

TRANSPARENCY AND EFFICIENCY OF THE SUPERIOR COUNCIL OF MAGISTRACY

of the Republic of Moldova

2010-2012



LRCM

LEGAL
RESOURCES CENTRE
FROM MOLDOVA

Monitoring report

**TRANSPARENCY AND EFFICIENCY
OF THE SUPERIOR COUNCIL
OF MAGISTRACY**

of the Republic of Moldova

2010-2012

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Opinions, findings, conclusions and recommendations expressed in this Report belong to the authors and do not necessarily reflect those of the Law Program of the Soros Foundation-Moldova

Monitoring Report “Transparency and efficiency of the Superior Council of Magistracy of the Republic of Moldova. 2010-2012”

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Executive Summary

The Superior Council of Magistracy (hereinafter “SCM”) plays an essential role in ensuring the quality and efficiency of the judicial system of the Republic of Moldova due to its competencies according to the legislation. The main duties of the SCM are related to the career of judges, professional training of judges and staff of courts’ secretariats, and monitoring discipline and ethics of judges and courts’ management. The functioning of the whole judicial system depends on the manner of operation of the SCM. Also, SCM plays an essential role within the legal system and in the society, as it represents the judicial power and ensures the quality of its functioning. For this reason, the work of SCM needs to be correct, efficient and inspire trust in judges, as well as in others within the justice system and the public. Transparency of the SCM activity is essential in order to ensure both the quality of its activity and that of the judicial system, as well as wide access to information concerning its activity to anyone who may seek it.

In order to ensure full implementation of its duties, SCM relies on dedicated members and staff, as well as a series of external factors. When SCM was established, its composition, competencies and the manner of its functioning were not regulated with sufficient clarity in the law. The way SCM was administrated was not in the spirit of that of a self-administrating judicial body.

Currently, SCM is composed of judges elected by the judges of all levels of courts from the whole country, ex officio members, and titular law professors. Legislative amendments from 2012 shall create a new composition of the SCM where the majority of members are judges. However, the procedure for electing members/judges is not sufficiently well-regulated, a fact that diminishes the potential for electing the best candidates. The way of designating titular law professors and - members of Parliament is not properly regulated either. Since the founding of the SCM and until its actual composition, no selection processes for members designated by Parliament has been organized. That creates the perception that appointments are based on political criteria or on other criteria which are less clear. The legislator could change the quality of the members from titular law professors” in order to include representatives of civil society”, that would broaden the spectrum of specialists who can become members of SCM, and could contribute to improving the performance of the SCM. The presence of the General Prosecutor within the SCM can hardly be justified, at least so far as the Bar is not represented. Moreover, in most of the cases, disciplinary proceedings against judges initiated by the General Prosecutor referred to cases where judges adopted judgments that were “inconvenient” for the prosecutor’s office.

The status of entities affiliated to the SCM and the division of responsibilities among them is not sufficiently defined. In particular, the Judicial Inspection (hereinafter “JI”) does not enjoy functional independence. Despite the fact that it is led by the main inspecting judge, the law, or SCM regulations (the old and the new one), do not clearly divide responsibilities between the main inspecting judge and other inspecting judges. At the same time, JI exercises a very important function aimed at ensuring the observance of ethic and disciplinary norms by judges, which is essential for ensuring the integrity of the judicial system. Despite legal requirements, documents drafted by the JI are not published and judges do not have sufficient knowledge about its activities.

As far as the three SCM boards are concerned, despite the fact that legal provisions concerning the status of Evaluation Board are confusing, it seems that the intention of the legislator was to create a Performance Evaluation Board for Judges and a Selection Board for Judges as entities that should enjoy independence in exercising their functions. Their activity is ensured and supervised by the SCM through three main levels: 1) organization of selection processes for selecting representatives of the civil society within the Board; 2) ensuring the activity of the secretariat of the Board, and 3) examination of complaints submitted against the decisions adopted by the Board. The final responsibility for the good functioning of these Boards lays with the SCM. The status of the Disciplinary Board (hereinafter “DB”) is still unclear because of the mandatory validation of all its decisions by the SCM. Its status needs to be further clarified in the new draft Law on the Disciplinary Responsibility of Judges. In the future, SCM needs to carry out an evaluation of its activities and the activities of affiliated entities in order to determine whether the current approach is efficient and whether SCM’s practical leverage aimed at ensuring its duties in three following fields, loses: The career of judges, performance evaluation of judges, and the discipline and ethics of judges.

The reduced number of SCM staff has been a serious impediment in carrying out the SCM duties in full. By 15 March 2013, the number of persons working in the SCM Secretariat was insufficient to ensure all its duties. If initially the main problem was the low number of staff assigned by law, at least from 2012, SCM has had the possibility to recruit new staff and it depends entirely on the SCM how it will exploit this opportunity.

As to the competencies assigned to the SCM by law, they seem to be adequately regulated, except the lack of an express reference in the Law to the role of the SCM in promoting quality and efficiency of justice. Also, the Law on the SCM assigns the role of verifying requests of the General Prosecutor concerning criminal investigation against judges to the JI, despite the fact that this function should be exercised by the members of the SCM only, without intermediary bodies. The large number of issues included in the agenda of SCM meetings represents a stringent problem that needs to be solved as soon as possible. It does not allow the SCM to discuss conceptual issues. SCM should not decide during its meetings on a number of minor issues which are assigned by Law to the SCM within its competence, and the practice of organizing meetings needs to be improved by eliminating minor issues from the agenda.

From the very beginning, SCM had limited legal competencies regarding the appointment of judges. The legislative amendments of 2005 limited the role of the President of the

country in appointing judges. Through legislative amendments of 2012, the procedure of selecting and promoting judges was clarified. The main tasks are the selection and performance of evaluation boards of judges. However, SCM was often requesting another candidate than the one who was preferred by the Board to be appointment to the position of judge. Moreover, in many decisions by the SCM, it is not possible to determine on which grounds the candidate who was preferred by the Board was not chosen by the SCM for. Such practices damage the image of the SCM and seriously affect the credibility of the process of selecting judges.

The National Institute of Justice (hereinafter “NIJ”) was designed to serve as the main provider of human resources for the judicial system. Before the 2012 legislative amendments, 80% of judges had to be selected from NIJ graduates, and the rest from experienced practitioners. However, it appears that these requirements were never observed. This could be explained by the lack of a general selection processes for all vacant positions of judges, as well as by refusal of NIJ graduates to participate in the competitions announced for certain positions, and also by a reduced number of NIJ graduates. SCM is consulted concerning the number of persons that need to be recruited for the NIJ’s initial training of judges. In 2011 and 2012, this number increased from 10 to 15. Nevertheless, this number is considerably lower than the number of vacant positions for judges, or the number of positions that will become vacant shortly. On the other hand, SCM still does not organize general competitions for all vacant positions for judges, despite the fact that this procedure is much simpler and more efficient when it comes to recruiting staff.

From 2010, the activity of the DB has improved considerably. Its decisions are published and they are much better motivated than before. There are, however, still many legislative drawbacks concerning disciplinary procedures for judges, which could be eliminated through the draft Law on the Disciplinary Responsibility of Judges elaborated by the Ministry of Justice. On the other hand, in several cases examined in 2012, SCM did not initiate disciplinary proceedings, but warned judges about the need to observe the law, and in several other cases disciplinary proceedings were stopped by the SCM because, after the initiation of disciplinary proceedings, the judge in question resigned. Such practices led to conclusions that SCM did not act sufficiently firm in order to improve discipline among judges, and that judges were encouraged to leave the system in honourably to the detriment of disciplinary proceedings.

SCM alleges that it does not have sufficient competencies for elaboration and execution of court budgets. Recent declarations of the Minister of Justice confirm the intention of the executive to transfer the Department of Judicial Administration (hereinafter “DJA”) to the SCM. This will represent the last stage in the process of strengthening the role of the SCM in the process of elaboration and execution of court budgets. Legislative amendments from July 2012 have substantially consolidated the role of the SCM in the process of allocation of judges per court, this representing an important tool for ensuring court efficiency.

Audio recordings of court hearings, as well as random assignment of cases are mandatory in the Republic of Moldova. In 2008-2009, audio recordings of court hearings and random assignment of cases among judges represented some of the main fields within the

justice sector where external assistance was provided. However, in 2012, less than 15% of all Moldovan courts were audio recording all court hearings. In 2012 and in the beginning of 2013, SCM took several steps in order to improve the situation in this field. Nevertheless, random assignment of cases continues to be rather an exception than a rule. Despite the fact that since 2010 SCM found obvious situations suggesting that the assignment of cases in court was not conducted randomly, it did not react with sufficient firmness. We are convinced that without a firm and uncompromising position of the SCM, the situation in this field will not improve.

Despite the fact that the competence of the SCM to elaborate policies and normative acts related to the functioning of judicial system is not directly established by law, *de facto*, SCM does provide opinions on different normative acts and may come up with proposals in areas related to its activity. Therefore, SCM needs qualified staff for elaboration of policies and normative acts, including analyzing the impact of the current legal framework, which will ensure full involvement of the SCM in the decision-making process. Qualitative and coherent involvement of the SCM in the decision-making process will further enhance its role compared to the executive and legislative powers. SCM needs to establish clear rules concerning opinions that it can formulate, because providing formal and superficial opinions will only reduce its authority towards judges, as well as towards the other two powers and the society at large.

According to Article 8¹ of the Law on the SCM, the activity of the SCM needs to be transparent. However, this is not always the case. SCM meetings are public, and SCM publishes the agenda of its meetings in advance. Moreover, it publishes most of its decisions after their adoption. Nevertheless, failure to publish materials referred to in the agenda limits transparency. At the same time, the way the SCM meetings are organized, where issues included in the agenda are mainly discussed only among the members of the SCM during deliberations - in combination with the brief motivation of SCM decisions - does not allow us to assess the activity of the SCM as being sufficiently transparent. Transparency should not be seen as a simple demand on behalf of the civil society. It represents a condition for increasing trust in the SCM among judges and the entire society. Increased transparency of the SCM should be one of its main priorities.

Methodology

The study aims at analyzing the activity of the SCM from the perspective of its transparency, its interaction with mass-media and society, and its efficiency in the perspective of its own internal administration and the administration of the judicial system.

This Report includes six chapters. Chapter 1 describes the history, responsibilities and composition of the SCM and of the entities affiliated with it Chapter 2 is dedicated to the role of the SCM and the activity of the Qualification Board (hereinafter “QB”) related to the career and professional training of judges. Chapter 3 analyzes the activity of the SCM, JI and DB. Chapter 4 refers to the activity of the SCM in the administration of the courts, the role of the SCM in financial administration of courts, verification of the organizational activity of courts, random assignment of cases in courts, and audio recording of court hearings. Chapter 5 refers to the internal organization of the SCM and describes the SCM Secretariat and its functions, the organization of the SCM meetings, and the representation of the SCM before the courts in cases where its decisions are challenged. Chapter 6 refers to the transparency of the SCM in internal administration, posting of information on the SCM website, elaboration and publication of the Annual Activity Report, relations of the SCM with mass-media and civil society, and the reactions of the SCM to issues of public interest. Each chapter ends with recommendations related to the issues described therein.

The methodology of the Report was elaborated by the LRCM team. The study analyzed the activity of the SCM between 2010 and 2012. LRCM representatives were present during most of the SCM meetings that took place in 2012 and January – February 2013. The Report was drafted between November 2012 and March 2013 and reflects the situation by 15 March 2013.

The report analyzes normative regulations related to the activity of the SCM, SCM Secretariat, JI, QB and DB of the SCM. The implementation team took into consideration amendments to the Law on the SCM adopted by the Law No. 153 that introduced new norms concerning the SCM composition, transparency of the SCM activity, structure of the SCM Secretariat, mechanism of challenging the SCM decisions, and mechanism of SCM reporting about its activity. By this law, QB ceased its activity and the Selection Board for Judges and the Performance Evaluation Board for Judges were established. However, considering that these two boards have not started their activity at the moment of editing this Report, it analyzes the activity of the QB from 2010 to 2012 instead.

The LRCM team carried out direct monitoring of the SCM activity by attending the SCM meetings, analyzing the agenda of the SCM meetings in advance, as well as documents attached to the agenda that were available on the website. Following each SCM meeting attended by a LRCM representative, minutes were drafted concerning the subjects discussed. The SCM website was constantly monitored from the perspective of its functionality and content. An increased attention was paid to publication of the SCM decisions on the SCM website.

The implementation team conducted qualitative semi-structured interviews with members of the SCM, SCM Secretariat, JI, DB and QB, as well as DJA employees, judges, defence lawyers and other experts in July – August 2012. The interviews were mainly aimed at identifying the opinion of professionals within the justice system concerning the following issues: SCM competence, tasks of the SCM members, activity of the SCM Secretariat, preparation of SCM meetings, activity of JI, DB and QB, participation of SCM in elaboration of court budgets, representation of the SCM in courts, participation of the SCM in elaboration of public policies in the field of justice, providing opinions on draft laws, communication with judges from the country, transparency of the SCM activity, decisional transparency, the manner of ensuring publication of income and property statements of judges by the SCM, audio digital recording of court hearings, random assignment of cases, and publication of court judgments on the courts' websites. The interviews are confidential and the report does not reflect the names of those interviewed.

In April 2012, LRCM team carried out a study visit to the SCM of Romania where they had meetings with the SCM members, the Secretary General of the SCM, JI members, judges, experts and representatives of civil society. Interviews focused on the activity of the SCM Secretariat, preparation of the SCM Plenum meetings, the manner of organizing activities of the SCM members within the commissions and sections, transparency of the SCM activities, representation of the SCM in courts, providing opinions to draft laws, communication of the SCM with judges throughout the country, JI activity, reform of the disciplinary procedure, justice reform, and the fight against corruption.

The draft Report was subjected to peer evaluation within the LRCM. The initial draft Report was commented on by an international expert and two national experts with experience in the field of justice, and consequently the draft Report was amended by incorporating suggestions by these experts. A pre-final draft Report was handed over to the SCM representatives in order to prepare the public launching of the Report.

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The authors of the report would also like to express their gratitude to all members of the SCM, the secretariat of the SCM, judges, defence lawyers, prosecutors and independent experts interviewed for the purpose of drafting the Report for their time and their willingness to share opinions during the data collecting process, as well as for formulating the Recommendations aimed at improving the activity of the SCM and its transparency.

The authors of the Report are also extending their gratitude to the members and Secretariat of the SCM of Romania for the time allocated during the study visit conducted in April 2012, and for providing information about the activity of the SCM of Romania.

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List of abbreviations

CA – Court of Appeal

QB – Qualification Board

DB – Disciplinary Board

LRCM – Legal Resources Centre from Moldova

SCJ – Supreme Court of Justice of the Republic of Moldova

SCM – Superior Council of Magistracy of the Republic of Moldova

DJA – Department of Judicial Administration

JI – Judicial Inspection

NIJ – National Institute of Justice

Law on the SCM - Law No. 947, of 19 July 1996, on the Superior Council of Magistracy

Law on the Status of Judges – Law No. 544, of 20 July 1995, on the Status of Judge

Law on the QB – Law No. 949 of 19 July 1996 on the Qualification and Attestation Board of Judges

Law on the DB - Law No. 950 of 19 July 1996 on the Disciplinary Board and Disciplinary Liability of Judges

Law No. 153 – Law No. 153, of 5 July 2012, on Amendment and Completion of Some Legislative Acts

Law on the Career of Judges - Law No. 154, of 5 July 2012, on the Selection, Performance Evaluation and Career of Judges

Regulation of the SCM Secretariat of 2007 – Regulation on the Organization and Activity of the SCM Secretariat, approved by the SCM Decision No. 68/3 of 1 March 2007

Regulation of the SCM Secretariat of 2013 – Regulation on the Organization and Activity of the SCM Secretariat, approved by the SCM Decision No. 112/5 of 5 February 2013

CHAPTER 1

General presentation of the Superior Council of Magistracy

1.1 History

The first official reference to the “Superior Council of Magistracy” is found in p. 3 of the Concept of Judicial and Legal Reform in the Republic of Moldova, adopted by the Decision of the Parliament No. 152 of 21 June 1994. According to this Decision, SCM had to be established as “a special body, aimed at ensuring independence of the judicial power, establishing guarantees and forms of self-administration of courts, setting up the judiciary system and carrying out control over the activity of judges”. The concept envisaged setting up the QB and DB “within the SCM”, and the DB “shall examine cases of administrative, disciplinary and criminal liability of judges”. The SCM was to be composed of the Minister of Justice (Chairperson of the SCM); the Chairperson of the SCJ; the Chairperson of a Court of Appeal; the Chairperson of the Economical Court; the Chairperson of the Military Tribunal; the General Prosecutor, and five other members consisting of three judges elected at the General Assembly of Judges and two law professors elected by the Parliament.

