).

**(6)** The nominal composition of the Commission shall be confirmed by a Parliament decision.

**(7)** 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) working in the field of justice reform and fight against corruption in the last 2 years. Their list shall be approved by Government decision.

**(8)** The members of the Evaluation Commission shall meet the following requirements:

- a) have higher education;
- b) have an irreproachable reputation;
- c) have at least 10 years of experience in one or more of the following fields: legal, economic, fiscal, investigation of corruption and corruption-related crimes, integrity checking;
- d) have not held the position of Member of Parliament, or Member of Government in the past 3 years;
- e) have not been part of a political party in the past 3 years;
- f) have not held the position of judge or prosecutor in the Republic of Moldova in the past 3 years;
- g) have not been a member of the bodies referred to in Article 2 para. (1) in the past 3 years;
- h) have a sufficient knowledge of English.

**(9)** Membership of the Evaluation Commission is incompatible with any public office position. The incompatibility of Evaluation Commission members shall be resolved within 10 days of the date of their occurrence.

**(10)** Membership of the Evaluation Commission shall cease in the event of:

- 1) cessation of the work of the Evaluation Commission;

- 2) resignation;
- 3) withdrawal of membership as a result of:
  - i. occurrence of circumstances of incompatibility or failure to meet the requirements set forth in para. (8);
  - ii. deliberate violation of this Law and of the Rules of Procedure of the Evaluation Commission;
  - iii. committing a flagrant offence;
  - iv. non-attendance of at least 3 meetings of the Evaluation Commission without good reasons;
  - v. impossibility to exercise the function of Evaluation Commission member, including for health reasons, for a duration of more than 30 days;
- 4) death.

**(11)** Membership of the Evaluation Commission shall be withdrawn by reasoned decision of the Commission, taken by secret ballot of a majority of its members and shall be forwarded for information to the body that appointed the member concerned. The person whose membership is in question may not vote.

**(12)** In the event of termination of the membership of the Evaluation Commission on the basis of the grounds set out in para. (10) items (2) – (4), the impact of which is that the necessary quorum provided for in Article 11(2) is not met, the Evaluation Commission chairperson or, when appropriate, the Head of Secretariat shall notify immediately the Parliament, as the authority responsible for selecting Commission members, for it to take the necessary actions to select a new member, in accordance with the procedure laid down for the commission member whose term of office has ceased.

**(13)** The Evaluation Commission shall meet within up to 10 days from the date of confirming the candidates provided in para. (1). The Commission may convene in meeting upon the appointment of at least 4 members. The date, time and venue of the first working meeting shall be established by the Ministry of Justice, which shall also ensure the official convening of Commission members to this meeting.

**(14)** At its first working meeting, the Evaluation Commission shall elect the Commission chairperson and resolve other matters related to the operation of the Evaluation Commission.

## **Article 6. Powers of the Evaluation Commission**

In order to carry out its function, the Evaluation Commission shall have the following powers:

- a) draw up and approve its own Rules of Procedure and of the Commission Secretariat;
- b) assess the candidates and pass decisions on the outcome of candidate integrity evaluation;
- c) collect and verify any data relevant to the evaluation of candidates;
- d) have access to any information systems that contain data relevant to the fulfilment of its mandate, namely the evaluation of the ethical and financial integrity of candidates, including via the interoperability platform (MConnect);
- e) hear the candidate and other persons holding relevant information about the candidate's integrity;
- f) request information from individuals or legal entities of public or private law, and gather any information relevant to the fulfilment of its mandate;
- g) other powers provided for by this Law.

## **Article 7. Obligations of the Evaluation Commission members**

The members of the Evaluation Commission shall have the following obligations:

- a) participate, in person or by video conference, in the meetings of the Evaluation Commission;
- b) ensure confidentiality and security of personal data that have become known to them while performing their mandate as member of the Evaluation Commission;

- c) refrain from using, except for purposes of evaluation, handing over or disclosing confidential information about candidates and their close persons, which became known to them while performing their mandate as member of the Evaluation Commission;
- d) refrain from any activity in case of conflict of interests, from any activity that could result in a conflict of interest, or from any actions incompatible with membership of the Evaluation Commission, in the manner established by the Rules of Procedure of the Evaluation Commission;
- e) refrain from actions that could discredit the Evaluation Commission or cast doubt on the objectivity of its decisions.

