

# UNITED NATIONS HUMAN RIGHTS COUNCIL

## SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF MOLDOVA

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### On behalf of:

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## Two failed attempts to promote Constitutional amendments to strengthen the independence of the judiciary

On 30 September 2020, the Moldovan Government approved the [draft law](#) on the amendment of the Moldovan Constitution. The draft amendments envisage strengthening the independence and accountability of the judiciary. It provides for life tenure of judges, removing the Constitutional requirement for presidential reconfirmation of judges after the first five years in office. The draft law strengthens the independence of the High Judicial Council (SCM) by providing for a single six-year term mandate of the SCM members. Additionally, the draft promotes changes in the composition of the SCM and clarifies the conditions for electing or appointing SCM members. The draft law removes the requirement concerning the appointment of Supreme Court judges (SCJ) by the Parliament to soften the political implication in judicial appointments and removes the minimal prior experience in judicial office of ten years for eligible judges for the SCJ office.

If approved, the Constitutional amendments would strengthen the independence of the judges and judicial administration. However, the chances of the amendments being approved are unclear. In 2016, a similar draft law had been presented to the Parliament, but it was not voted within one year and became void. In 2017, another similar draft law had been initiated, but shared the same fate, despite positive opinions from the [Constitutional Court](#) of Moldova and the [Venice Commission](#).

### Recommendation:

- 1) To the Parliament of Moldova, to ensure immediate action after the Parliamentary elections in July 2021 to approve the long-awaited constitutional amendments related to the judiciary.

## New Justice Reform Strategy awaits adoption and genuine commitment

The Moldovan judiciary is perceived by society as politically dependent, severely affected by corruption and acting mainly in corporate interests. According to the June 2021 [Public Opinion Barometer](#), approximately 82% of the Moldovan population does not trust the judiciary. In 2020, Moldova ranked 82<sup>th</sup> out of 128 countries, in the [WJP Rule of Law Index](#), ranking in the lowest row of the Eastern Europe block. To improve the situation in the justice sector, the Ministry of Justice came up with a new [Strategy for Ensuring the Independence and Integrity of the Justice Sector for 2021 – 2024](#). Its main strategic directions include ensuring the independence, accountability, and integrity of justice sector actors and of the quality, transparency and efficiency of justice.

The Parliament approved the [Strategy and Action Plan](#) in November 2020. However, the newly elected President [returned](#) it for repeated review by the Parliament. President highlighted that the Strategy did not include the vetting of justice professionals, the reform of the anticorruption bodies, the effective verification of declarations of assets and interests, confiscation of assets which may not be demonstrated by persons holding public functions. In addition to the President comments, three important aspects require

particular attention:

- (i) The Strategy and Action Plan timeframe and deadlines require an important update, as the strategy was envisaged to enter in force already at the beginning of 2021.
- (ii) The activities set in the Action Plan do not set a consecutive order of implementation of activities and the process of monitoring of implementation involves a secretariat of the monitoring group and a high-level forum of decision makers in the justice sector.
- (iii) The Strategy and the action plan should focus on the most burning problems and exclude the activities or limited impact and importance.
- (iv) Without a clear structure of competences among the involved stakeholders and proper financing of the secretariat, the implementation of the Strategy may be significantly jeopardised.

### **Recommendations:**

- 1) To the Parliament of Moldova, to take as a matter of urgent priority the adoption and effective implementation of the new 2021-2024 Justice Strategy;
- 2) To the Parliament and Government of Moldova, prior to the final adoption of the Strategy, revise the activities, timeframe and deadlines, evaluate the necessary funds for its implementation, set a consecutive order of implementation of activities and ensure a process of monitoring of implementation;
- 3) To the authorities responsible for strategy implementation (in particular Ministry of Justice) to coordinate the implementation of the new justice strategy, including with international support.

### **The High Judicial Council (SCM) should regain its role as the guarantor of judicial independence**

In March 2019, the International Commission of Jurists (ICJ) presented a [report](#) on the independence of judges in the Republic of Moldova. The report includes recommendations to ensure the full independence of judges and increase the efficiency of justice in the country. While the report acknowledges important progress in many areas, including in efforts to secure audio-recordings of all court hearings, the introduction of a system of random allocation of cases, and staff and salary increases for all judges, it confirms that the implementation of the most crucial legal reforms is significantly lagging behind and often lacks political will.

Among other challenges, the report highlights a culture of excessive hierarchy that remains prevalent among judges. The members of the ICJ mission heard stories about judges who live in fear: the fear of expressing their opinion about the situation in the justice or the fear of prosecution for issuing decisions contrary to the interests of the prosecutor's office or the people in power.