Articles 122 and 123 of the Constitution of the Republic of Moldova refer to the SCM. Article 122 regulates the SCM composition and Article 123 describes its duties in general terms. By Decision of the Parliament No. 362 of 3 February 1995, the Parliamentary Legal Commission for Appointments and Immunities, jointly with the SCM, was in charge to ensure the elaboration of the draft Law on Organization and Activity of the SCM and to present it for examination by the Parliament in the second half of March 1995. On 6 July 1995, the Law No. 514 on the Organization of Judiciary was adopted. This Law envisaged in Article 24 that judicial self-administration shall be carried out by the SCM, which is “an independent body, created to ensure the establishment and functioning of the judicial system and is a guarantor of independence of the judicial authority”.¹ On 19 July 1996, the Law on the SCM was adopted.

¹ Article 24 of Law No. 514 on the Organization of Judiciary was amended by Law No. 153 of 5 July 2012 and provides the following: “SCM is an independent body, created in order to set up and ensure proper functioning of the judicial system, which represents the guarantee of independence of the judiciary and ensures judicial self-administration.”

a. SCM duties and transparency

Article 123 of the Constitution envisages that the SCM shall ensure the appointment, transfer, removal from office, promotion and application of disciplinary measures against judges, and the manner of organisation and functioning of the SCM shall be established by organic law.

According to Article 20 paragraph 1 and 4 of the initial version of the Law on the SCM, in cases of promotion, transfer, suspension or dismissal of judges, “the minister of Justice or, as the case may be, the Chairperson of the Supreme Court of Justice, shall submit their motivated proposals to the Council, ... that shall attest execution of the conditions envisaged by the Law for taking the proposed measures”. By the decision of the Constitutional Court No. 10, of 4 March 1997, this provision was declared unconstitutional, because it does not ensure independence of judges. The Law on the SCM was subsequently amended by the Law No. 1414, of 17 December 1997. According to this law, proposals for appointment of judges had to be submitted by the Chairperson of the SCM to the President of the country or, as the case may be, to the Parliament, and issues related to the promotion, transfer, suspension, resignation and dismissal of judges had to be examined by the SCM (Articles 19 and 20).

Further amendments were introduced to the Law on the SCM by the Law No. 373 of 19 July 2001. Some of them proved to be particularly damaging to the independence of judicial power. The competence of the SCM in the field of appointment of judges was reduced. If the President of the country or, as the case may be, the Parliament rejects appointment or reconfirmation of the candidate proposed by the SCM for the position of judge, the SCM is entitled to repeatedly nominate the same candidate only in case of new circumstances in favour of him or her. Rejection, including repeated rejections of candidates nominated by the SCM constitutes basis for submitting a proposal of removal of the respective candidate from the office of judge.²

By Law No. 373, of 19 July 2001, SCM was tasked to «propose for Parliament’s approval the draft budget necessary for the good functioning of the courts».³ This provision was amended several times. According to Law No. 154, of 21 July 2005, the SCM does no longer present for Parliament’s approval the draft budget necessary for the good functioning of the courts, but “presents, as established by the legislation in force, [to the Ministry of Finance], the draft budget necessary for the good functioning of the courts”.⁴ By Law No. 247 of 21 July 2006, this task of the SCM was excluded. It appears that the amendment was introduced in order to be in compliance with Article 23 paragraph 2 of the Law on the Organization of the Judiciary, which provides that the Ministry of Justice is responsible “for providing organizational, technical-material and financial support to courts and courts of appeal. The budget of each court and court of appeal shall be specified in the Law on the State Budget.” More details related to elaboration of court budgets are described in section 4.3 of the Report.

² See for details Article 11 paragraph 3 and 4 of the Law on the Status of Judges and Article 19 of the Law on the SCM, in the version of Law No. 373 of 19 July 2001.

³ See Article 4 letter n) of the Law on the SCM, in the version of Law No. 373 of 19 July 2001.

⁴ See Article 4 letter n) of the Law on the SCM, in the version of Law No. 154 of 21 July 2005.

The role of the SCM related to the appointment of judges was consolidated by Law No. 174, of 22 July 2005. According to this Law, the President of the country may reject the candidate proposed by the SCM for appointment or reconfirmation to the position of the judge only once, and only in the presence of compelling evidence of incompatibility of the candidate with the respective position by violation by the respective candidate of the legislation or legal procedures related to his/her selection and promotion. If the SCM repeatedly nominates the same candidate for the position of judge, the President of the country must issue a decree on appointment of the respective candidate to the position of judge. A term of 30 days was introduced for appointment or refusal.⁵

Some important amendments were introduced by Law No. 247, of 21 July 2006, in order to consolidate the role of the SCM. The SCM competencies were reviewed and structured into the following four categories: career, initial and continuous training, monitoring of judges' discipline and ethics, and administration of courts.⁶ However, the SCM competence in the field of elaboration of court budgets is missing.

In 2006, Parliament adopted a draft law which envisaged the creation of the DJA within the SCM in order to ensure organizational, administrative and financial activity of the courts and courts of appeal. The President of the country did not promulgate the draft law, arguing that these competences shall stay within the responsibility of the Ministry of Justice because the SCM has already some important competencies in this field as court budgets were approved by the Parliament upon the proposal of the SCM. As a consequence, by the Decision of the Government No. 670, of 15 June 2007, DJA was established within the Ministry of Justice in order to "ensure the organizational, administrative and financial activity of the courts and courts of appeals."⁷ DJA is still part of the Ministry of Justice. However, at the beginning of 2013, the SCM and the Ministry of Justice were working on a draft law that envisages the transfer of the DJA under the subordination of the SCM.

The JI was established within the SCM by Law No. 185, of 26 July 2007. JI is responsible for verification of the organizational activity of the courts, examination of complaints related to judges' ethics addressed to the SCM, verification of requests submitted by the General Prosecutor concerning criminal investigations against judges, and the examination of reasons invoked for rejecting SCM proposals on appointment or reconfirmation of candidates to the position of judge.

According to Law No. 949, of 19 July 1996, the QB and DB are functioning within the SCM since 1996. QB was made responsible for selecting candidates for the position of the judge and for periodical attestation of judges. DB is functioning pursuant to the Law No. 950 of 19 July 1996 on the DB, and is responsible for the examination of disciplinary proceedings against judges. Law No. 154, of 5 July 2012 on the Selection, Performance Evaluation and Career of Judges (hereinafter "Law on the Career of Judges") abrogated the Law on the QB, and two entities were created instead of the QB: The Selection Board and the Evaluation

⁵ See Article 11 paragraph 3, 4 and 5 of the Law on the Status of Judges, in the version of Law No. 174 of 22 July 2005.

⁶ See Article 4 of the Law on the SCM, in the version of Law No. 247 of 21 July 2006.

⁷ See Article 2 of the Decision of the Government No. 670 of 15 June 2007. DJA had to become functional since 1 January 2008.

Board for Judges. Currently, the Ministry of Justice is in the process of elaborating a new draft Law on the Disciplinary Board and Disciplinary Proceedings against Judges.

Law No. 306, of 25 December 2008, introduced the obligation of the SCM to record its meetings on video and audio, or in stenographs, to be published on the SCM website. The SCM was also obliged to create conditions for participation of representatives of mass-media in its meetings and to publish the agenda of the meetings, draft decisions to be adopted and the materials substantiating such decisions, on its website.⁸ The current SCM website was created with the support of international donors and became operational in the summer of 2009. According to Law No. 152, of 8 July 2010, the SCM must publish all decisions related to disciplinary cases on its website.⁹ These provisions contributed to an increase of SCM transparency, despite the fact that a number of SCM decisions and materials substantiating such decisions are still not available on its website. For more information in this regard, please see section 6.1. of the Report.

The last amendments to the Law on the SCM were introduced by Law No. 153, of 5 July 2012 (hereinafter “Law No. 153”). According to the informative note to the draft Law, the respective amendments were introduced in order to contribute to “the amelioration of the activity of the judicial system and its self-administration bodies, enhancing transparency of the justice administration process and taking decisions by the self-administration bodies of the judicial authority.” In the context of the Report, the most important amendments on the SCM are related to its composition, to bodies functioning within the SCM and SCM competence. More details concerning current duties, composition and structure of the SCM are included in sections 1.2 – 1.4 of the Report.

b. SCM composition and resources

In its initial version, Article 122 of the Constitution envisaged the SCM to be composed of 11 members, including three magistrates elected by secret vote by joint boards of the SCJ, three by the Parliament from among titular professors, and five *ex officio* members: The Minister of Justice, The Chairperson of the SCJ, The Chairperson of the Court of Appeal, The Chairperson of the Economic Court and The General Prosecutor. The mandate of the elected members was five years.

The nominal composition of the SCM was determined by the Decision of the Parliament No. 362, of 3 February 1995, “on the Superior Council of Magistracy” and it was established that the Minister of Justice is the *ex officio* Chairperson of the SCM.¹⁰ Article 3 of the Decision No. 362 also envisaged that the SCM composition shall include 10 magistrates. According to its preamble, the Decision No. 362 had to be operational only until adoption of the Law on Organization and Activity of the SCM. The first meeting of the SCM took place on 1 March 1995.¹¹

⁸ See Article 15 paragraphs 3, 5 and 6 and Article 16 paragraph 3 of the Law on the SCM, in the version of Law No. 306 of 25 December 2008

⁹ See Article 8¹ paragraph 3 of the Law on the SCM, in the version of Law No. 152 of 8 July 2010.

¹⁰ The respective provision was subsequently declared unconstitutional by the Decision of the Constitutional Court No. 10 of 4 March 1997.

¹¹ For details, see SCM website, section About the SCM, http://www.csm.md/index.php?option=com_content&view=article&id=66&Itemid=81&lang=ro.

The Law on the SCM was adopted on 19 July 1996. Article 3 of the Law reproduced provisions of Article 122 of the Constitution. Article 5 of the Law also provided that the Minister of Justice is *ex officio* Chairperson of the SCM, and in the absence of the Minister of Justice duties of the Chairperson of the SCM shall be exercised by the Chairperson of the SCJ. According to Article 26 of the Law on the SCM, secretarial work was to be performed by the officials of the Ministry of Justice appointed by an order of the Minister of Justice. Moreover, Article 27 of the Law on the SCM stated that the technical, material and informational activity of the SCM was to be provided by the Ministry of Justice, which kept the SCM files and registries.

Considering the lack of permanent members, the appointment of Minister of Justice as *ex officio* Chairperson of the SCM, the considerable involvement of the Minister of Justice in the process of appointment and promotion of judges, and the lack of SCM own secretariat and technical-material basis, the decision of the Parliament No. 362 and initial provisions of the Law on the SCM created premises for subordination of the SCM to the Ministry of Justice and for *a priori* dysfunctional SCM without the support of the Ministry.

By decision of No. 10, of 4 March 1997 The Constitutional Court declared that the provisions of the Law on the SCM declaring The Minister of Justice as *ex officio* Chairperson of the SCM and provisions envisaging that the technical-material, informational basis and secretariat of the SCM shall be ensured by the employees of the Ministry of Justice were unconstitutional. The Law on the SCM was amended by Law No. 1414, of 17 December 1997. In Article 5 it stated that the Chairperson of the SCM shall be elected by secret vote, for a mandate of two years and six months, by the majority vote of the SCM members, and that in the absence of the Chairperson, his/her duties shall be exercised by a SCM member nominated by the SCM. Some further amendments were also done in order to ensure the functionality of the SCM. It was envisaged that the SCM should have its own budget and a secretariat consisting of eight people to run the activities of the SCM, DB and QB. According to this law, the SCM structure and secretariat were established in an Annex to the Law on the SCM.

Article 122 of the Constitution was amended by Law No. 471 of 12 November 2002. Pursuant to the new Article, the SCM shall consist of judges and titular *professors*, and the mandate of the elected members was reduced from five to four years. By the same law the number of *ex officio* members was reduced to three: The Chairperson of the SCJ, The Minister of Justice, and The General Prosecutor. This amendment was further detailed through amendments introduced to the Law on the SCM by Law No. 191, of 8 May 2003. According to the amendments, SCM is to be composed by 12 members; three *ex officio* members, six judges – two elected by the SCJ Plenum, two by the Assembly of Courts of Appeal Judges and two by the Assembly of District Court Judges – and three titular professors appointed by the Parliament. The chairperson of the SCM is elected for a mandate of four years.¹² Titular professors were also bound to respect the incompatibilities imposed for judges.¹³

¹² See amendments to Article 4 and 5 of the Law on the SCM, introduced by Law No. 191 of 8 May 2003.

¹³ See Article 11 paragraph 2 and Article 27 paragraph 9 of the Law on the SCM, in the version of Law No. 191 of 8 May 2003.

According to Law No. 191, of 8 May 2003, the Chairperson of the SCM became the administrator of the SCM's financial means,¹⁴ and the structure and numerical composition of the SCM secretariat was to be approved by the SCM and not by a law adopted by Parliament.¹⁵

The composition of the SCM was also amended by Law No. 174, of 22 July 2005. The number of judges-members of the SCM was increased to seven, and they had to be elected by secret vote of the General Assembly of Judges. The number of titular professors was reduced from three to two. One professor was to be proposed by the parliamentary majority and one by the opposition. Titular professors were to be appointed by Parliament with the vote of at least two thirds of the elected deputies. For the first time, the possibility of detaching judges-members of the SCM within the period of their tenure within the SCM was introduced, however only one judge at a time and only for a specific period of time. Thus, the law established detachment of each of the seven judges by rotation, and that the order of detachment shall be established by draw.¹⁶

Law No. 247, of 21 July 2006 introduced the interdiction for *ex officio* members to hold or exercise the position of Chairperson of the SCM.¹⁷ This provision was important in order to separate the SCM from the three institutions whose chairpersons are *ex officio* members of the SCM, and to consolidate the institutional independence of the SCM.

The composition of the SCM was again amended by Law No. 306, of 25 December 2008. The number of judges was reduced and the number of titular professors was increased. *Ex officio* members of the SCM remained the same; The Chairperson of the SCJ, The Minister of Justice and The General Prosecutor. The total number of members remained the same - 12, including five members-judges elected by secret vote of the General Assembly of Judges, and four members elected by the Parliament from among titular professors by the majority vote of the elected deputies at the proposal of at least 20 deputies in the Parliament.¹⁸ At the same time, the Law introduced an important provision for the good functioning of the SCM, namely the possibility to detach judges elected by the General Assembly of Judges for the duration of their mandate as SCM members and interdiction for the members of the SCM, except for *ex officio* members, to practice any remunerated activity other than didactic and scientific activity, for the duration of their mandate as SCM members. This Law also envisages the election of the SCM Chairperson by secret vote of the majority of the SCM members. At the same time, the monthly allowance of the titular professors-members of the SCM was increased from 400 MDL to 50% of the salary of the SCM members-judges, except for the individual elected as SCM Chairperson.¹⁹

¹⁴ See addition of letter d) to Article 6 of the Law on the SCM, introduced by Law No. 191 of 8 May 2003.