## **Article 8. Evaluation of candidates' integrity**

**(1)** For the purposes of this Law, the evaluation of candidates' integrity shall consist in verifying their ethical integrity and financial integrity.

**(2)** The candidate shall be deemed to meet the criterion of ethical integrity if:

- a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer;
- b) there are no reasonable suspicions that the candidate has committed acts of corruption, acts related to corruption or corruptible acts, within the meaning of the [Law on Integrity No 82/2017](#);
- c) has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

**(3)** In the absence of rules of ethics and conduct approved for the field in which the candidate works or has worked, it shall be verified whether or not the past conduct of the candidate casts reasonable doubts on his/her compliance with the ethical and conduct standards established for judges and prosecutors.

**(4)** A candidate shall be deemed to meet the criterion of financial integrity if:

- a) the candidate's assets have been declared in the manner established by law;
- b) the Evaluation Commission finds that his/her wealth acquired in the past 15 years corresponds to the declared revenues.

**(5)** To assess the candidate's financial integrity, the Evaluation Commission shall verify:

- a) compliance by the candidate with the tax regime in the part related to the payment of taxes on using funds and income derived from the owned property, as well as taxable income and the payment of import duty and export duty;
- b) compliance by the candidate with the legal regime of declaring assets and personal interests;
- c) the method of acquiring the assets owned or possessed by the candidate or persons referred to in Article 2(2), as well as the expenses for the maintenance of such assets;
- d) the sources of income of the candidate and, where appropriate, of the persons referred to in Article 2(2);
- e) existence of loan, credit, leasing, insurance or other agreements that can generate financial benefits, where the candidate, the person referred to in Article 2(2) thereof, or the legal entity that they are beneficial owners of, is a contracting party;
- f) existence of donations, where the candidate or the person referred to in Article 2(2) has the status of donee or donor;
- g) other relevant aspects to clarify the origin and justification of the candidate's wealth.

**(6)** In assessing the criteria referred to in paras (2)-(5) and in deciding on them, the Evaluation Commission shall not depend on the findings of other bodies competent in the field concerned.



## Article 9. Initiating the evaluation procedure

(1) The Evaluation Commission shall initiate the evaluation procedure on the basis of the information received from the institutions responsible for the organization of elections or, where appropriate, of contests for the selection of members in the bodies referred to in Article 2(1), which shall include:

- a) name, surname, IDNP of the candidate;
- b) position held at the time of the application;
- c) position for which s/he is applying;
- d) contact details (address, phone, email) of the candidate.

(2)<sup>6</sup> The Evaluation Commission shall request the candidate to submit to the Commission a declaration of assets and personal interests with the updated data for the past 5 years, including the expenses of that period. The Evaluation Commission shall also request that the candidate submits to the Commission a declaration on the list of persons close to him/her, within the meaning of Law No 133/2016 on the Declaration of Assets and Personal Interests, who are working or have worked in the past 5 years in the judiciary, prosecution and public service. The aforementioned declarations shall be submitted within 7 days of the request. Failure to submit this information on time constitutes grounds for the Commission to find that the candidate failed the evaluation. The template of the declaration of assets and personal interests and of the statement on the list of close persons in the judiciary, prosecution and public service, provided for in this paragraph, shall be approved by the Evaluation Commission.

(3) By submitting the declarations stated in para. (2), the candidate shall declare on his/her own responsibility that the information is accurate and complete.

## Article 10. Information accumulation and appreciation

(1) *repealed.*<sup>7</sup>

(2) The Evaluation Commission and its Secretariat shall have free and real-time access to information systems containing data necessary for the fulfilment of its mandate, in particular for the evaluation of ethical and financial integrity of candidates, in line with the law on data exchange and interoperability, except for the information covered by [Law No 245/2008](#) on State Secrets.