Based on the findings of the report, the ICJ recommended, among others, that the High Judicial Council (SCM) must regain its role of defending the independence of judges. In particular, it must provide reasons for its decisions and not impede judges from

participation in events, allowing them to speak freely about the challenges they face. The Association of Judges from Moldova was encouraged to act openly and consistently for the defence of the independence of judges.

**Recommendations:**

- 1) To the SCM, to fulfil its role as defender of the independence of the judiciary and the rule of law in Moldova and speak out against threats to the independence of the judiciary and of individual judges;
- 2) To the SCM to encourage and facilitate the freedom and association and expression of judges.

[The system of selection and promotion of judges should be further improved](#)

The selection and promotion of judges are key elements for ensuring an independent and professional judiciary. In 2012, the Parliament passed a package of legislative amendments as part of the implementation of the [Justice Sector Reform Strategy](#) (JSRS), which settled a new legal and institutional framework for selection and promotion of judges in Moldova. The new system brought many novelties: unifying the point of access to the judges profession by introducing exams at the National Institute of Justice (NIJ), setting up specialized boards at SCM fully responsible to ensure the process of selection and evaluation of judges' performance, last but not least, introduction of new criteria for the selection and performance evaluation of judges.

The 2012 amendments were supposed to improve the quality of the selection process and to contribute to the promotion of the most upstanding and competent judges. Despite all these efforts, the mechanism brought modest results. Multiple monitoring studies and research carried out from 2013 through 2018 identified numerous shortcomings of the system introduced in 2012. Among them (i) the impractical organization of contests for each vacancy, (ii) the duplication of responsibilities among the entities involved in the selection process, and (iii) the insufficient reasoning of SCM's decisions on the selection of candidates proposed for the position of judge, as well as in promotion of judges. The results of many contests very often left an independent observer with the impression that SCM members' personal beliefs weighted more than the entire judicial selection and promotion process carried out by the specialized SCM boards and exams at the NIJ.

In the autumn of 2018, the Parliament passed a [new series of important legal amendments](#) on judicial selection and the promotion of judges, which became effective in October 2018. Under the new rules, vacancies in the system are to be announced all at once, in one competition, and candidates chose their preferred vacancies in the descending order of the obtained score. The SCM will have a limited but pro-active role assigning at most 20% out of the final evaluation score. The amendments mostly addressed the above-mentioned shortcomings. In addition to these efforts, we recommend to the SCM the following:

**Recommendations:**

- 1) To ensure that the candidates to the position of judge who graduated the NIJ compete for all vacancies put out to contest;
- 2) To develop an interview methodology for evaluation of candidates in order to ensure a proper assessment of candidates by the SCM. In the first contest held under the new rules, the SCM failed to organize a proper interview with the candidates, with specific questions and the evaluation of all candidates by standard evaluation criteria;
- 3) To give away their “exclusive vote” when selecting and promoting judges. It seems that the SCM failed to give up the practice of nominating candidates for selection or promotion of judges based solely on the “exclusive vote” of each SCM member. The SCM’s decisions should lay out the majority’s arguments in favor of these candidates. All the selection and performance filters as well as the legal amendments introduced in 2018 are inefficient and useless if in the end all that matters is “the exclusive vote” of the SCM members.

### The judges disciplinary liability mechanism should be simplified

The [mechanism of disciplinary liability of judges](#) in Moldova is extremely complex. Over the period of 2016 to 2020, more than 7,500 complaints have been filed to the Superior Council of Magistracy (SCM) regarding the actions of judges, based on which 250 judges have appeared before the Disciplinary Board and 49 sanctions have been applied. Most of the sanctions refer to the judges’ failure to fulfil procedural actions, namely the deadlines for issuing motivated court decisions.

For each case, which goes through all stages of a disciplinary procedure, at least five institutions are involved and between 30 and 38 people are allocated. On average, each case lasts up to 400 days. In 2015, a new law on the disciplinary liability of judges came into force, which should have streamlined this procedure. But even with significant amendments made in 2018, the results are still waited. According to an analytical document on the subject, elaborated in 2020, the dysfunctions of the disciplinary system are related not only to the way the disciplinary offences are being defined, meaning to the procedure of disciplinary liability of magistrates itself, but also to the issues related to the administration of justice and the independence of judges.

The current legal framework has certainly set off a disciplinary activity that has a long way to become more efficient. Today even to impose a simple warning to a judge, a disciplinary verification and investigation by the Judicial Inspection shall be launched, followed by an examination at the Disciplinary Board, then an appeal before the SCM, and finally an appeal against the decision before a court of appeal and the Supreme Court of Justice. The time and the human resources involved in this process are enormous.