¹⁵ See Article 27 paragraph 7 of the Law on the SCM, introduced by Law No. 191 of 8 May 2003.

¹⁶ See Article 3 paragraph 4 and 5 of the Law on the SCM, in the version of Law No. 174 of 22 July 2005.

¹⁷ See Article 5 paragraph 3 of the Law on the SCM, in the version of Law No. 247 of 21 July 2006.

¹⁸ See Article 3 paragraph 4 of the Law on the SCM, in the version of Law No. 306 of 25 December 2008.

¹⁹ See Article 3 paragraphs 4 - 6, Article 5 paragraph 1 and Article 27 paragraph 9 of Law on the SCM, modified by Law No. 306 of 25 December 2008.

The composition of the SCM was again amended by Law No. 153. According to Article IV of the law, the number of elected judges increased from five to six, and the number of titular professors decreased from four to three.

The short description of the main phases in the SCM development since its creation until present indicates either lack of understanding, or will, with regards to the competencies and resources that a genuine judicial self-administration body should have. Legislative amendments only, without considering the human factor, are certainly not sufficient to address the real situation.

The evolution of the legislative framework related to the SCM composition confirms the fact that the executive and legislative powers did not want an independent SCM. Until 1997, SCM was chaired by the Minister of Justice despite the fact that this was contrary to the Constitution. Moreover, the SCM Secretariat and its technical-material and informative basis were ensured by the Secretariat of the Ministry of Justice. Between 1995 and 2012 the SCM composition was changed four times, and these amendments referred only to the number of judges elected to the SCM. Until 2008, SCM members did not act on a permanent basis within the SCM, and met in weekly meetings. Apparently, until 2008, neither SCM nor the executive or the legislative powers were in favour of detachment of SCM elected judges. This appears strange, as it is not realistic to count on an adequate exercise of such important and large functions by the members who are not acting on a permanent basis, with a secretariat of only 10 – 15 persons.

1.2 Role and current duties

Article 1 of the Law on the SCM provides that the SCM is an independent body created in order to organize and ensure the functioning of the judicial system as well as the guarantor of the judicial authority's independence and that it exercises judicial self-administration. Despite the fact that this implicitly follows from the text of the Law on the SCM, it does not expressly mention the role of the SCM to promote the quality and efficiency of justice, i.e the role recommended by the Consultative Council of European Judges. The consultative Council of European Judges takes the view that the Councils for the Judiciary should promote the efficiency and quality of justice, so assisting full implementation of the right to a fair trial and to reinforce public confidence in the justice system.²⁰

At the same time, the phrase “created in order to organize and ensure the functioning of the judicial system” contained in the Article 1 of the Law on the SCM is quite vague. The legislator probably had in mind the role of the SCM related to the management and administration of the judiciary, by ensuring autonomous government of the judicial system²¹ or judicial self-administration that appears at the end of the phrase in Article 1. Despite the fact that it might look like a theoretical exercise it would be useful to review Article 1 of

²⁰ See, for instance, p. 10 of the Opinion No. 10 (2007) of the Consultative Council of European Judges, available in Romanian language at <https://wDB.coe.int/ViewDoc.jsp?id=1254135&Site=COE>.

²¹ See, for instance, p. 12 of the Opinion No. 10 (2007) of the Consultative Council of European Judges. According to p. 12 “Beyond its management and administrative role vis-à-vis the judiciary, the Council for the Judiciary should also embody the autonomous government of the judicial power,” available in Romanian at <https://wDB.coe.int/ViewDoc.jsp?id=1254135&Site=COE>.

the Law on the SCM for further clarifying the role of the SCM, including through SCM practice and relevant international recommendations.

Article 4 of the Law No. 957 lists the competences of the SCM. They are structured in four categories: The judges' careers, professional training of judges and staff of court secretariats, monitoring observance of discipline and ethics of judges, and administration of courts. Article 4 paragraph 5 also mentions that the SCM may have "other competencies provided by law". Apparently the legislator introduced paragraph 5 in order to create premises for granting new competences to the SCM.

Article 4 of the Law on the SCM mentions expressly the following SCM competences:

a) Related to the career of judges:

- submits proposals on appointments, promotions to a higher court, transfer to the same level court or to a lower court, appointments to the position of chairperson or deputy-chairperson of the court or dismissal of judges, chairpersons and deputy-chairpersons of the courts to the President of the Republic of Moldova or to Parliament;
- takes the oath of judges;
- approves Regulations on Selection of Candidates for the Position of Judge, on Promotion to the Position of Judge to a Higher Court, on Appointment to the Position of Chairperson or Deputy-Chairperson of the Court and transfer of the Judge to a Same Level or Lower Level Court;
- approves Regulation on the Selection Process for Supplementing Vacant Positions for Judges, Chairpersons or Deputy-Chairpersons of the Courts and on the Organization and Conduct of the Selection Process;
- decides on the interim position of the chairperson or deputy chairperson of the district court, court of appeal or SCJ, if the position is vacant or he/she is suspended from office, until the vacant position is filled in the manner set by law, or the suspension is cancelled;
- applies encouragement measures to the judges;
- appoints members of the Selection and Career Board for Judges and of the Performance Evaluation Board for Judges, according to its competence.

b) Related to the initial and continuous training of judges and staff of court secretariats:

- appoints judges to the NIJ Council;
- approves the strategy on the initial and continuous training of judges, expresses its opinion on the action plan on its implementation;
- examines and expresses its opinion on the Regulation on Organization of the Selection Process for Admission to the NIJ, on the didactic programs and curricula for the initial and continuous training of judges at the NIJ, on the Regulation on Organization of the Selection Process for Professors, and on the Composition of the NIJ Admission and Graduation Examination Commissions;
- delegates judges for participation in seminars, conferences, training courses and for business trips;

- expresses its opinion on the number of persons to be admitted to the initial training of judges at the NIJ;
- examines the appeals against the decisions issued by the Selection and Career Board for Judges and by the Performance Evaluation Board for Judges.

c) Related to the discipline and ethics of judges:

- adopts decisions on petitions of citizens on issues related to ethics of judges;
- examines appeals against decisions issued by the DB;
- applies disciplinary sanctions against judges;
- validates decisions issued by the DB;
- requests information on income and property statements of judges from the competent authorities ;
- requests authorities to verify the authenticity of income statements of judges' family members;
- publishes the income, property and personal interests statements of judges on its website and keeps them for the entire year.

d) Related to the administration of courts:

- examines the information provided by the Ministry of Justice on ensuring the organizational, material, and financial needs of the courts;
- approves the Regulation on the Random Assignment of Cases to be Examined in Courts that ensures transparency, objectiveness, and impartiality of this process;
- examines, confirms and suggests draft budgets of the courts in a manner provided by current legislation;
- submits the Annual Report on the Organization and Activity of the Courts in the previous year to the Parliament and the President of the Republic of Moldova on an annual basis, not later than 1 April;
- approves the structure of the personnel of the SCM, appoints, promotes, transfers, and dismisses its employees, applies encouragement measures and disciplinary sanctions to its employees;
- offers annual vacations to the chairpersons and deputy chairpersons of the courts.

Each of the four categories of competencies attributed to the SCM is analyzed in more details in chapters 2 – 6. Several general perceptions related to the SCM roles and duties, which are not analyzed in next chapters, are presented below in this section.

From interviews conducted with SCM members, it turns out that according to them, the main role of the SCM is to consolidate and ensure a good functioning of the judicial system, both from the point of view of judges' performances, as well as efficient administration of courts. However, not all SCM members consider that the SCM is fully carrying out its role attributed by the law. For instance, some consider that the SCM is still at the stage of establishing the rules for its own functioning and for the functioning of its affiliated entities. Other SCM members consider that at the beginning of the mandate of the current composition of the SCM, some members had personal or corporate interests which prevented them from functioning according to mandate. Tergiversation for more than one year of the

process of electing the SCJ Chairperson in 2010 - 2011²² and for more than five months of the SCM Chairperson in 2012²³ clearly points out on some serious problems in the SCM functioning as a responsible institution.

The SCM members interviewed in the process of preparation of this Report mentioned the following as the most important impediments for the good functioning of the SCM: absence of premises for the SCM, DJA status and SCM limits in the process of elaboration of the budget of the judiciary system, small number of SCM staff, and absence of the right of the SCM to take any legislative initiative. All interviewed members of the SCM consider that the legislative and executive powers do not fully recognize the SCM authority as an institution that ensures judicial self-administration and as a guarantor of independence. The main argument invoked in this regard is the fact that since the SCM was established in 1995 and until 15 March 2013, it did not have separate premises. Now, SCM is situated in the SCJ premises at M. Kogălniceanu str., no. 70 in mun. Chişinău, where it has a conference room and several offices. Detached SCM members are usually working in joint offices with inspecting judges. Many state institutions which are independent or subordinated to the central public administration received premises immediately or shortly after their request.²⁴ In 2013, the SCM received 13.7 million lei from the state budget for purchasing premises.

In the opinion of the interviewed members of the SCM, despite the fact that the SCM is “the guarantor of the judicial authority’s independence and exercises judicial self-administration”, it does not *de facto* manage resources allocated to the judicial system. They are managed centrally by the DJA that is within the Ministry of Justice. SCM has insisted on the transfer of the DJA to subordination of the SCM since 2006 - 2007. At the SCM meeting of 30 October 2012, SCM adopted the decision No. 683/33 by which it requested Parliament, the President and the Government of the Republic of Moldova to initiate the amendment of legislative framework in order to transfer the DJA from the Ministry of Justice to the subordination of the SCM. During the elaboration of this Report, a working group was operating within the Ministry of Justice which aimed at preparing normative acts necessary for the transfer of DJA to the subordination of the SCM.

Our impression is that the problem of formal subordination of the DJA under the Ministry of Justice needs to be treated with more seriousness by the SCM, and consequences of formal subordination could have been avoided if the SCM would have cooperated more actively and efficiently with the DJA from the very beginning. According to the impression created as a result of monitoring SCM activity in 2012 and reviewing some relevant documents from the last three years, the SCM collaborated very little with the DJA in the process of elaboration of court budgets. Therefore, requests for courts to submit

²² The SCM announced a selection process for the position of chairperson of the SCJ in November 2010, however no candidate was selected. Following the selection process announced by the SCM in September 2011 for the position of chairperson of the SCJ, in February 2012, Mr. Mihai Poalelungi was nominated to the Parliament in order to be appointed as chairperson of the SCJ.

²³ The position of SCM chairperson became vacant after appointing, on 23 March 2012, the former SCM chairperson, Mr. Nicolae Timofti President of the country. Not until 25 September 2012, by Decision No. 579/29, SCM elected Mr. Nichifor Corochii as SCM chairperson.

²⁴ Center for Combating Economic Crimes and Corruption, Center for Human Rights or the Coordinating Council of the Audiovisual received premises shortly after they were established.

information related to their budgets were sometimes coming in parallel from the SCM and the DJA, creating confusion in the judicial system. The SCM could have appointed a person from the secretariat in order to keep constant contact with the DJA, request current information from the DJA and involve the DJA staff in the SCM activity, asking them for information or asking their opinion every time they discussed aspects related to the budget and financial activity of the judicial system. Also, SCM could demonstrate by its own example how the allocated budget could be efficiently planned and managed. Regretfully, the SCM website does not contain information about the SCM budget.

Another impediment in the SCM activity, mentioned by the members interviewed during elaboration of this Report, is related to the SCM secretariat. The size of the SCM secretariat was initially established by law and the SCM was granted the right to approve the structure and numerical composition of the secretariat by Law No. 191 of 8 May 2003. However, this discretion is limited by budgetary restraints. By the end of 2012, less than 20 persons were working in the SCM secretariat. The authors of the Report consider that the SCM secretariat is crucial for the good functioning of the SCM. This topic is further described in section 5.1. of the Report.

According to several members of the SCM interviewed during elaboration of this Report, SCM is limited in promoting systemic changes because it does not have the right to legislative initiative, this is also emphasized by several interviewed judges. According to them, executive and legislative powers do not treat SCM at the level of its expectations which affects the efficiency of collaboration between the three powers considerably. For instance, some SCM members consider that, despite the fact that SCM is one of the key institutions that needs to implement the *Strategy of the 2011 – 2016*,²⁵ *Justice Sector Reform* it was not sufficiently consulted and involved in the process of elaboration of the Strategy. On the other hand, according to the opinion of other members of the SCM, the SCM still does not have a well established practice related to its participation in the elaboration of public policies or normative acts. For this purpose, usually one SCM member is appointed to participate in the working groups created for elaboration of draft laws, who however does not communicate to the other SCM members the issues discussed within the working groups. As a result, despite the fact that SCM is represented in the process of legislative drafting, the other members are often not aware of the details related to the process and are left with the impression that they are excluded from the process of elaboration of the respective normative act, and that they are not involved before the moment when the normative act or policy document is sent for public consultations. It is not clear if judges are consulted and what the deadline for providing proposals and recommendations to the draft normative acts elaborated by the third parties is. Usually, SCM does not make public the recommendations received from courts or other interested persons similar to the model of elaboration of normative acts and public policies used by the Ministry of Justice. By issuing internal regulations, SCM needs to establish rules that would allow its effective involvement in the process of elaboration of public policies and normative acts.

²⁵ Strategy of Justice Sector Reform for 2011 – 2016, adopted by Law No. 231 of 25 November 2011.

The authors of the Report consider that the lack of right of the SCM to legislative initiative does not represent an impediment to the SCM activity, however it needs to revise the mechanism of its work in the process of providing opinions to the draft normative acts, and even to elaborate draft normative acts that it could send to the institutions that possess the right to legislative initiative. On the other hand, the Minister of Justice, who is a SCM member, could be a mediator in the process of sending SCM opinions to the bodies with the right to legislative initiative. Moreover, granting the right to legislative initiative to the SCM would inevitably draw the SCM into political discussions and negotiations, possibly affecting SCM authority.

In the process of elaboration of the Report, judges and lawyers were interviewed as to how the SCM's role is perceived outside the institution. We found out from the interviews with judges that they expect the SCM to examine the real situation of the judicial system in detail, as well as to contribute to optimal working conditions and objectivity and transparency in exercising its duties. According to them, on the one hand, the SCM needs to act as a "trade union" for judges in order to defend their rights, and on the other hand, as a "tribunal" that needs to ensure the quality of the judicial act and discipline of judges. Many interviewed judges declared that in their opinion SCM does not take all measures it could take in this regard.

The authors of the Report find that these views on the part of the judges constitute a misconception with regard to the role of the SCM. It should not act, and cannot be considered, as a "trade union" for judges. It would probably be useful for the SCM to clarify its role towards the judges itself. If SCM accepts the role of "trade union" for judges, the role that the SCM apparently played quite often until 2009, then it cannot be responsible any longer for exercising judicial self-administration.

There are many judges who are not happy about the way the SCM communicates with them. Some judges even have the impression that the SCM does not know the situation in the courts well enough. The workload in some courts is much heavier in some courts than others, and judges expect more initiative from the SCM in order to solve this problem. Some judges are satisfied with the SCM transparency, mentioning that they access its website daily and can study the adopted decisions. Others, on the other hand, consider that the website is not user friendly, the SCM decisions are not always well motivated and it is often not clear why SCM reached one conclusion or the other. In particular, insufficient reasoning of SCM decisions was mentioned in cases when DB decisions are amended (either following their validation, or following their contestation), which impedes a uniform and clear practice for judges and parties in the trial. According to the interviewees, the SCM decisions concerning promotion or appointment of judges are not sufficiently reasoned either, something that gives the impression that the future of judges is totally at SCM discretion. Other judges expressed their dismay with the fact that the SCM is often not reacting to accusations brought against judges by politicians, or to unjustified articles published in mass-media. Judges stated that when accusations against judges are justified, SCM should act *ex officio* and initiate necessary proceedings, and when they are not justified, SCM should make public statements and send them to mass-media. Section 6.4 of the Report includes details concerning public reactions by the SCM. This aspect is not a very developed SCM activity and needs to be improved.