(3) When evaluating the candidates' integrity, the Evaluation Commission has the right to request from individuals and legal entities of public or private law, including financial institutions, the documents and information it needs to carry out the evaluation. The requested information shall be submitted for free to the Evaluation Commission, including in electronic format, within a maximum of 10 days from the date of request.

(4) Failure to submit on time the information requested in line with para. (3) shall be sanctioned according to the law.

(5) By derogation from the provisions of the [Law No 133/2011](#) on the Protection of Personal Data, processing the personal data of candidates and of persons referred to in Article 2(2) shall be allowed for as long as the Evaluation Commission and its Secretariat operate. The candidate's right to access these data shall be ensured by the Secretariat of the

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<sup>6</sup> Phrase „When starting the evaluation procedure” at the beginning of art. 9 para. (1) excluded by [Law No. 354/2022](#).

<sup>7</sup> Para. (1) „The Evaluation Commission shall gather and verify the information held no later than 30 days from the receipt of the declarations referred to in Article 9(2)” in art 10 repealed by [Law No. 354/2022](#) in force as of 27.12.2022.

Evaluation Commission. The candidate has the obligation to keep the confidentiality of personal data in the evaluation materials presented by the Commission.<sup>8</sup>

**(6)** Individuals and legal entities of public or private law, including financial institutions, may not refuse to submit the information set out in para. (3) on grounds of personal data protection, bank secrecy or other data with limited access, except for information that falls within the scope of [Law No 245/2008](#) on State Secrets.

**(7)** The Evaluation Commission may request additional data and information from the candidates subject to evaluation at any stage of the evaluation procedure, in order to clarify any uncertainties found during the evaluation.

**(8)** - *repealed.*<sup>9</sup>

**(9)** The Evaluation Commission shall assess the gathered materials using its own judgement, formed as a result of a multi-faceted, comprehensive and objective review of the information. None of the submitted materials has a predetermined probative value without having been assessed by the Evaluation Commission.

**(10)** If the Evaluation Commission finds that the information provided by the candidate or other individuals or legal entities, in accordance with para. (3), do not correspond to the reality, it shall notify the competent bodies with a view to having the respective facts documented and, depending on the case, applying sanctions.<sup>10</sup>

**(11)** The information gathered by the Evaluation Commission about the candidates for the position of member in the bodies referred to in Article 2(1) and about the persons referred to in Article 2(2) shall be kept, archived, deleted, destroyed in the manner laid down in the Rules of Procedure of the Evaluation Commission.

**(12)** The information on the subjects referred to in Article 2(1)(a)-(d) of this Law, evaluated according to the provisions of this law, shall be forwarded to the Evaluation Commission established on the basis of the Law No 65/2023 on the external evaluation of judges and candidates for the office of judge of the Supreme Court of Justice.

*[Article 10(12) was introduced via Law No 252 of 17.08.23, OG325-327/22.08.23 Article 581; in force as of 22.08.23]*

**(13)** The information on the subjects referred to in Article 2(1)(e)-(h) of this Law, evaluated according to the provisions of this law, 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 amendments of some regulatory acts.

*[Article 10(13) was introduced by Law No 252 of 17.08.23, OG325-327/22.08.23 Article 581; in force as of 22.08.23]*

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<sup>8</sup> Sentence "The candidate has the obligation to keep the confidentiality of personal data from the evaluation materials presented by the Commission" added to art. 10 para. (5) by [Law No. 354/2022](#) in force as of 27.12.2022.

<sup>9</sup> Art. 10 para. 8 "The time limit provided for in para. (1) may be extended by another 15 days if: a) the information to be analyzed is complex; b) the individuals and legal entities referred to in para. (3), as well as candidates referred to in para. (7) delay the submission of the requested information" repealed by [Law No. 354/2022](#) in force as of 27.12.2022.