The shortcomings of the disciplinary system are related not only to the procedure for holding judges accountable and sanctioning them but also to aspects related to the judicial independence. The Supreme Court of Justice lost its credibility after the September 2019 scandal, when evidence came to the public’s knowledge that the [Chief Justice](#) had given instructions to judges in certain cases — evidence that could be

categorized as related to politics or to some politically affiliated interest groups. The fact that all cases get to the SCJ has a compromising effect on the authority of lower court judges. In addition, the judiciary itself made statements that judges who had applied solutions that were contrary to expectation or had tried to oppose such influences were immediately subjected to various disciplinary or other actions, got poor performance grades, or were driven out of the system.

**Recommendations:**

- 1) To the SCM and the Parliament, to assess whether the time and human resources involved in the disciplinary activity should be reduced. The Judicial Inspection and the Disciplinary Board should become in practice autonomous from the SCM: the selection criteria of inspectors-judges must be changed, their number must be increased, and the Judicial Inspection must have its own apparatus. The disciplinary responsibilities of the Disciplinary Board and the SCM overlap, so it is better that they be fully delegated from the SCM to the Disciplinary Board;
- 2) To the SCM, to ensure that judges are protected against pressure within the system (particularly from the management of courts) and outside it (from prosecutors and politicians). Such pressure may also take the form of a disciplinary action filed by a litigant discontented with a judge's actions—an inconceivable situation that contradicts the principle of judicial independence.
- 3) To the Judicial Inspection, to focus on the most serious faults committed by judges. The practice from the recent years of focusing on breaches of procedural time-limits established for judges had a negative impact on the quality of judgements.
- 4) To the Judicial administration and the Government, along with the strengthening of the judicial system, efforts should be made to optimize judges' work—ensuring a proper caseload and enough judges and technical staff.

[More than half of judicial decisions in Moldova are excessively depersonalized](#)

The depersonalization of court decisions in the Republic of Moldova is defective or inconsistent in six out of every ten cases (63%). This is the conclusion of a comprehensive [study](#) conducted by the Legal Resources Centre from Moldova based on the analysis of 1,340 judicial decisions adopted from 1 January 2018 to 31 March 2019. According to the national legislation, until published on internet, certain information in the judgment is excluded from the content of a court decision. The rules on anonymization are set out by the Superior Council of Magistracy (SCM).

Most of the times, the courts fail to follow the provisions regarding the obligation to hide, *ex officio*, the home address, the date and place of birth, the personal identification number or the registration plate. This rule was breached in 305 decisions analyzed (38% of the total analyzed). In 179 decisions (34% of the total criminal and misdemeanors decisions analyzed) the judges (with the exception of the SCJ judges) abusively anonymized the names of the authors, perpetrators or instigators. In 163

decisions (20% of the total decisions analyzed), provisions of the Regulations not allowing the anonymization of the name of the judge, prosecutor, police officer, mediator, the bailiff, notary or the lawyer were breached. In 100 decisions (12% of the total decisions analyzed) a violation of the rule regarding anonymization in the interests of minors, privacy or morality occurred. In 172 decisions (21% of the total decisions analyzed) only part of the decision was depersonalized.

The results confirm that the failure to follow the provisions of the Regulation regarding the publication of court decisions, affects the entire judicial system. In the case of the district courts, the average rate of violations of the Regulation is 75%, and in some courts, it exceeds 90%. At the level of the courts of appeal, the situation is much better, but equally worrisome. 47% of the court decisions from the courts of appeal fail to meet the SCM Regulation.

Failure to follow the provisions of the Regulation regarding the publication of court decisions, for one reason, breaches the privacy of individuals who appear before the court. On the other hand, incoherent anonymization makes the whole exercise useless. At the same time, information that should stay is excluded, limiting the access the public interest data. This further erodes confidence in the judiciary.

**Recommendations:**

- 1) To the SCM to clarify any problematic provisions of the Regulation and take urgent measures to consolidate or “refresh” the knowledge of the judiciary and of the judicial assistants regarding the understanding and application of the provisions of the Regulation;
- 2) To the SCM and the Agency for Court Administration, to draft Guidelines for judicial assistants and judges, on the way and the situations in which the provisions of the SCM Regulation are applicable. Competent institutions such as the SCM and the Agency for Court Administration shall continue to ensure more efficient monitoring of compliance with the provisions regarding publication and depersonalization of court decisions.

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