According to the interviews carried out with lawyers, they apparently see the SCM as an institution responsible for ensuring judges' ethics and discipline, and for identification and settlement of chronic problems in the judicial system. The interviewed lawyers showed their dissatisfaction with the answers received from the SCM to their complaints, which are mainly declared unjustified without reasoning. Sometimes SCM motivation is limited to the phrase "acts invoked in the complaint were not confirmed". Some lawyers mentioned that the SCM did not contact witnesses mentioned in the complaint.

1.3 Current composition

According to Article 122 paragraph 1 of the Constitution, SCM consists of judges and titular professors elected for a 4 year mandate. The current composition of the SCM was done in November 2009 for a period of 4 years. According to the at that time, SCM was composed of the same *ex officio* members (Chairperson of the SCJ, Minister of Justice and General Prosecutor), five members-judges (elected by secret vote of the General Assembly of Judges of the Republic of Moldova) and four titular law professors (appointed by the majority vote of the elected deputies, and upon the proposal of at least 20 deputies of Parliament).

Article 3 of the Law on the SCM was amended by Law No. 153. Therefore, the number of elected judges increased to six, and the number of titular law professors was reduced to three. The selection process of judges and titular law professors has also changed. The six members-judges shall be elected by secret vote of the General Assembly of Judges, and they shall represent all court levels. In order to avoid calling General Assembly in the ocase if a position becominges vacant, the General Assembly of Judges shall also elect two alternate members of the SCM. The last amendment also needs to contribute to enhancing the efficiency of the SCM by avoiding long periods of time when the SCM is not working in to full capacity. Concerning the titular law professors, Law No. 153 has also instituted the obligation of Parliament to solicit the opinion of representatives of the parliamentary opposition concerning the candidates among the titular law professors and prohibit the election of the same professor for two consecutive mandates. Probably, the prohibition to elect titular law professors for two consecutive mandates was introduced to enhance the independence and efficiency of the professors-members of the SCM by reducing their temptation to «cooperate» with those who appointed them in this position for the first time in order to also be appointed again. If that was the intention of the legislator, then the application of double standards depending on the status of SCM members is not clear. Therefore, this interdiction also needs to be established for judges in order to reduce the «temptation of indulgence» towards judges-colleagues with the view of ensuring the necessary number of votes for them to be elected for a new mandate.

The mechanism of selecting judges and titular law professors is one of the main problems related to the SCM composition mentioned by a number of persons interviewed for this study. Judges are usually elected by the General Assembly of Judges without any public campaign. The names of the candidates are announced only at the meeting of the General Assembly. Usually, the General Assembly of Judges organizes elections without hearing candidates on their programs and intentions. Some of those interviewed in for the Report suggested that the selection process needs to be regulated in more detail with the possibility of

timely publication on the SCM website of information about the candidates, including the CVs of the candidates, the vision of the candidates concerning the SCM activity, and a presentation of the vision of the candidates to the General Assembly of Judges before initiating the voting process. These provisions could be included in the Regulation on Organization of General Assembly of Judges or in any other Regulation elaborated by the SCM. Similarly, the process of selecting the SCM members-titular law professors by Parliament needs to be more detailed. So far titular professors were voted in by the Parliament; however the general public did not know the candidates in advance, nor the criteria for proposing the respective candidates. The procedure used until now was not transparent and left the impression of a political process, which raises doubts regarding the independence of the candidates. The amendments introduced by Law No. 153 however, are not sufficient, as they include neither criteria nor a description of the selection process of the SCM members. Some of those interviewed suggested that Parliament needs to announce a public selection process, and to indicate criteria for members who have to be elected within the SCM by placing the CVs of the candidates on Parliament's website and organizing public hearings of the candidates.

Since November 2009, judges-members of the SCM are detached for the period of exercising their mandate, and members-titular professors may not practice other remunerated activities than didactic and scientific activity.²⁶ Starting from March 2012, SCM is operating in the composition of 11 members because Mr. Nicolae Timofti, former chairperson of the SCM (judge elected as SCM member by the General Assembly of Judges), was elected President of the Republic of Moldova, and his position within the SCM became vacant. SCM requested this vacant position to be filled. At the meeting of the General Assembly of Judges of 16 June 2012 none of the two candidates for the position of the SCM member accumulated the necessary number of votes in order to be elected as SCM member.²⁷ Electing a new SCM member failed again at an Extraordinary General Assembly of Judges on 23 November 2012, because the issue of electing a new SCM member was excluded from the agenda at the proposal of the chairperson of the meeting and by the majority of votes.²⁸ The election of a new SCM member by the General Assembly of Judges was not included in the agenda of the General Assembly of Judges of 15 February 2013 either.²⁹

Since 12 February 2013, SCM is functioning with ten members, because the SCM member, titular professor Mr. Igor Dolea, was appointed judge to the Constitutional Court by the decision of the SCM No. 130/6 of 12 February 2012.

²⁶ Law No. 306, of 25 December 2008 introduced a provision related to the detachment of the members-judges elected by the General Assembly of Judges and prohibited the professors-members of the SCM to practice other activities than scientific and didactic. This provision entered into force only for the new composition of the SCM. The SCM chairperson is the only one who started to work on a permanent basis within the earlier composition of the SCM (since March 2008).

²⁷ See for details the statement of the SCM available at: http://www.SCM.md/index.php?option=com_content&view=article&id=301%3Acomunicat&catid=55%3Anews&Itemid=133&lang=ro.

²⁸ See for details the statement of the SCM available at: http://www.SCM.md/index.php?option=com_content&view=article&id=333%3Acomunicat&catid=55%3Anews&Itemid=133&lang=ro. Withdrawing the issue of election of the SCM member from the agenda was based on the following reasons: little time left until the mandate of the current SCM expires (about eight months) and the fact that the SCM activity is blocked.

²⁹ See the decision of the SCM No. 848/40 of 26 December 2012 on calling the General Assembly of Judges.

Currently, SCM functions with nine members, because at the meeting held on 12 March 2013 it did not accept Mr. Andrei Pântea, interim General Prosecutor as a member of the SCM,³⁰ based on the reason that the interim General Prosecutor does not have the right to vote within the SCM. Such an interpretation is surprising, taking into consideration that according to the Law on the Prosecutor's Office, in the absence of the General Prosecutor or in case of impossibility of exercising his/her duties, they shall be exercised by the first-deputy General Prosecutor.³¹ By 15 March 2013, the SCM has not adopted a decision regarding the person who shall hold the position of *ex officio* member of the SCM in case the position of General Prosecutor becomes vacant.³²

The number of members who participate at the SCM meetings is also important because of the current uncertainty concerning the number of members necessary to make decisions. According to Article 15 paragraph 2 of the Law on the SCM, the meetings shall be deliberative if at least two thirds of its members are present. According to Article 24 paragraph 1 of the same Law, the SCM shall adopt decisions by the majority of votes of its members, except for the case when the SCM repeatedly proposes appointment of the same candidate for the position of judge to the President of the Republic of Moldova or to Parliament, as this decision needs to be adopted by the vote of two thirds of SCM members. Over the last three years, there were situations when SCM applied provision of this law regarding "the majority of its members" differently. In some cases SCM considers that majority needs to be calculated from the total number of SCM members, and in other cases from the number of members present at the meeting.³³

The current situation concerning the number of members of the SCM endangers the effectiveness of the SCM from the perspective of having the necessary quorum for adopting decisions, particularly within disciplinary proceedings initiated by three members of the SCM. Practice has shown that the failure to elect a member among the judges was not a practical decision. SCM needs to urgently initiate the process of electing members who are not present in the SCM and admit the interim General Prosecutor as *ex officio* member until the appointment of the new General Prosecutor by Parliament.

As far as opinions regarding the composition of the SCM are concerned, the increase of the number of judges in the SCM is welcomed by judges. Most of the judges interviewed mentioned that they would like to see more judges within the SCM. At the same time, some judges and representatives of civil society who were interviewed consider that the presence of the General Prosecutor and the Minister of Justice within the SCM is not adequate because it

³⁰ The position of the General Prosecutor became vacant on 21 January 2013, when Parliament accepted the resignation of the former General Prosecutor, Mr. Valeriu Zubco. Subsequently, first-deputy General Prosecutor, Mr. Andrei Pântea, exercises the interim position of the General Prosecutor.

³¹ See Article 28 of the Law No. 294 on the Prosecutor's Office of 25 December 2008.

³² During its meetings of 12 February 2013 and 26 February 2013, SCM discussed the issue of accepting Mr. Andrei Pântea, first-deputy General Prosecutor, as member of the SCM. However, no decision of the SCM on admitting or not admitting Mr. Pântea to its meetings with the right to vote was published. Nevertheless, Mr. Pântea did not come to the subsequent meetings of the SCM.

³³ See, for instance, issue No. 6 from agenda of 26 January 2010 on application of the provisions of Article 24 of the Law on the SCM (not published), decision of the SCM No. 253/16 of 8 May 2012, decision of the SCM No. 290/17 of 15 May 2012, decision of the SCM No. 291/17 of 15 May 2012.

affects the independence of the judicial system, and, respectively, their competence to initiate disciplinary proceedings needs to be at least limited, if not totally abolished.

The authors of the Report do not consider the presence of the Minister of Justice within the SCM *per se* as a danger for the SCM independence for the following main reasons: 1) the Minister of Justice has competences related to establishing policies in the justice sector and, respectively, his/her presence within the SCM could rather help than damage the judges; 2), the Minister of Justice cannot have considerable influence within the SCM with just one vote as the majority of the SCM members are still judges; 3) the experience of the Republic of Moldova proves that no abuses were noted on behalf of the Minister of Justice in his position as a SCM member, at least over the last three years; 4) there are two main guarantees within the current disciplinary proceedings that counter-balance the right of the Minister of Justice to initiate disciplinary proceedings, namely examination of the case by the DB, and the obligation of the member who initiated disciplinary proceedings to refrain from voting during the SCM vote related to validation of the DB decision or contestation of its decision at the SCM.³⁴

As far as the General Prosecutor is concerned, the authors of the Report consider that his/her presence within the SCM raises questions from the perspective of equality of arms because the Bar is not present in the SCM and, respectively, an impression is created that the defence and prosecution are unequally treated in the Republic of Moldova. The correctness for the General Prosecutor to initiate disciplinary proceedings in some concrete cases where the General Prosecutor's Office was a party, for instance in case of appeal in cassation³⁵, acquittal sentence or too mild sentence³⁶ or other proceedings which are not convenient to the prosecutor's office, is also disputable.³⁷ The Constitutional Court was addressed concerning the constitutionality of the provisions that entitled the General Prosecutor to initiate disciplinary proceedings against judges; however this request was not accepted for examination based on its merits.³⁸

Some judges and representatives of the civil society who were interviewed suggested to amend the provisions concerning the SCM members who are not judges in order to include

³⁴ See Article 24 paragraph 5 of the Law on the SCM.

³⁵ See, for instance, decision of the DB No. 23/7, of 29 June 2012.

³⁶ See, for instance, decisions of the DB No. 12/9 of 11 June 2010; No. 21/14 of 3 September 2010; No. 22/12 of 3 September 2010; or No. 37/9 of 12 October 2012.

³⁷ See, for instance, disciplinary proceedings initiated by the General Prosecutor against the judge who ordered the cancelation of an order issued by the General Prosecutor (decision of the DB No. 14/6, of 15 June 2012); rejecting a request of a prosecutor related to prolongation of preventive arrest (decision of the DB No. 26/8, of 7 September 2012); or obligation of the prosecutors to submit a request for revision in a criminal case (decision of the DB No. 4/3, of 30 March 2012).

³⁸ By its decision of 3 April 2012, the Constitutional Court did not accept an application submitted by a Parliamentary Advocate concerning the control of constitutionality of the provision that entitles the General Prosecutor to initiate disciplinary proceedings against judges for examination based on its merits. According to Article 31 of the Law on the Parliamentary Advocate, the Parliamentary Advocate is entitled to apply to the Constitutional Court for constitutional control of acts in order to check their correspondence with the generally accepted principles and international legal acts on human rights. The Constitutional Court found that the respective application exceeded the provisions of Article 31.

“representatives of civil society”, a term that also includes titular law professors. Such a term is wider however, and would also allow including another members than titular law professors. The main rationale for such a proposal is to broaden the possibility of including also other professions useful for the SCM activity, such as specialists with experience in the fields of administration, management, promoting human rights etc.

1.4 Affiliated entities

SCM has four affiliated entities: Selection Board for Judges; Performance Evaluation Board for Judges, DB and JI. Selection Board for Judges replaced the QB, which ceased its activity following the adoption of the Law on the Career of Judges. This Report analyzes the activity of the QB, because it operated until autumn 2012. More details related to QB activities are included in chapter 2 of the Report.

The way in which these three boards are instituted, composed and function is regulated by separate laws, and, according to the same laws, the SCM shall only adopt the Regulations on the activity of those three boards, examine appeals against decisions of these boards, (concerning the disciplinary board, at the moment SCM only validates its decisions) and ensure technical and material needs of the boards, while employees of the SCM secretariat shall carry out the secretariat work of the boards. SCM also has important competences related to the election or appointment of the members of the boards and namely, it appoints two judges within the Performance Evaluation Board for Judges, organizes public selection processes for selecting members of the Performance Evaluation Board for Judges and Selection Board for Judges from the civil society, and organizes the General Assembly of Judges in order to elect four members-judges within the Selection Board for Judges and three members-judges within the Performance Evaluation Board for Judges.

The Selection Board for Judges consists of seven members, including four judges and three representatives of the civil society. Its task is to ensure the selection of candidates for the position of judge, promotion of judges to higher courts, appointment of judges to the position of chairperson or deputy chairperson of courts, and transfer of judges to same level courts or higher level courts. The Performance Evaluation Board for Judges is composed of seven members, including five judges and two representatives from civil society. Its task is to ensure the performance evaluation of the judges.³⁹ DB consists of ten members, i.e. five judges and five titular professors. Its task is to examine cases concerning disciplinary liability of judges.⁴⁰

JI is also acting within the SCM. This body is subordinated to the SCM, and is composed of five inspecting judges, who can be any person who holds a license diploma in law or its equivalent, with work experience in the legal field of at least seven years and an irreproachable reputation. Inspectors-judges are elected by the SCM and enjoy the inviolability granted to judges.⁴¹ JI is managed by a senior inspecting judge who is subordinated to the SCM.⁴² The JI has the following main competencies: verification of the organizational activ-

³⁹ See Article 3 and 15 of the Law on Career of Judges.

⁴⁰ See Law on the DB.

⁴¹ According to Article 19 of the Law on the Status of Judges.

⁴² According to Article 71 paragraph 4 of the Law on the SCM.

ity of the courts and examination of complaints related to judicial ethics. On 12 December 2012, SCM submitted a new Regulation on Organization, Competence and Activity of the JI for public discussions,⁴³ and on 29 January 2013, by Decision 89/4, the SCM adopted this Regulation.⁴⁴

According to Article 71 paragraph 6 letter c) of the Law on the SCM, the JI shall “verify the motions related to the consent of the SCM to initiate criminal investigation against judges”.⁴⁵ The Regulation on the JI of 2013 envisages that the motions related to initiating criminal investigation against judges are sent to the senior inspecting judge who shall appoint an inspecting judge to carry out the following tasks: verification of the motions within 15 days, requesting explanations from the respective judge, and elaborating an information note to be submitted for examination by the SCM. We argue that the task of the JI related to the verification of the motions about the consent of the SCM to initiate criminal investigation against judges is not appropriate for the JI. Also we consider the rules envisaged by the Regulation on the JI from 2013 about the 15 days deadline for carrying out verifications, without providing deadlines for urgent situations, and about request for explanations from the judge, without exceptions for ensuring confidentiality and efficiency of criminal proceedings, as inadequate. The duty related to the verification of the motions should not be interpreted as a need of verification by the SCM or JI of the opportunity to initiate criminal proceedings. Instead, what we have here is an additional procedural guarantee for judges. Despite the fact that the reasonability of such a guarantee is disputable, even if it is preserved, it should not include verification by the SCM of the reasons and possibility of initiating a criminal investigation, which is the competence of the prosecutor’s office, but only verification if the accusation brought forward is not manifestly abusive. SCM members need to decide, in closed meetings, on the motions related to initiating criminal investigation, without involving JI in carrying out the respective verifications.