<sup>10</sup> Art. 10 para. (10) amended by [Law No. 354/2022](#) in force as of 27.12.2022. The previous version of this para. was the following: "If the Evaluation Commission finds that the information stated in the declarations submitted by candidates, the accuracy and completeness of which were confirmed by the latter in the affidavits submitted in line with Article 9(3), as well as information provided by other individuals or legal entities in accordance with para. (3), do not constitute a true reflection of the reality, it shall notify the competent bodies with a view to establishing and penalizing alleged wrongdoing."



## **Article 11. Meetings of the Evaluation Commission**

- (1) The Evaluation Commission shall carry out its activity in closed meetings, with the exceptions established by this Law.
- (2) The meetings of the Evaluation Commission shall be held with the presence of at least 4 members.
- (3) The members of the Evaluation Commission shall attend the meetings in person or by video conference. If a member of the Evaluation Commission is unable to attend the meeting, s/he shall notify the Commission's Secretariat of the given fact.

## **Article 12. Hearing of candidates**

- (1) After examining the information gathered, the Evaluation Commission shall invite the candidate for the hearing.
- (2) The hearings shall take place in a public session, which shall be audio/video recorded. The Evaluation Commission may decide to conduct the hearings or a part of the hearing in a closed meeting if the interests of public order, privacy or morality are undermined. If the Evaluation Commission rejects the candidate's request to hold the hearings or part of them in a closed meeting, s/he may immediately notify the Commission of his/her withdrawal from the competition.
- (2<sup>1</sup>) Video recordings of the hearings in public sessions are placed on the Commission's official website.<sup>11</sup>
- (3) If the candidate refuses to attend the hearing, the meeting shall be held in his/her absence and the respective candidate shall be evaluated on the basis of the information gathered by the Evaluation Commission.
- (4) The candidate has the following rights:
  - a) attend the meetings of the Evaluation Commission and give oral explanations;
  - b) be assisted by an attorney or a trainee attorney during the evaluation procedure;
  - c) consult the evaluation materials, at least 3 days before the hearing;
  - d) submit in writing additional data and information, which s/he deems necessary, in order to remove suspicions about his/her integrity, if s/he was in impossibility to present them previously;<sup>12</sup>
  - e) appeal the decision of the Evaluation Commission.

## **Article 13. Decision of the Evaluation Commission**

- (1) Once the evaluation procedure is completed, the Evaluation Commission shall issue a reasoned decision on passing or failing the evaluation. Withdrawal of a candidate from the competition after the institutions in charge of organizing the elections or the competition, as appropriate, submit the lists of candidates to the Evaluation Commission, shall be equivalent to failing the evaluation by the candidate concerned, irrespective of the reason given by the candidate.
- (2) The Evaluation Commission decision shall list the relevant facts, reasons and conclusion of the Evaluation Commission for passing or failing the evaluation.
- (3) The Evaluation Commission decision shall be adopted by a majority vote of participating members. Members of the Evaluation Commission do not have the right to abstain from voting.

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<sup>11</sup> Para. 2<sup>1</sup> in art. 12 added by [Law No. 354/2022](#) in force as of 27.12.2022.

<sup>12</sup> Phrase “, if s/he was in impossibility to present them previously” to art. 12 para. (4) lit. d) added by [Law No. 354/2022](#) in force as of 27.12.2022.

(4) In the event of a parity of votes, the Evaluation Commission shall examine repeatedly the information about the candidate concerned and shall put it to the vote the following day. If parity of votes repeats, the evaluated candidate shall be deemed not to have passed the evaluation.

(5) A candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the requirements laid down in Article 8, which have not been mitigated by the evaluated person.

(6) The decision on failing the integrity evaluation constitutes a legal basis not to allow the candidate to the elections or competition. The decision shall be submitted to the legally competent bodies to investigate into the detected violations, however the decision findings do not have probative value for any subsequent procedures or proceedings.