Law No. 153⁴⁶ envisaged that the three boards and JI are “bodies functioning under the subordination of the Superior Council of Magistracy”, “the competence, the manner of organization and the functioning of the boards” shall be established by law and regulations approved by the SCM. Despite the fact that the JI is included as the fourth body that functions within the SCM subordination, its competence, the manner of organization and functioning are regulated only by the Law on the SCM and Regulation of the SCM on the JI, and the competence, the manner of organization and functioning of the three other

⁴³ See <http://www.csm.md/files/Noutati/2012/12/12/REGULAMEN2.pdf>

⁴⁴ See http://csm.md/files/Acte_normative/REG%20functionare%20a%20inspectiei%20judiciare.pdf

⁴⁵ According to Article 19 paragraph 5 of the Law on the Status of Judges, “a judge shall not be detained, brought by force, arrested, and searched without the consent of the Superior Council of Magistracy.” Before amendments introduced by the Law No. 153 of 05.07.2012, the competence of the JI included verification of “the motions of the General Prosecutor related to the consent of the Superior Council of Magistracy to initiate criminal investigation, perform the procedural acts requiring, based on law, the consent of the Council (SCM), including detention, bringing by force to court or police, search or preventive arrest, as well as the motions related to the consent to subject a person to criminal liability” (Article 7¹ paragraph 6 of the Law on the SCM, in the version before amendments introduced on 5 July 2012).

⁴⁶ See Article 7 of the Law on the SCM, in the version amended by Law No. 153.

boards are regulated by particular laws⁴⁷ and SCM regulations.⁴⁸ Before the amendment introduced on 5 July 2012, Article 7 paragraph 1 of the Law on the SCM envisaged that “the Qualification Board, Disciplinary Board and Judicial Inspection are functioning within the Superior Council of Magistracy”. It should be noted that despite the fact that according to Article 7 of the Law on the SCM the Evaluation Board is subordinated to the SCM, according to Article 15 paragraph 1 of the Law on the Career of Judges the Evaluation Board “shall be established within” the SCM. The phrase “pe lângă” in Romanian language (translated as “within” in English language) is quite unclear, and it probably represents a less successful translation of the phrase “при” from the Russian language, which would be more correctly translated by phrases as “next to”, which does not clearly reflect the legal status of the institution. Despite the fact that the provisions concerning the status of the entities functioning within the SCM do not seem to be very important, they actually influence both the perception about these institutions and their activities. For instance, in interviews with some members of the DB and QB, they interpreted “pe lângă” in a way suggesting that boards are independent. When asked about lack of information about JI or QB activities on the SCM website, some members of the SCM and the SCM secretariat objected stating that this task belongs to the respective institutions, and not to the SCM, recognizing, implicitly, at least their functional independence. At the same time, members of the SCM consider both boards to be special bodies of the SCM with limited duties, because of the SCM competence to validate the decisions of the QB and DB. Law No. 153 introduced an important amendment in this respect and namely: decisions of the Selection Board for Judges shall not be validated by the SCM, but could be only challenged at the SCM. However, decisions of the DB are still validated by the SCM.

In conclusion, the current legislation regulates the legal status of boards functioning within the SCM differently. Considering the interviews carried out for this Report, as well as the legislative provisions mentioned above, we conclude that the status of the bodies subordinated to the SCM is not clear. For instance, in the case of the Selection Board for Judges it is not clear if “subordinated” to the SCM means that members of the Board need to consult members of the SCM regarding the adopted decisions. Probably this is not what the legislator meant. It is also not clear if the Performance Evaluation Board for Judges is subordinated to the SCM or is operating “within the SCM”.

By the end of 2012, the members of the QB and DB were not remunerated and the work load of the judges-members of the boards was not reduced. Since 2013, the members of the Selection Board for Judges and Performance Evaluation Board for Judges, who are representatives of civil society, will receive an allowance equal to 1/20 of the salary of a SCJ judge for attending each board meeting, and the members-judges shall maintain their

⁴⁷ See the Law on Career of Judges that regulates the competence of the Selection Board for Judges, Career Board for Judges and Performance Evaluation Board for Judges. The Law on the DB envisages the competence and the activity of the DB. At the end of 2012, the Ministry of Justice was working on a new draft Law on the Disciplinary Responsibility of Judges that will also regulate the DB activity.

⁴⁸ The Regulation on the activity of the Selection Board for Judges, Career Board for Judges and Performance Evaluation Board for Judges was adopted by the SCM at the meeting of 22 January 2013.

salaries at their permanent place of work. However, the work load shall be reduced depending on their duties within the board.⁴⁹ The same principles are also envisaged for the DB in the draft Law on the Disciplinary Responsibility of Judges submitted for public consultations on 22 November 2012. The inspecting judges are employed by the SCM as permanent staff and are remunerated by the SCM.

The authors of this report consider that it is necessary for the legislator to clarify the legal status of the three boards affiliated to the SCM. Probably, the rationale behind creating special bodies for the most important functions of the SCM is to ensure specialization of decision makers in each field, to diminish the work load of the SCM members, and to diminish the risk of concentrating all the activities related to the judiciary system within the SCM. In this situation, it would probably make more sense for each board to enjoy operational independence, and for the SCM to act as the superior body that ensures their correct activity through its secretariat and through examination of appeals submitted against decisions adopted by these entities. The examination of appeals would diminish the number of cases related to the activity of the judiciary system that reach the courts, and the SCM would therefore act as a quasi-judicial body as far as the cases related to the career and discipline of judges are concerned. Considering the important competences of the JI, its role needs to be further consolidated in order to provide the JI with more independence in its activity.

The activity of the QB, DB and JI is examined below, particularly for the year 2012, from the perspective of transparency of their activity and of the extent to which their activity influences the overall perception of the transparency and efficiency of the SCM.

The amendments introduced on 5 July 2012 probably need additional time for their application in order to assess how successful they are. The authors of the Report recommend carrying out an evaluation of the functionality of the SCM and of the three boards affiliated to the SCM in order to determine the rationale of having a structure where duties of judges related to the selection, performance evaluation and examination of disciplinary cases are shared between the SCM and boards. The last amendments related to the remuneration of the members of the boards affiliated to the SCM envisage, among others, new costs that need to be justified. After some time of operation of the new boards, the SCM needs to carry out an analysis of the activity of the SCM and of the affiliated bodies, including an analysis of the rationale related to the creation of three boards subordinated to the SCM instead of concentrating all the tasks within the SCM and assigning them to the SCM members. An alternative could be providing limited autonomy to the Selection and Evaluation Boards, but keeping a large autonomy of the DB. According to the Law on the Career of Judges, SCM has very limited power to influence the process of selection and evaluation of judges.

1.5 Recommendations

- 1) Introducing the objective of the SCM to promote the quality and efficiency of justice in the Law. The Law on the SCM could include the following phrase: “the Superior Council of Magistracy is an independent body, created in order to guarantee the independence of the judicial system, promote the quality and efficiency of justice, and to manage and administer the judicial system”;

⁴⁹ See Article 3 paragraph 3 and Article 15 paragraph 3 of the Law on the Career of Judges.

- 2) Elaboration and publication by the Parliament of the rules concerning the process of appointment of the SCM members by the Parliament in order to ensure a transparent process based on merits, and to exclude any speculation of their appointment based on political and other similar criteria;
- 3) Amendment of Article 123 of the Constitution of the Republic of Moldova in order to exclude the General Prosecutor from the list of ex officio members of the SCM, or to add the Chairperson of the Bar as ex officio member of the SCM;
- 4) Reviewing legal provisions related to the mandate of SCM members in order to introduce the prohibition of holding two consecutive mandates for all members of the SCM, (not just for titular law professors) or cancel the prohibition of holding two consecutive mandates by members who are titular-professors;
- 5) Amendment of the provisions concerning the SCM composition in order to replace the requirement concerning titular law professors with “representatives of civil society”, and thus ensure the representation of different professional groups within the SCM;
- 6) Urgent clarification of the SCM position concerning persons who exercise an interim position as ex officio members of the SCM ;
- 7) Excluding the task of the Judicial Inspection to verify requests related to the SCM consent to initiate criminal investigation against judges;
- 8) Including a sub-division within the SCM Secretariat responsible for the legislative process and strengthening the SCM capacity to effectively get involved in the process of elaboration of public policies and normative acts in the field of justice;
- 9) Examining the opportunity of maintaining the three boards under the subordination of the SCM or concentration of several competences within the SCM and their assignment among SCM members.

Career and professional training of judges

2.1 The role of the Superior Council of Magistracy

The legislation provides the following main competences of the SCM related to the professional training of judges:

- a) expresses its opinion on the number of persons to be admitted to the initial training of judges at the NIJ;
- b) submits proposals on the appointment, promotion and transfer of judges, appointment of the chairperson or deputy chairperson of the court, dismissal of judges, chairpersons or deputy chairpersons of the courts to the President of the Republic of Moldova or to the Parliament;
- c) approves the Regulations concerning the criteria and selection process of judges, their promotion, appointment to the position of the chairperson or deputy chairperson of the court and transfer of judges;
- d) appoints some members of the Selection Board for Judges and Performance Evaluation Board for Judges;
- e) appoints two judges of the Constitutional Court.

a) Determining the number of persons to be admitted to the initial training of judges at the NIJ

According to Article 4 paragraph 2 d) of the Law on the SCM, the SCM expresses its opinion on the number of persons to be admitted to the initial training of judges at the NIJ. In practice, NIJ has been coordinating the number of persons to be enrolled to the NIJ with the SCM.

NIJ was created in order to become the main source of staffing for the judicial system. NIJ admitted people for initial training for the first time in 2007. Since that year, the number of vacant positions within the judicial system has constantly been higher than 20. From 2007 to 2010, SCM approved only 10 candidates for the position of judge, and in 2011 and 2012 - 15 candidates. Considering the number of vacant positions, the fact that studies in the NIJ last for 18 months, and that in the immediate future a number of judges are to leave their positions because of reaching the pension age, such a reduced number of proposed candidates to be recruited for the NIJ training cannot cover the demand for new staff. This has generated some undesirable side effects; it appears that everyone recruited to the NIJ shall become judges, regardless of the results of their studies. Conditions were created for

admitting a high number of persons who did not study at the NIJ to the position of judge, contrary to the Law on the Status of Judges (it allowed only 20% of all judges to be elected from among the candidates who did not study at NIJ), damaging NIJ and affecting the quality of the body of judges.

It follows from information described in the above paragraph that neither NIJ nor SCM tried to evaluate the real needs of the judicial system for new staff. Without such an evaluation, the selection of judges can hardly be expected to guarantee staff of the highest quality. It is our opinion that the SCM needs to carry out such an evaluation as soon as possible, and the number of persons that need to be recruited to the NIJ for the position of the judge in 2013 shall inevitably and significantly increase.

b. Proposal of candidates to the position of judge

Picking candidates for the position of judge shall be carried out based on a selection process announced by the SCM. The selection process shall be carried out based on a special Regulation approved by the SCM.⁵⁰ Announcements for supplementing vacant positions are published on the SCM website and in the Official Monitor. Applicants need to submit all necessary documents to the SCM within the time-frame indicated in the announcement. The person selected by the SCM shall be proposed by the SCM to the President of the country or Parliament in order to be appointed to the position of judge.⁵¹

By Article II of Law No. 247, of 21 July 2006, Article 9 of the Law on the Status of Judges was supplemented with a new provision stating that the SCM shall announce the deadline for applying at least 90 days in advance. The same time limit is indicated in the Regulation approved by decision of the SCM No. 68/3, of 1 March 2007. Nevertheless, in some decisions SCM set shorter deadlines.⁵²

According to SCM data, on 31 December 2009, 440 judges were employed within the judicial system, including 38 investigative judges. At the same time, there were 28 vacant positions, namely two at the SCJ, 11 at the Courts of Appeal,⁵³ and nine vacant positions for

⁵⁰ Decision of the SCM No. 68/3 of 1 March 2007 on approving the Regulation concerning the Organization and Conduct of the Selection Process for Supplementing Vacant Positions for Judges, Chairpersons or Deputy Chairpersons of the Courts, and Promoting them to Higher Courts (not published on the SCM website), amended by decision of the SCM No. 103/5 of 02 April 2009 - - http://csm.md/files/Acte_normative/HOTARIREA%20PRIVIND%20MODIFICAREA%20organizare%20C5%9Fi%20desf%20C4%83%C5%9Furare%20a%20concursului%20pentru%20suplinirea%20posturilor%20vacante.pdf.

⁵¹ Article 11 paragraph 1 of the Law on the Status of Judges.

⁵² For instance Decision of the SCM No. 654/33 of 23 October 2012 – 30 day time limit (<http://www.csm.md/files/Hotaririle/2012/32/654-32.pdf>), decision of the SCM No. 619/30 of 09 October 2012 – 30 day time limit (<http://www.SCM.md/files/Hotaririle/2012/30/619-30.pdf>), decision of the SCM No. 619/30 of 09 October 2012 – 13 days (<http://www.SCM.md/files/Hotaririle/2012/27/551-27.pdf>), decision of the SCM No. 551/27 of 11 September 2012 – 13 days (<http://www.SCM.md/files/Hotaririle/2012/27/551-27.pdf>), decision of the SCM No. 551/27 of 11 September 2012 – 13 days (<http://www.SCM.md/files/Hotaririle/2012/26/521-26.pdf>), decision of the SCM No. 477/25 of 24 July 2012 – 30 days (<http://www.SCM.md/files/Hotaririle/2012/25/477-25.pdf>), decision of the SCM No. 97/8 of 28 February – 20 days <http://www.SCM.md/files/Hotaririle/2012/8/97-8.pdf>, etc.

⁵³ CA Chişinău – 1, CA Bălţi – 1, CA Bender – 4, CA Cahul, CA Comrat – 2, Economic CA – 1.

judges and 6 for investigative judges in the district courts.⁵⁴ According to data distributed at the SCM meeting of 12 June 2012, at the end of May 2012, from the total number of 460 judges, 444 judges and investigative judges were employed, and 16 positions were vacant.

The selection processes are not well organized, and vacancies are announced for each position separately. In spite of the fact that there always is a number of vacant positions within the judiciary, SCM does not organize a general selection process for all vacant positions. Even though on 28 May 2012 there were 23 vacant positions for judges⁵⁵ and three positions for investigative judges⁵⁶, the selection process procedures were only announced for some of the vacancies and only for some courts⁵⁷. The reason for this remains unclear. On 28 May 2012, 20 judges and investigative judges were detached, temporary transferred or suspended.⁵⁸

In order to become a judge, a person needs to graduate from the NIJ or to have at least five years of experience as a judge or assistant-judge at the Constitutional Court, judge in international courts, prosecutor, titular law professor in accredited high education institutions, lawyer, judicial assistant, or court clerk.⁵⁹ Candidates who are not graduates from the NIJ were requested by the SCM to pass an exam at the QB. NIJ graduates do not need to pass any exam, they participate in the selection process based on their graduation results from the NIJ.

The SCM announces separate selection processes for the two categories of candidates, even though the law does not provide for it.⁶⁰ Such practice is peculiar. Article 6 of the Law on the Status of Judges, in the version before amendments were introduced in July 2012, envisaged a quota of 20 % for candidates with legal background with an experience of at least five years⁶¹ and, respectively, 80 % for NIJ graduates. Apparently, this proportion was

⁵⁴ District Court Buiucani, mun. Chişinău – 1, District Court Bălţi – 2, District Court Basarabesca – 1, District Court Bender – 1, District Court Dubăsari – 1, District Court Făleşti – 1, District Court Ocnîţa – 1, District Court Sîngerei – 1 judge and 6 investigative judges, District Court Bălţi – 1, District Court Călăraşi – 1, District Court Ceadîr-Lunga – 1, District Court Orhei – 1, District Court Taraclia – 1, District Court Vulcăneşti – 1.

⁵⁵ District Court Bălţi – 1, District Court Ungheni – 1, District Court Vulcăneşti – 1.

⁵⁶ For instance, <http://www.SCM.md/files/Hotaririle/2012/3/34-3.pdf>.

⁵⁷ SCJ – 6, CA Chişinău – 1, CA Bălţi – 1, CA Bender – 4, CA Cahul – 1, CA Comrat – 3, District Court Buiucani, mun. Chişinău – 1, District Court Centru, mun. Chişinău – 1, District Court Cahul – 2, District Court Sîngerei – 1, Military district court – 2.

⁵⁸ SCJ – 1, CA Chişinău – 2, CA Bălţi – 1, CA Bender – 1, District Court Botanica, mun. Chişinău – 2, District Court Buiucani, mun. Chişinău – 3, District Court Ciocana, mun. Chişinău – 1, District Court Rîşcani, mun. Chişinău – 1, District Court Bălţi – 1, District Court Cantemir – 1, District Court Edineţ – 1, District Court Orhei – 1, District Court Rîşcani – 1, District Court Sîngerei – 1 and District Court Soroca – 1 investigative judge.

⁵⁹ See Article 6 of the Law on the Status of Judges.

⁶⁰ For instance <http://www.SCM.md/files/Hotaririle/2012/29/583-29.pdf>.

⁶¹ Based on Article II of Law No. 247, of 21 July 2006, paragraph 2 of Article 6 of the Law on the Status of Judges was formulated as follows: “By derogations from the provisions of paragraph (1) letter c), the following persons may be candidates for the position of judge: persons who acted at least the last 5 years as deputy of Parliament, members of the Court of Accounts, titular law professors at an accredited high education institution, prosecutors, investigators, criminal investigation officers, lawyers, Parliamentary Lawyers, notaries, juristconsultants, judge’s referees, judicial bailiffs, consultants (counsellors) of the court, or court clerks, as well as persons who acted in legal positions within the Constitutional Court, Superior Council of Magistracy or public authorities, and who passed the capacity exam before the QB, under the conditions of the law. The number of vacancies for candidates for the position of judge shall be established by the Superior Council of Magistracy and cannot exceed 20 percent of the total number of places over a period of three years”.

never observed, because the SCM proposed a number of candidates who did not graduate NIJ for the position of judge.⁶² This quota was subsequently excluded by Law No. 153, following the change introduced in the procedure of marking the candidates who did not graduate from NIJ.⁶³

Grading of the candidates by the QB does not necessarily mean that the respective candidate will be proposed by the SCM for the position of judge. Before amendments introduced to Article 19 paragraph 2 of the Law on the SCM summer 2012, the selection of candidates was left at the total discretion of the SCM. Even recently, SCM proposed a candidate for the position of judge who did not receive the best grade from the QB.⁶⁴ Usually such SCM decisions are not sufficiently motivated to understand the reasons why other candidates with better grades from the QB are not picked.⁶⁵ Such practice does not bolster confidence in the SCM. On the contrary, it strengthens the suspicion that decisions are not taken based on merit.

c. Appointment to the position of judge until reaching age threshold

According to Article 11 paragraph 1 of the Law on the Status of Judges, candidates selected for the position of judge at the proposal of the SCM shall be appointed for an initial term of five years. Following the expiry of the five-year term, judges shall be reconfirmed to their position, upon proposal of the SCM, until reaching the 65-years age threshold. SCM may refuse proposing a candidate for reconfirmation to the position of judge, however the law does not specify under which circumstances. According to Article 11 of the Law on the Status of Judges, the President of the country may reject a candidate proposed by the SCM only once “in case of incontestable evidence of candidate’s incompatibility with the respective position, of violation by him/her of the legislation or violation of legal procedures related to his/her selection and promotion”. A repeated proposal of the candidate by the SCM cannot be rejected by the President.

Usually, SCM easily proposes reconfirmation of judges. All 17 judges whose initial term in office expired in 2012 were proposed by the SCM for reconfirmation. Over the last years the President accepted most SCM proposals concerning reconfirmation of judges. Out of 17 proposals by the SCM, the President rejected reconfirmation only of one judge. Following additional verifications, SCM did not propose the judge again.

⁶² According to the Annual Activity Reports of the SCM, in 2009 20 persons with an experience of at least five years, and two graduates of the NIJ were appointed to the position of judge, in 2010 two persons with an experience of at least five years, and seven graduates of the NIJ were appointed to the position of judge, in 2011 – nine persons with experience of at least five years, and fifteen graduates of the NIJ were appointed to the position of judge, and in 2012 – nine persons with experience of at least five years, and ten graduates of the NIJ were appointed to the position of judge.

⁶³ According to the last amendments, they need to pass an exam before the Graduation Commission of the NIJ according to the procedure and conditions set forth by Law No. 152, 8 June 2006 on NIJ.

⁶⁴ On 26 February 2013, SCM adopted a decision to supplement one vacant position of judge at Bender district Court. Three candidates participated in the selection process. SCM proposed Ina Țăbărnă for appointment to the President, despite the fact that she received the lowest mark at the exam passed before the QB.

⁶⁵ See, for instance, decision on proposal of Ina Țăbărnă for the position of judge, available on <http://SCM.md/files/Hotaririle/2013/7/154-7.pdf>.

JJ has an important role in the process of appointment and reconfirmation of judges. According to Article 7¹ of the Law on the SCM, the SCM is entitled to “examine the grounds in case the SCM- proposed candidate is rejected by the President of the Republic of Moldova or by Parliament”. JJ shall submit an information note to the SCM in this regard. In practice, JJ does not have sufficient power to effectively carry out this examination. JJ representatives mentioned during the interviews that JJ has full access to personal files of judges, and inspecting judges may examine personal files of judges in order to verify certain information. However, concerning the other aspects that are not included in judges’ personal files, JJ totally depends on the extent to which other bodies, such as Information and Security Service and General Prosecutor’s Office, hold relevant information. For instance, in the case of judge Serghei Bodiou, the President of the country refused to reconfirm him in the position of judge in 2012 invoking some general reasons and requested the JJ to verify his income and property statements. In this case it was clear that the President of the country had access to additional information, however he did not present this information to the SCM in his refusal to reconfirm the respective judge in his position, but requested additional verification to be carried out. JJ does not have direct access to such information, unless it is provided to the JJ. According to Article 11 paragraph 3 of the Law on the Status of Judges, the President of the country may reject a candidate only in case “of discovering incontestable evidence”. Apparently, in this case the President of the country did hold such evidence, but did not present it to the SCM, despite the fact that Article 11 paragraph 4 of the same Law requires that a refusal by the President should be reasoned. The obligation to justify a refusal of reconfirmation to the position of judge envisaged by Article 11 paragraph 4 as mentioned above, represents an essential guarantee for ensuring independence of judges, and SCM needs to ensure strict observance of this norm. For this reason, refusals by the President based on evidence which are not submitted to the SCM should not be accepted. On the other hand, before proposing reconfirmation for the position of judge, the SCM needs to thoroughly examine the proposed judges. For this purpose, the SCM could enter into agreements with responsible institutions, such as for instance the National Integrity Commission, in order to receive relevant information from them in due time.

d. Approval of Regulations concerning selection and promotion of judges

On 5 July 2012, Parliament adopted the Law on the Career of Judges. The law entered into force on 14 December 2012. According to Article 2 paragraph 3 of this Law, SCM shall adopt Regulations on the Selection Process of Candidates for the Position of Judge, on Promotion to the Position of Judge to a Higher Court, on Appointment to the Position of Chairperson or Deputy-Chairperson of the Court and Transfer of the Judge to the Same Level or a Lower Level Court. The same Law also provides that SCM shall adopt Regulations on the Activity of the Selection Board for Judges (Article 9 paragraph 4), and of the Performance Evaluation Board for Judges (Article 21 paragraph 4). Based on amendments introduced by the Law No. 153, the SCM was also empowered to adopt Regulations on the Necessary Number of Judges for Each Court.

In autumn 2012, SCM initiated the process of elaboration of these Regulations, and in December 2012 and January 2013 the draft Regulations were opened for public

consultations following their publication on the SCM website. On 22 January 2013, SCM approved the Regulation on the Activity of the Performance Evaluation Board for Judges (decision No. 59/3), and the Regulation on the Activity of the Selection Board for Judges (decision No. 60/3). On 26 February 2013, the Regulation on the Criteria for Determining the Number of Judges in Courts was adopted (decision No. 175/7). On 5 March 2013, the Regulation on Criteria for Selection, Promotion and Transfer of Judges was adopted (decision No. 211/8)⁶⁶. All these regulations were adopted within a quite limited time. Despite the fact that the SCM adopted decisions approving the respective regulations, on 15 March 2013 only the last Regulation was available on the SCM website. According to the SCM, the other regulations were in the process of being drafted at the time of the drafting of this Report. Even though we are aware of the fact that as a result of legislative amendments introduced in summer 2012 SCM had to adopt a large number of regulations, approval and finalization of the adopted regulations could create the impression that the SCM wanted to approve these regulations as soon as possible to the detriment of their quality. Such a practice cannot bolster confidence in the SCM.

e. Appointing members to the Selection Board for Judges and Performance Evaluation Board for Judges

According to the Law on the Career of Judges published on 14 September 2012, the SCM shall appoint three members to the Selection Board for Judges and four members to the Performance Evaluation Board for Judges. Three members of the Selection Board for Judges and two members of the Performance Evaluation Board for Judges need to be representatives of civil society and are selected based on a public competition within three months after the publication of the Law. The other two members of the Performance Evaluation Board for Judges need to be elected by the SCM from among judges,⁶⁷ and their selection through a competition process is not required by the law.

The selection process for the appointment of the members to the Selection Board for Judges and members to the Performance Evaluation Board for Judges from representatives of civil society was announced by decision of the SCM No. 685/33 of 30 October 2012. On 26 December 2012, SCM planned to elect the members of the Selection Board for Judges from civil society⁶⁸. On the same day, SCM elected two members-judges of the Performance Evaluation Board for Judges.⁶⁹

On 26 December 2012, without indicating any reason, the SCM rejected all four candidates who were representatives of civil society, for the position of members of the Performance Evaluation Board for Judges.⁷⁰ On the same day, a new selection process was announced. Three candidates enrolled in the selection process. On 26 February 2013, SCM

⁶⁶ See <http://SCM.md/files/Hotaririle/2013/8/211-8.pdf>.

⁶⁷ See Article 16 paragraph 1 b) of the Law on the Career of Judges.

⁶⁸ See <http://SCM.md/files/Hotaririle/2012/40/836-40.pdf>.

⁶⁹ See <http://SCM.md/files/Hotaririle/2012/40/837-40.pdf>.

⁷⁰ See <http://SCM.md/files/Hotaririle/2012/40/835-40.pdf>. The list of rejected candidates included the former Chairperson of the Cahul Court of Appeal, known as one of the best chairpersons of the court in the country, and head of a department at the largest Law Faculty in the country.

elected only one member of the Board and announced another selection process for supplementing the other two vacant positions.⁷¹ The SCM again did not explain the reasons for rejecting the two candidates. It should be noted that one of the two rejected candidates is one of the most respected lawyers in the Republic of Moldova.⁷² We understand the desire of the SCM to have the best specialists in the Performance Evaluation Board for Judges; however we do not consider that the selection process can be allowed go on indefinitely, considering the fact that all judges from the Republic of Moldova need to be evaluated according to a quite complex procedure over the following two years. Moreover, it appears that the persons who undoubtedly deserved to be appointed as members of the Board were rejected by the SCM without any justification. Such practice can bring criticism against the SCM and discourage good candidates from applying in the future.

f. Appointment of judges to the Constitutional Court

Formally, the Constitutional Court of the Republic of Moldova is not part of the judicial system. According to Article 136 paragraph 2 of the Constitution, two of the six members of the Constitutional Court shall be appointed by the SCM for a 6-year term of office. On 23 February 2013, the term of office of the two judges of the Constitutional Court appointed by the SCM expired.

At the end of 2012, SCM announced a selection process for the appointment of two judges of the Constitutional Court. This announcement was published on the SCM website and in Official Monitor. Seven candidates applied for these positions. Their identities were made public and their CVs published on the SCM website.⁷³ On 12 February 2012, Mr. Igor Dolea, SCM member, and Mr. Tudor Pañțiru, ex-judge on behalf of the Republic of Moldova to the European Court of Human Rights, were elected by the SCM for the position of judges of the Constitutional Court.⁷⁴ SCM selected these candidates based on their wide experience in constitutional law and their extensive activity in the field of protection of human rights and fundamental freedoms.

2.2 Activity of the Qualification Board

The Law on the Career of Judges, in force since 14 December 2012, provides for the creation of two bodies to deal with the career of judges: the Selection Board for Judges and the Performance Evaluation Board for Judges. Until the two boards are to be created, the responsibility for the selection, promotion and evaluation of judges lies with the QB, which operates based on the Law on the QB. The two new boards started their activity quite recently, on 14 December 2012, and consequently, this chapter refers primarily to the activity of the QB.

QB was constituted within the SCM and had the purpose of ensuring the selection of candidates for the position of judge, as well as establishing the professional level of acting

⁷¹ See <http://SCM.md/files/Hotaririle/2013/7/156-7.pdf>.

⁷² This is Mr. Victor Pușcaș, ex-Chairperson of the SCJ and of the SCM, and ex-judge of the Constitutional Court.

⁷³ See <http://SCM.md/files/Noutati/2013/01/17/CurteaConstitutionala.pdf>.

⁷⁴ See <http://SCM.md/files/Hotaririle/2013/6/130-6.pdf>.

judges.⁷⁵ According to Article 2 of the Law on the Qualification and Attestation Board for Judges, the QB members are constituted for four years in the following composition: two judges of the SCJ, two judges from the courts of appeal, two judges from the district courts, and six titular law professors. Judges of the SCJ, courts of appeal and district courts were elected at the assembly of judges of the respective court convoked by the SCM. Three members of the QB from the total number of titular law professors were appointed by the SCM, and three by the Minister of Justice. The composition of the QB could not include members of the SCM and members of the DB. According to the law, the chairperson of the QB should be elected by the Board from among its judges-members. The activity in the QB was not remunerated, and judges-members of the Board could not count on a reduced work load at the court where they were acting as judges.

According to Article 7 of the Law on the QB, the QB was organizing the capacity exam for judge candidates who were not graduates the NIJ, and issued opinions regarding promotion of judges to higher courts, and occasionally attested judges.

Only one person from the SCM secretariat was ensuring the QB activity and prepared the materials for QB meetings. In order to attest a judge, the SCM secretariat, in collaboration with court chairpersons, was providing references and recommendations, as well as information concerning the amount and quality of work performed in the relevant period.