(7) The Evaluation Commission decision, edited in Romanian, shall be sent to the candidate to his/her e-mail and to the institution responsible for organizing the elections or competition, as appropriate. On the same day, the Evaluation Commission publishes on its official website the information if the candidate has passed or not the evaluation. If within 48 hours of sending the decision, the candidate does not notify the Evaluation Commission of his/her refusal to publish the decision, the decision on his/her evaluation shall be published on the website of the institution responsible for organizing the elections or competition, as appropriate, in a de-personalised form, except for the candidate's name and surname that shall remain public.<sup>13</sup>

#### **Article 14. Appealing the decision of the Evaluation Commission**

(1) The decision of the Evaluation Commission may be appealed by the evaluated candidate within 5 days from the date of receiving the reasoned decision, without following the preliminary procedure.

(2) The evaluated candidate may appeal the unfavourable decision of the Evaluation Commission before the Supreme Court of Justice, which shall form a special panel consisting of 3 judges and a substitute judge. The judges and the substitute judge shall be appointed by the President of the Supreme Court of Justice and confirmed by Decree of the President of the Republic of Moldova.<sup>14</sup>

*[The phrase "confirmed by Decree of the President of the Republic of Moldova" from Article 14(2) were declared unconstitutional by Constitutional Court Decision No 9 of 07.04.22, OG120-127/22.04.22 Article 62; in force as of 07.04.22]*

(3) The President of the Republic of Moldova may reasonably reject the candidate judges nominated by the President of the Supreme Court of Justice. In this case, the President of the Supreme Court of Justice shall nominate other judges from the Supreme Court of Justice to be included in the special judicial panel.<sup>15</sup>

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<sup>13</sup> Art. 13 para. (7) amended by Law No. 354/2022. The previous version of this para. was the following: "The Evaluation Commission decision shall be sent to the candidate to his/her e-mail and to the institution responsible for organizing the elections or competition, as appropriate. If within 48 hours of sending the decision, the candidate does not notify the Evaluation Commission of his/her refusal to publish the decision, the decision on his/her evaluation shall be published on the website of the institution responsible for organizing the elections or competition, as appropriate, in a de-personalized form, except for the candidate's name and surname that shall remain public."

<sup>14</sup> Phrase „and confirmed by decree of the President of Republic of Moldova” at the end of para. (2) of art. 14 declared unconstitutional by [CCJ 9](#) of 7 April 2022.

<sup>15</sup> Art. 14 para. (3) "The President of the Republic of Moldova may reasonably reject the candidate judges nominated by the President of the Supreme Court of Justice. In this case, the President of the Supreme Court of Justice shall nominate other judges from the Supreme Court of Justice to be included in the special judicial panel" declared unconstitutional by [CC decision 9](#) of 7 April 2022.

*[Article 14(3) was declared unconstitutional by Constitutional Court Decision No 9 of 07.04.22, OG120-127/22.04.22 Article 62; in force as of 07.04.22]*

**(4)** If a member of the special judicial panel abstains or is recused, the motion shall be reviewed by the other members of the special panel and the substitute member, who shall replace the member whose abstention or recusal is discussed. If the motion for recusal or abstention is accepted, the case shall be examined by replacing the concerned judge with the substitute member.

**(5)** Early recusal of judges who do not yet take part in the proceedings, as well as of a judge or the special judicial panel that reviews the motion for recusal shall not be allowed. If the motion for recusal is filed repeatedly in bad faith and abusively in order to delay the proceedings, to mislead the evaluation or with another malicious intent, the motion for recusal shall not be accepted.

**(6)** An appeal against the decision of the Evaluation Commission shall be heard and determined in accordance with the procedure laid down in the Administrative Code, subject to the exceptions laid down in this Law, and shall not have a suspensive effect on the Evaluation Commission decisions, elections or competition in which the candidate concerned participates.

**(7)** By derogation from Article 195 of the Administrative Code no 116/2018, the appeal against a decision of the Evaluation Commission shall be examined within 10 days.

**(8)** When examining the appeal against a decision of the Evaluation Commission, the special judicial panel of the Supreme Court of Justice may adopt one of the following decisions:

- a) reject the appeal;
- b) allow the appeal, and order the re-evaluation of candidates who failed the evaluation if it finds that within the evaluation procedure, the Evaluation Commission made some serious procedural errors that affected the fairness of the evaluation procedure, and that there were circumstances that could have led to the candidate's passing the evaluation<sup>16</sup>.

**(9)** The decision of the special judicial panel of the Supreme Court of Justice is irrevocable from the time it is issued. The decision shall be deemed 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.

**(10)** If the Evaluation Commission resumes the evaluation of a candidate in accordance with para. (8)(b), the provisions of this law on the integrity evaluation procedure shall apply accordingly.

## **CHAPTER III FINAL AND TRANSITORY PROVISIONS**

### **Article 15. Final Provisions**

**(1)** This Law shall enter into force on the date of its publication in the Official Gazette of the Republic of Moldova and shall apply until the completion of the examination by the Supreme Court of Justice of the final appeal lodged against the decision of the Evaluation Commission pursuant to Article 14. During the period of application of this Law, the provisions of other legal acts of equal or lesser legal power shall apply in so far as they do not conflict with the provisions of this Law.<sup>17</sup>

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<sup>16</sup> Phrase “, if it finds the existence of some circumstances that could have led to candidate’s passing of evaluation,” added to art. 14 para. (8) lit. b) by [Law No. 354/2022](#) in force as of 27.12.2022. This formulation was latter deemed unconstitutional by [CCJ 5](#) of 14.02.2023 in force as of 07.03.2023.

<sup>17</sup> Original formulation of art. 15 para. (1) “[...] until 31 December 2022” was replaced with “30 June 2023” in art. 15 para. (1), by [Law No. 354/2022](#) in force as of 27.12.2022. Further modified to “the

**(2)** The Government shall take the necessary measures to ensure the functioning of this Law, including:

- a) ensure, through the Ministry of Justice, the payment of the monthly allowance for the Evaluation Commission members as provided for in Article 5(1)(a) from the funds approved in the Ministry of Justice budget for the external/extraordinary evaluation of judges and prosecutors;
- b) adopt, through the Ministry of Justice, within 5 working days of the date of entry into force of this Law, the order on the list of development partners referred to in Article 5(7);
- c) ensure that development partners and the Parliament are contacted within 5 working days from the date of entry into force of this Law, in order for them to nominate members of the Evaluation Commission and to recruit and employ staff of the Secretariat of the Evaluation Commission;
- d) identify, within 15 days from the date of entry into force of this Law, the premises for the Evaluation Commission.

**(3)** Parliament shall:

- a) within 15 days from the date of entry into force of this Law, approve the nominal membership of the Evaluation Commission. For this purpose, parliamentary factions shall nominate candidates for membership of the Evaluation Commission, in accordance with Article 5(1)(a), within 7 days of the date of entry into force of this Law;
- b) within 15 days from the date of entry into force of this Law, start a public competition to appoint 6 persons as members of the Superior Council of Magistracy, who enjoy high professional reputation and personal integrity, with experience in law or another relevant field, who do not work in the legislative, executive or judicial authorities and are not politically affiliated;
- c) from April 26 to 29, 2022, verify the eligibility of candidates registered in the public competition referred to in letter (b), and, within 2 days of the relevant decisions being taken, forward the information on candidates who have passed the eligibility to the Evaluation Commission.

**(4)** The Evaluation Commission shall, within 20 days of its establishment, draw up and approve its Rules of Procedure, as well as the Regulation of the Commission Secretariat.

**(5)** By derogation from the provisions of Law no 158/2008 on Civil Service and Status of Civil Servant and the laws governing the special status of certain categories of civil servants, secondment of civil servants from public authorities and institutions to the Evaluation Commission shall be permitted, in accordance with Article 3(7) of this Law.

**(6)** A special judicial panel for reviewing appeals against Evaluation Commission decisions shall be set up in the Supreme Court of Justice within 15 days of the date of entry into force of this Law.