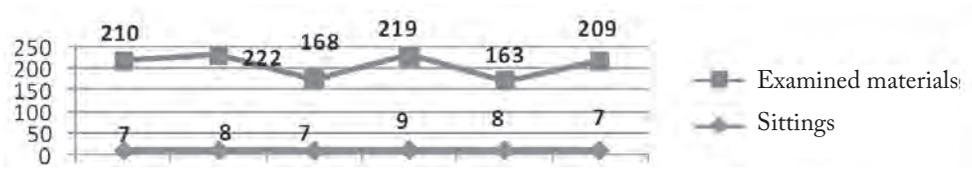
The Law did not establish the frequency of QB meetings; however it established that the QB had to examine material submitted by the SCM within one month.⁷⁶ The frequency of organizing QB meetings depended on the selection processes announced by the SCM for the appointment and promotion of judges. The table below presents the information about the activity of the QB 2007-2012.⁷⁷ According to these data, the Board organized at least seven and maximum nine meetings annually. In each of these years, the Board examined from 163 (in 2011) up to 222 materials (in 2008). All QB decisions were elaborated by responsible persons from the SCM secretariat. It follows from these data that the Board examined about 25-30 persons during each meeting. Taking into consideration this amount of work, the fact that the members of the QB were not detached, and that the QB secretariat consists of only one person, the impression emerged that the Board was not allocating sufficient time for the examination of the materials. This fact is also confirmed by statistical data presented in the following sections. According to these sections, in 2007 - 2012 the Board proposed to the SCM the dismissal of only one judge based on his poor qualifications,

⁷⁵ Article 1 of the Law on the QB. See, also, the Law on the Status of Judges, Regulation on Organization and Activity of the SCM Secretariat, Regulation on the Manner of Organizing and Conducting the Capacity Exam; Regulation on the Manner of Organizing and Conducting the Selection Process for Supplementing Vacant Positions of Judges, Chairpersons or Deputy-Chairperson of courts, for Promoting Judges to Higher Courts.

⁷⁶ The following materials are included: (i) Attestation of judges related to their promotion to a higher court, (ii) Attestation of judges related to the proposal of their appointment to the position of chairperson or deputy-chairperson of the court, (iii) Attestation of judges related to the proposal of their appointment to the position of the judge until reaching the age threshold, (iv) Attestation for receiving qualification grades, (v) Attestation for confirming the qualification grades already held, (vi) Passing capacity exam for the position of the judge and investigative judge.

⁷⁷ This table was developed based on data available on the SCM website in the file dedicated to the QB activities.

despite the fact that the professionalism of a number of judges was heavily and repeatedly criticized during the Annual General Assemblies of Judges, both by the SCJ chairperson, and by the SCM members.



The section on the SCM website dedicated to the QB activity⁷⁸ includes annual information notes on the activities of the QB in 2009, 2010 and 2011.⁷⁹ Statistical information on the QB activity is also included in Annual Activity Reports of the SCM for 2009, 2010 and 2011.⁸⁰ However, the Activity Reports of the SCM and of the QB for previous years are not available on the SCM website.

Contrary to Article 14 paragraph 3 of the Law on the QB, material concerning capacity exams and attestations carried out by the QB were not published and/or kept on the SCM website despite the fact that the QB was sending them to the SCM on a quarterly basis.⁸¹ In 2012, these information notes were not included in the agenda of the SCM meetings, and they were not subject to public debates at SCM meetings. By 31 January 2012, no decisions of the QB for the period 1996 – 2012, contestation or validation of the QB decisions by the SCM⁸² or separate opinions were published on the SCM website. Apparently, the motivation of the QB is included in the SCM decisions which validate or invalidate the QB decisions.⁸³ However, the decisions of the QB were never reasoned. The QB was just informing the SCM about its decisions. Therefore, the QB has never made any proposals to the evaluated judges in order to improve the quality of their activities.

The Law on the Career of Judges created conditions for a better mechanism of the periodic selection and evaluation of judges. The decisions of the Selection Board for Judges and of the Performance Evaluation Board for Judges need to be reasoned and published on the SCM website within five days after their adoption.⁸⁴ The members-judges of the boards are neither detached nor additionally remunerated. However, depending on the work load within the boards, their work load in the capacity of judges may be decreased.⁸⁵ Nevertheless, it appears that at least in the case of the Evaluation Board for Judges the amount of work of its members will be very heavy and an adequate exercise of the tasks

⁷⁸ Available until February 2013.

⁷⁹ See http://www.SCM.md/index.php?option=com_content&view=article&id=62&Itemid=74&lang=ro. At the moment of the publication of this Report, this website was not operational.

⁸⁰ See http://www.SCM.md/index.php?option=com_content&view=article&id=108&Itemid=130&lang=ro.

⁸¹ The SCM secretariat prepared information notes on the activity of the QB on a quarterly basis and contributed to the elaboration of the Annual Reports of the Board.

⁸² http://www.SCM.md/index.php?option=com_content&view=article&id=60&Itemid=72&lang=ro.

⁸³ According to Article 13 of the Law on the QB and Article 20, 21 and 22 of the Law on the SCM.

⁸⁴ See Article 10 paragraph 3 and Article 22 paragraph 4 of the Law on the Career of Judges.

⁸⁵ Idem, Article 3 paragraph 3 and Article 15 paragraph 3.

within this Board will be impossible without a substantial decrease of their work load in the capacity of judges. Our proposal is that for at least the first year in office the members of the Evaluation Board for Judges should act on a permanent basis within the SCM and be assisted by sufficient staff in order to ensure genuine periodical evaluation of judges.

a. Capacity exam

The capacity exam in the Republic of Moldova was terminated on 14 December 2012 when the Law on the Career of Judges entered into force. This exam had to be passed by the candidates to the position of judge who did not study at the NIJ. The exam was passed before the QB. The purpose of the capacity exam was to check the knowledge of the competitors for the position of judge based on criteria of high professionalism, good knowledge of the law, and abilities to correctly apply the law. The exam included oral tests on civil and criminal procedure, on civil, criminal, administrative, constitutional and labour law, tests on the status of judge and judicial organization; as well as the elaboration of two procedural documents and solving specific cases. It was considered that a candidate passed the capacity exam if he got a grade higher than 7.5.⁸⁶ Based on the grade awarded by the Board at this exam, the candidate could participate in the selection process for the position of judge.

The capacity exam was organized and conducted based on the Regulation on the Manner of Organizing and Conducting the Capacity Exam, approved by Decision of the SCM No. 319/13 of 11 October 2007⁸⁷ and other provisions.⁸⁸ The capacity exam was held every six months. When necessary, an additional exam was organized. The date and place of the exam was established by the QB, and information on this information was disseminated through mass-media and through the website at least 60 days before the exam. According to the website related to the QB activity, the last information about the organization of exam for the candidates to the position of judge was published in July 2009. At the same time, SCM validated a number of QB decisions, confirming the organization of a number of capacity exams.⁸⁹ Announcements concerning the organization of capacity exams are published in Official Monitor, but not on the SCM website.

The decision of the SCM served as grounds for admitting a person to the capacity exam. Before the exam, the SCM secretariat checked whether the candidates satisfied formal criteria indicated in the law, and issued a written opinion in this regard. Candidates admitted to the capacity exam were sent to the QB based on the SCM decision. The table below holds information about candidates who participated at the capacity exam in 2010 - 2012.

Year	Participated at the exam	Passed the exam	Did not pass the exam
2009	14	14	0
2010	51	29	22
2011	12	9	3
2012	29	21	8

⁸⁶ See Article 20 of the Law on the QB.

⁸⁷ See http://SCM.md/files/Acte_normative/regulament_capacitate.pdf.

⁸⁸ Law on the QB, Law on the Status of Judges and Regulation on the Manner of Organizing and Conducting the Selection Process for Supplementing Vacant Positions of Judges, Chairpersons or Deputy-Chairpersons of Courts, Promoting Judges to Higher Courts, approved by the decision of the SCM No. 68/3 of 1 March 2007.

⁸⁹ For instance <http://www.SCM.md/files/Hotaririle/2012/33/674-33.pdf>.

The grade received at the capacity exam was valid for three years and the candidates could participate based on this grade in any selection process announced by the SCM. However the grade awarded by the QB was not mandatory for the SCM. There were quite a few cases when SCM proposed the President's appointment candidates to the position of judge who were not awarded the highest grade at the capacity exam.⁹⁰

Following legislative amendments adopted in the summer of 2012, the capacity exam was abolished. However, candidates who did not graduate from the NIJ needed to take a similar exam before the Graduation Commission of the NIJ. This exam is taken according to the procedure and conditions regulated by Law No. 152-XVI, of 8 June 2006, on National Institute of Justice.⁹¹ This innovation is welcomed, because NIJ graduates and other candidates competing for the position of judge are now evaluated by the same persons.

Article 21 of the Law on the Career of Judges provides that the meetings of the Evaluation Board shall be public. The Law suggests that the evaluated judge shall be interviewed in a public meeting and provides the possibility for persons who initiated the evaluation procedure to participate at the meeting. Article 22 paragraph 4 of this Law also provides that the decisions of the Board need to be reasoned and published on the SCM website. We consider the Board meeting where judges are evaluated being public, and the publication of the decisions of the Evaluation Board for Judges to be contrary to the essence and purpose of performance evaluation of judges. In order not to damage the image of judges, publication of decisions on performance evaluation risks to reduce performance evaluation to a simple formality, where only positive aspects are mentioned and only positive qualifications are awarded. On the other hand, publication of the decisions of the Evaluation Board on the results of evaluation of individual judges could be used by the parties in the proceedings in order to challenge judges, something that can affect the process of administration of justice. In countries such as Germany, the Netherlands, Romania or Lithuania results of the evaluation of individual judges are not made public. In this context, we recommend the SCM to request an amendment of the Law No. 154 for the part concerning the publicity of individual decisions of the Evaluation Board and of the meeting where evaluated judges are interviewed.

b. Appointment to the position of judge until reaching the age threshold

After the first five years of service judges were subjected to a mandatory evaluation – called “attestation”. This procedure had the same goal as the procedure related to the evaluation of judges' performances. The purpose of the attestation was to assess the professionalism of judges and to stimulate their growth, as well as to increase their responsibility in observing the legislation when judging cases.⁹²

In the period 2008 - 2012, the Evaluation Board attested more than 80 judges in order to reconfirm them in their positions. Apparently none of these judges was rejected by the

⁹⁰ See, for instance, decision on proposal of Ina Țăbărnă, available at <http://SCM.md/files/Hotaririle/2013/7/154-7.pdf>.

⁹¹ See Article 6 paragraph 3 of the Law on the Status of Judges, in the version after amendments introduced by the Law No. 153.

⁹² See Article 22 of the Law on the QB.

Board. This supports the impression that the procedure was perceived by the board as a simple formality.

c. Granting qualification degrees and attestation

The Law on the QB provided that each judge needed to hold a qualification degree. Depending on position, tenure, experience and professionalism, six qualification degrees were established for judges.⁹³ The qualification degrees were granted following the attestation by the QB, except the superior qualification degree granted by the President of the country.⁹⁴ The attestation of judges was carried out every three years. The Board made decisions based on interviews with the judge and on the reference letter issued by the chairperson of the court or by the chairperson of the higher court in case of attestation of the chairperson of the court.⁹⁵ Decisions by the QB concerning the attestation were graded by pass or fail. Depending on the professional knowledge, tenure and work experience, the results of the professional activity and organizational capacities of the person subjected to attestation, the Board could grant a higher qualification degree, keep the current qualification degree, postpone the attestation or demote the judge.

According to figures presented in the table below, from 2009 to 2012, the Board attested and granted qualification degrees to most of the judges. In 2009, four judges were not attested, in 2010 – three judges, one judge in 2011 and one in 2012. Judges who did not pass the attestation were asked to take it repeatedly. Apparently only one of the nine judges who did not pass the attestation between 2009 and 2012 failed to pass the attestation repeatedly. In that case, the Board asked the SCM to propose his dismissal from the position of judge. SCM proposed his dismissal; however Chişinău Court of Appeal cancelled the decision of the SCM.

Year	Subjected to attestation	Test passed	Test not passed
2009	41	37	4
2010	48	45	3
2011	37	36	1
2012	52	51	1

2.3 Recommendations

- 1) Organizing a general selection process for all vacant position in courts. The competition for selecting judges needs to be organized two or three times per year;
- 2) Each selection process for a vacant position in courts needs to be open for all candidates;
- 3) The SCM should conduct a study in order to forecast the number of new judges necessary for the judicial system in the next years;

⁹³ From 5 to 1 and the superior qualification degree. The 5th qualification degree was granted based on the attestation passed before the QB within six months after appointment to the position of judge.

⁹⁴ See Article 27 of the Law on the QB.

⁹⁵ Ibidem, Article 24.

- 4) Increasing the number of trainees of the NIJ for the position of judge, in order to ensure that most of the candidates proposed for the position of judge are graduates of the NIJ, and hence eliminate the chances of NIJ trainees with poor educational results to become judges;
- 5) Discontinue the SCM practice to repeatedly evaluate candidates for the position of judge. The score awarded to the candidates by the Selection Board for Judges should not be questioned by the SCM. The final decision could be left at the SCM's discretion only in cases when candidates receive equal score at the Selection Board for Judges;
- 6) A more thorough verification of judges by the SCM before formulating proposals for reconfirmation to the position of judge or promotion of the judge, and making agreements with relevant authorities in order to receive access to the necessary information for verification;
- 7) Urgent election by the SCM of two members of the Evaluation Board for Judges;
- 8) The SCM shall request amendments of the Law on the Career of Judges in order to exclude the provisions related to the publication of individual decisions of the Evaluation Board for Judges, as well as provisions related to the public character of its meeting where judges who were already evaluated are interviewed.

Judges' ethics and discipline

3.1 Role of the Superior Council of Magistracy

The role of the SCM is essential in ensuring judges' ethics and discipline. According to current legislation, the main power of the SCM to ensure judges' ethics and discipline are related to the disciplinary proceedings against judges, verification of courts' activities, dismissals of judges and the possibility to request information on the income statements of judges. Following the above-mentioned, chapter 3 is structured separately for each of these fields, and briefly analyses the activity of the JI from the perspective of the examination of the complaints submitted to the SCM concerning judges' ethics and discipline and verification of the organizational activity of the courts; initiating disciplinary proceedings by the members of the SCM; activity of the DB; validation and appeals against DB decisions; proposals concerning resignation of judges, and SCM competence related to income, property and conflict of interests statements of judges.

According to the Laws on the Status of Judges, on the SCM and on the DB in force at the moment of elaborating this Report, the SCM shall have the following competences related to disciplinary proceedings that offer sufficient powers for ensuring full observance of judges' ethics and discipline:

- complaints concerning judges' ethics and discipline shall be submitted to the SCM, shall be examined by the JI, and shall be distributed by the Chairperson of the SCM;
- any SCM member may initiate disciplinary proceedings based on a received complaint or *ex-officio*.⁹⁶ Before Law No. 153 entered into force, any member of the SCM could revoke the request for initiating disciplinary proceedings, leading to discontinuation of the proceedings;
- a decision by the DB in examining a disciplinary case, determining whether a disciplinary offence is found, proposing sanctions that are deemed necessary to be applied, enters into force only after its validation by the SCM. DB decision may be appealed to the SCM by the judge concerned, or by the SCM member who initiated disciplinary proceedings.