**(7)** The Superior Council of Magistracy and the Superior Council of Prosecutors respectively:

- a) within 7 days of the Evaluation Commission issuing the decision on the evaluation of the last candidate for the respective Council enlisted in the elections or competition prior to 27 March 2022, convene the General Assembly to select the Council members, which shall be held no later than 35 days after the date of convening;
- b) within 7 days of the Evaluation Commission issuing the decision on the evaluation of the last candidate for the respective boards, enlisted in the elections or competition

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completion of the examination by the Supreme Court of Justice of the final appeal lodged against the decision of the Evaluation Commission pursuant to Article 14" by [Law 147 of 09.06.23](#), in force as of 21.06.23

prior to 27 March 2022, convene the General Assembly to select the board members, which shall be held no later than 35 days after the date of convening;

- c) if it has not received applications for all the positions referred to in Article 2(1) by 27 March 2022, set another deadline for applying for those positions. This shall not affect the evaluation of candidates who have submitted their applications prior to this date. Similar evaluation, appointment and election deadlines apply to candidates who submitted their applications after 27 March 2022.

**(8)** The application deadline for the position of member of the Superior Council of Magistracy, the Superior Council of Prosecutors and membership to the specialized bodies of judges and prosecutors is extended until 27 March 2022. Until the expiry of this term, the candidates who submitted their applications as per the regulations applicable before the entry into force of this Law may withdraw their applications by submitting a request, and they will not be subjected to evaluation.

**(9)** On the day following the expiry of the application deadline for the position of member of the Superior Council of Magistracy, the Superior Council of Prosecutors and specialised bodies of judges and prosecutors, the Superior Council of Magistracy and the Superior Council of Prosecutors shall publish on their official websites the full lists of candidates to those positions.

**(10)** Within 7 days of the expiry of the application deadline for the position of member of the Superior Council of Magistracy, the Superior Council of Prosecutors and specialised bodies of judges and prosecutors, the Superior Council of Magistracy and the Superior Council of Prosecutors shall submit the lists of candidates for the positions, with the information provided for in Article 9(1). Until the expiry of this deadline, candidates who have applied may withdraw their application by submitting a request and they will not be subjected to evaluation.

**(11)** By derogation from Article 9(1) of the [Law No 947/1996](#) on the Superior Council of Magistracy and Article 73(1) of the [Law No 3/2016](#) on the Prosecutor's Office, the mandates of the members of the Superior Council of Magistracy and Superior Council of Prosecutors, with the exception of ex-officio members, shall be extended until their successors are vested in.

**(12)** Until the new membership of the Superior Council of Magistracy and the Superior Council of Prosecutors is legally formed, to avoid any disruptions in exercising the councils' duties laid down by the Constitution of the Republic of Moldova,<sup>18</sup> council decisions shall be adopted in accordance with the provisions of the Administrative Code governing the issuance of administrative acts.

*[The phrase "laid down by the Constitution of the Republic of Moldova" in Article 15(12) was declared unconstitutional by CC Decision No 9 of 07.04.22, OG120-127/22.04.22 Article 62; in force as of 07.04.22]*

## **Article 16. Transitional Provisions**

**(1)** [Law No 947/1996](#) on the Superior Council of Magistracy (republished in the Official Gazette of the Republic of Moldova, 2013, no 15-17, Article 65, with subsequent amendments, shall be amended as follows:

1. Article 3 shall be supplemented with paragraph (3<sup>1</sup>), with the following content:

"(3<sup>1</sup>) Candidates for the position of member of the Superior Council of Magistracy, provided for in para. (3) are subject to integrity assessment by the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors, established by

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<sup>18</sup> Phrase "laid down by the Constitution of the Republic of Moldova" in art. 15 para. (12) declared unconstitutional by [CCJ 9](#) of 7 April 2022.



law. The Commission decision shall be included in the candidate's file. A candidate who has not passed the evaluation may not be included on the ballot paper."

**2.** In Article 3<sup>1</sup>:

the following letter (c) shall be added to para. (1):

"c) has passed the evaluation carried out by the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors.";

the following letter (d) shall be added to para.(2):

"d) the decision of the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors."

in para. (3), the words "is not complete" shall be replaced by "does not contain the documents referred to in para. (2)(a)-(c)".

**(2)** [Law No 154/2012](#) on the Selection, Evaluation of Performances and Career of Judges (Official Gazette of the Republic of Moldova, 2012, no. 190-192, Article 636), with subsequent amendments, shall be amended as follows:

**1.** Article 4 shall be supplemented with para. (2<sup>1</sup>), with the following content:

"(2<sup>1</sup>) Candidates for the position of member of the board for selection referred to in para. (1) and (2) are subject to integrity assessment by the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors, established on the basis of the law. The candidate who failed the evaluation may not be elected as a member or substitute member of the board for selection."

**2.** Article 16 shall be supplemented by para. (4<sup>1</sup>) with the following content:

"(4<sup>1</sup>) Candidates for the position of member of the evaluation board referred to in para. (1) and (2) shall be subject to integrity assessment by the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors. The candidate who failed the evaluation may not be elected as a member or substitute member of the evaluation board."

**(3)** Article 10 of [Law no. 178/2014](#) on the Disciplinary Liability of Judges (Official Gazette of the Republic of Moldova, 2014, no 238-246, Article 557), with subsequent amendments, shall be supplemented with para.(3<sup>1</sup>), having the following content:

"(3<sup>1</sup>) Candidates for the position of member of the disciplinary board referred to in paras (1), (2) and (3) are subject to integrity assessment by the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors, established on the basis of the law. The candidate who failed the evaluation may not be elected as a member or substitute member of the disciplinary board."

**(4)** [Law no. 3/2016](#) on the Prosecutor's Office (Official Gazette of the Republic of Moldova, 2016, no. 69-77, Article 113), with subsequent amendments, shall be amended as follows:

**1.** Article 25<sup>1</sup> (7) shall have the following content:

"(7) Shortlisting of candidates for the position of Chief Prosecutor of the Specialized Prosecutor's Office is carried out by the special commission established by the Superior Council of Prosecutors, consisting of 5 members as follows: one proposed by the President of the Republic of Moldova, one by the Ministry of Justice, and 3 by the Superior Council of Prosecutors. Membership of the special commission may be held



by persons qualified in the field of law, have at least 10 years of professional experience in the country or abroad and enjoy an impeccable reputation. At least 3 members of the special commission will be reputable experts, with extensive experience in the field of specialized prosecution, prevention and combating corruption and organized crime, including abroad. At least one member of the special commission shall be a representative of civil society with experience in fighting corruption."

**2. In Article 69:**

para.(3<sup>2</sup>) shall have the following content:

"(3<sup>2</sup>) The candidate who has a length of service as a prosecutor of at least 3 years actually worked and has not been disciplinarily sanctioned or the term of action of the disciplinary sanction has expired and has passed the integrity assessment carried out by the Independent Commission for the evaluation of the integrity of candidates for the positions of members of the self-administration bodies of the judges and prosecutors, established under the law, may be elected to the position of member of the Superior Council of Prosecutors from among the prosecutors. The candidate's application file contains:

- a) Curriculum Vitae;
- b) Motivation Letter;
- c) manifest that includes the main objectives as a member of the Superior Council of Prosecutors;
- d) decision of the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors."

In para. (3<sup>3</sup>), the words "not complete" shall be substituted for "does not contain the documents referred to in paragraph (3<sup>2</sup>) (a)-(c)"

In para. 4, after the text "as well as the age of 65 years at most," shall be replaced with "to pass the evaluation carried out by the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors, and be 65 years old at most";

Para. (7) shall be supplemented with the following text "as well as the persons who have not passed the evaluation carried out by the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors"

**3. Article 83(4) shall be supplemented with the following text: "and passed the evaluation of integrity in the manner and under the conditions laid down for candidates for the position of member of the Superior Council of Prosecutors".**

**SPEAKER OF THE PARLIAMENT Igor GROSU**

**No 26. Chişinău, 10 March 2022.**