SCM is the only authority that can accept a request for the resignation from a judge or apply a disciplinary sanction in the form of a dismissal of a judge from his/her position. SCM can also request information on income and property statements of judges from relevant authorities, and it can request tax authorities to verify the validity of income statements

⁹⁶ See Article 24 paragraph 5 of the Law on the SCM.

made by family members. SCM must also ensure the publication of income and property statements by judges on its website and keep them for one year.⁹⁷

In our opinion, there is a conceptual problem in the current legislation related to the lack of distinction between judges' ethics and discipline. On the one hand, any violation of the norms of the Code of Judicial Ethics represents a disciplinary offence.⁹⁸ On the other hand, the Code of Judicial Ethics also includes general norms which are difficult to define as offences equal to disciplinary offences as indicated in the Law on the Status of Judges.⁹⁹ The role of the Code of Judicial Ethics is different from the purpose of disciplinary proceedings. The code of Judicial Ethics needs to include a number of general recommendations that could be accompanied by a series of practical situations that would provide examples of general principles and recommendations. These situations could be annually updated by the SCM. Not any violation of the Code of Judicial Ethics should amount to a disciplinary offence, because an offence requires a more exact regulation by the law in order to prevent its abusive application. Only the most serious violations of the Code of Judicial Ethics should represent disciplinary offences, such as violation of the rules regarding impartiality or incompatibility. At the same time, in order to provide the Code of Judicial Ethics with a certain legal force, the law could oblige the SCM in to issue commentaries, directly or through the JI, on the Code of Judicial Ethics with recommendations related to practical situations, such as, for instance, reasonable limits for participation of a judge in social networks, or events that could lead to conflicts of interest. They could be annually updated, based on situations identified by the SCM and the JI, and based on clarifying questions addressed to judges who are confronted with ethical dilemmas and need guidance. It is also possible to introduce a privilege of the SCM to apply a warning or to formulate recommendations directly or through the JI in cases when the behaviour of a judge is contrary or could be contrary to the Code of Judicial Ethics. Such a measure would be of an educational and a preventive nature. At the same time, warnings¹⁰⁰ could be included in the personal file of the judge and considered when taking decisions concerning the promotion or evaluation of the behaviour of the judge.

⁹⁷ See Art. 4 para. 3 letter e) - g) of the Law on the SCM.

⁹⁸ See Art. 22 para. 1 letter k) of the Law on the DB.

⁹⁹ For instance, the Code of Judicial Ethics regulates the following: a judge should always display an official, serious and polite behaviour when communicating with other people (Art. 6 para.2); the judge shall adjust his/her appearance and clothes during the exercise of his/her position to the requirements of the law and prestige of the profession (Art. 6 para. 3); the relationship of the judge with his/her work colleagues should be based on respect and good-faith, his/her exemplary behaviour should be a model of communication and adequate mutual attitude (Art. 7 para. 1); the judge can get involved in any social activities in so far as they do not damage the authority of the judicial power, prestige of the profession or execution of professional obligations (Art. 11 para. 3).

¹⁰⁰ In fact, the SCM is already applying a procedure similar to the proposed warnings in the SCM decisions where disciplinary offences are not established and where, respectively, disciplinary proceedings are not initiated, and the judge "is warned about the need to strictly observe the legislation in force when examining cases". In 2012, at least 12 such decisions were adopted (No. 833/40 of 26.12.2012, No. 818/39 of 20.12.2012, No. 805/38 of 18.12.2012, No 804/38 of 18.12.2012, No. 803/38 of 18.12.2012, No.760/37 of 4.12.2012, No.739/36 of 20.11.2012, No.700/34 of 6.11.2012, No. 699/34 of 6.11.2012, No. 657/32 of 23.10.2012, No. 569/28 of 18.09.2012, No. 568/28 of 18.09.2012). The legal force and the significance of these "warnings" is not very clear, as they are mainly applied to violations of the investigation procedure of disciplinary offences committed by judges. It is not clear if these "warnings" are attached to the personal files. It appears however that they are applied, because SCM members are not sure if their actions could be qualified as disciplinary offences. Also see section 3.3 below.

Two or three warnings during a year could amount to a repeated violation of the Code of Judicial Ethics and represent a disciplinary offence. Such a mechanism would serve two important purposes: it would prevent cases of abusive interpretation of the provision “violation of the norms of Code of Judicial Ethics”, and moreover, it would transform general norms of the Code of Judicial Ethics into a practical and useful tool for judges.¹⁰¹

3.2 Activity of the Judicial Inspection

JI was set up in 2008, following the amendments to the Law on the SCM through Law No. 185, of 26 July 2007. It is composed of five inspecting judges. The mandate of an inspecting judge is four years. The inspecting judge may exercise his/her duties for a maximum of two consecutive mandates. Anyone who is licensed in law or its equivalent, has legal work experience of at least seven years¹⁰², and has a good reputation in conditions established in Article 6 paragraph 4 of the Law on the Status of Judges may become inspecting judge.¹⁰³ The inspecting judges are elected by the SCM following a public selection process. The candidate who gets more than half of the votes of the SCM members shall be considered elected. The JI shall be managed by a senior inspecting judge who is appointed for the period of his/her mandate by the SCM from among the inspecting judges. The senior inspecting judge shall be subordinated to the SCM. When exercising his/her duties, the inspecting judge shall enjoy inviolability regulated by Article 19 of the Law on the Status of Judges.¹⁰⁴ By the end of 2012, the JI was composed of three categories of members: detached judges, former judges, and persons with legal work experience other than judicial office.

¹⁰¹ A similar mechanism exists in Latvia, where questions addressed by judges and clarifications offered regarding recommended behaviour are published annually.

¹⁰² Initially, Article 7¹ of the Law on the SCM envisaged work experience of ten years. Because the number of inspecting judges could not be filled in, the term was reduced from ten to seven years by Law No. 115, of 17.10.2010.

¹⁰³ According to Art. 6 para. 4 of the Law on the Status of Judges, a person is considered not to have an *irreproachable* reputation, if he/she: a) has criminal records, including closed criminal records, or was released from criminal liability by an act of amnesty or pardon; b) was dismissed from law bodies based on discreditable reasons or was released, based on the same reasons, from the positions that grant the person the right to be a candidate for the position of judge (according to Art. 6 para. 2 of the Law on the Status of Judges these positions are the following: judge or judge-assistant of the Constitutional Court, judge in international courts, prosecutor, titular law professor in accredited high education institutions, lawyer, judicial assistant or court clerk); c) his/her behaviour is incompatible with the norms of the Code of Judicial Ethics or he/she carries out an activity which is incompatible with the norms of this Code.

¹⁰⁴ Article 19 of the Law on the Status of Judges provides the following: “(1) The personality of the judge shall be inviolable. (2) The inviolability of a judge shall be extended to his/her dwelling and workplace, vehicles and telecommunication means, which he/she uses, his/her correspondence, goods and personal documents. (3) The judge shall not be liable for his/her opinions expressed while exercising his/her duties related to administration of justice, as well as for judgments he/she adopts, unless he/she was found guilty of criminal abuse by a final sentence. (4) Criminal investigation may be initiated against a judge only by the General Prosecutor, with the consent of the Superior Council of Magistracy, under conditions of the Criminal Procedure Code. In case a judge committed offences specified in Art. 324 and Art. 326 of the Criminal Code of the Republic of Moldova, the consent of the Superior Council of Magistracy for initiating criminal investigation is not necessary. (5) A judge shall not be detained, brought by force, arrested or searched without the consent of the Superior Council of Magistracy. The consent of the Superior Council of Magistracy is not necessary in case a flagrant offence is committed, and in cases when offences specified in Art. 324 and Art. 326 of the Criminal Code of the Republic of Moldova are committed.”

According to Article 7¹ paragraph 6 of the Law on the SCM, the JI examines the complaints of the citizens addressed to the SCM and related to the judicial ethics by always requesting a written explanation by the judge mentioned in the complaint. Following the examination of the complaints, JI prepares an information note which is sent to the SCM for decision concerning initiating disciplinary proceedings or not. Taking into consideration the activity of the JI over the last three years, which is reflected in the Annual Activity Report of the SCM, examination of complaints on judges' ethics and discipline represents the main activity of the JI, despite the fact that it also has other duties.

From the Activity Reports of the SCM for the last three years, as well as from the interviews with the SCM and JI representatives, it may be concluded that the JI examines all complaints submitted to the SCM. Complaints are distributed by the SCM chairperson to the inspecting judges who need to prepare an answer which is coordinated with one of the SCM members appointed for this purpose by the SCM chairperson. The SCM members who receive the complaints send them to the senior inspecting judge, asking for his or her examination. Such practice however needs to be limited only to ex officio members of the SCM, who could send the received complaints to the JI for their verification before providing an answer, which needs to be signed both in their capacity of SCM member and as in their usual capacity (of minister, chairperson of the SCJ or General Prosecutor). If the complaints are addressed to other members of the SCM, they need to be considered addressed to the SCM and not to the members in their individual capacity. The direct assignment of complaints by the chairperson of the SCM is disputable because there is the position of senior inspecting judge. It is therefore reasonable for the senior inspecting judge to assign complaints among the inspecting judges, based on a random system and depending on the work load of the inspecting judges.

By the end of 2012, during investigation of complaints, the JI was always requesting written explanations from the judges mentioned in the complaint. In some cases, the inspecting judge could visit the court where the judge mentioned in the complaint was working in order to collect materials that support or weaken the claim that a disciplinary offence had been committed. In cases when complaints were addressed to specific members of the SCM, they could examine the complaint and decide whether disciplinary proceedings needed to be initiated without requesting the involvement of the inspecting judge in conducting preliminary verification. It is however, not clear how the preliminary verification is carried out in this type of cases. These situations are not encouraged, because in such cases materials are not complete and explanations by the relevant judge are usually not recorded. An incomplete preparation of some files was also mentioned in the information notes concerning the activity of the DB in 2010 and 2011. Therefore, in 2010, concerns were expressed with regards to requests for initiating disciplinary proceedings being sent without materials of the case, and in 2011 concerns were expressed with regards to sending the case materials in all proceedings.

Since 2012, a new practice was noted within the SCM related to the elaboration of information notes by the JI based on received complaints. Usually, the agenda of each SCM meeting includes between five and 10 issues related to information notes elaborated by the JI with reference to complaints concerning actions of judges. Decisions are adopted based on these notes, which, according to Article 25 of the Law on the SCM, can be appealed to the SCJ. However, most of the complaints are never examined within the SCM meetings, and they are

simply rejected by a letter signed by a SCM member who was assigned by the chairperson of the SCM to examine that particular complaint. Other SCM members are not officially informed about the respective complaint, despite the fact that any member of the SCM may initiate disciplinary proceedings. Often, SCM members are initiating disciplinary proceedings based on a complaint received directly from the affected person, and not from the SCM. The authors of the study consider that the practice of not bringing all complaints into the attention of all SCM members substantially limits the rights of the SCM members to initiate disciplinary proceedings. The JI could inform SCM members about the complaints received in writing, on a weekly basis. The draft Law on the Disciplinary Responsibility of Judges provides a new procedure that needs to be observed during examination of each notification.

The SCM treats ill-founded notifications concerning the behaviour of judges as petitions and examines them based on the Law on Petitioning. Based on interviews with representatives of the JI and SCM members, we concluded that answers to petitions addressed to the SCM are included in administrative acts issued by the SCM which can be appealed, respectively, according to the administrative procedure. Some of the interviewed lawyers however, do not consider such an approach to be sufficient, and in their opinion responses to the petitions, which are signed only by one member of the SCM, do not represent an administrative act of the SCM. The interviewed lawyers consider that they receive an insufficiently motivated decision on many of their complaints, without having further possibilities to appeal them. The SCM needs to abandon the practice of examining notifications concerning violations committed by judges based on the Law on Petitioning. There is a need to have an effective remedy in place in case such notifications are rejected.

The examination of some complaints submitted to the SCM do not clearly belong to the SCM competence and the current practice of coordinating each answer with a SCM member is not the most efficient one. JI needs to have competence to respond to complaints which are manifestly ill-founded or which do not clearly belong to the SCM competence without additional coordination with the SCM

When a petition contains elements of a disciplinary offence, the JI shall investigate the case, prepare an information note and present it to a SCM member or to the SCM as such in order to obtain a decision on initiation of disciplinary proceedings. The function of the JI concerning investigation of complaints related to disciplinary liability of judges is, probably, the most essential activity of the JI despite the fact that it is not regulated directly by Article 71 of the Law on the SCM which defines the JI competence.

DB is the competent body for examining cases related to disciplinary liability of judges.¹⁰⁵ DB examines the case only after it is initiated by a SCM member. Section 3.4 analyzes the activity of the DB. JI has a very limited role in the process of examination of the case by the DB. According to the law, when DB establishes that additional verification needs to

¹⁰⁵ The activity of the DB is regulated by the Law on the DB. On 22 November 2012, the Ministry of Justice submitted a new draft Law on the Disciplinary Responsibility of Judges for public consultations. The Report will specifically refer to the Law on the DB, which is a relevant normative framework for the period of monitoring the SCM, as well as to the draft law, to the extent when certain explanations are useful. The draft law may be amended and/or adopted before publication of this report. For this reason the draft law is not analyzed in details in this report.

be carried out before the examination of the case, it shall ask the main inspecting judge to appoint an inspecting judge in order to provide additional information received within the preliminary verification. When necessary, additional documents and materials are requested, as well as court files, which were examined by the judge with regards to violation of the law.¹⁰⁶ For this purpose, the DB may request the JI to carry out additional verifications. The problem of the insufficient cooperation between the JI and DB was noted in the information note concerning the activity of the DB in 2010. Interviews conducted with representatives of JI and DB show that last year very few additional verifications were ordered. The inspecting judge who prepared the materials of the case, or the SCM member who initiated disciplinary proceedings, usually do not take part in the DB meeting. We consider that their participation in the examination of the case by the DB would contribute to a more thorough examination with a full hearing of the parties, and would prevent situations when divergent information is submitted directly to the DB.¹⁰⁷

JI has other two relevant competences for ensuring judges' ethics and discipline. According to Article 7¹ paragraph 6 of the Law on the SCM, the inspection verifies the organizational activity of the courts in the course of administration of justice. P. 13 of the Regulation of the JI of 2007 also regulates that the JI "carries out verifications ordered by the SCM in order to respond to requests by judges concerning protection of their professional reputation and their independence and presents its reports to the SCM", despite the fact that this competence is not expressly indicated in the law.¹⁰⁸ Such competence is not indicated in the Regulation of the JI of 2013.

During the process of verification of courts, the JI may identify grounds for initiating disciplinary proceedings. In such case, it shall prepare an information note and send it to the SCM. Before 15 March 2013, no information note prepared by the JI about organizational activity of the courts was published. For this reason, we cannot fully assess the extent to which the JI uses this power. The information note on the activity of the JI for 2012¹⁰⁹ is the only document that mentions disciplinary proceedings (five) following some complex ad-hoc verifications carried out in Ialoveni, Edineț courts and District Economic Court. The practice of carrying out ad-hoc verifications seems to be efficient and needs to be continued.

The duty of verifying requests concerning protection of the rights of judges is not expressly regulated by the Law on the SCM or the Regulation of the JI from 2013, however this duty should be logically exercised by the SCM through the JI. In 2010-2012 no information note of the JI which would demonstrate the implementation of this duty was published, therefore it is not possible to assess the extent to which it is implemented in practice. In 2012, no such information notes were attached to the SCM decisions or included in the SCM agenda where acts prepared by the JI were discussed.

¹⁰⁶ See Article 14 of the Law on the DB.

¹⁰⁷ See, for instance, decision of the SCM No. 485/25 of 24 July 2012, which cancelled the decision of the DB based on the reason that the DB was misled by the judge referred to in the disciplinary proceedings.

¹⁰⁸ By the decision of the SCM No. 89/4 of 29 January 2013, the new Regulation on the Organization, Competence and Operation of the JI was approved. It includes the right of the JI to verify the organizational activity of the courts.

¹⁰⁹ See decision of the SCM No. 102/5 of 5 February 2013 on the Activity of the JI during 2012.

Before 15 March 2013, the SCM website included information only on the JI composition and competence. The Annual Report of the JI is included in the Annual Activity Report of the SCM, which is published on a yearly basis. For 2012, a decision of the SCM No. 102/5, of 5 February 2013 was published, which includes a summary of JI activities in 2012. Information notes elaborated by the inspecting judges based on petitions, answers to the petitions, or information notes elaborated after the verification of the organizational activity of the courts are not made public. Despite the fact that the information notes prepared by the JI are usually attached to the agenda of the SCM meeting, they are never published on the SCM website.

The lack of information concerning the activities of the JI negatively influences its perception by judges and parties in trials. The interviewed judges declared that they do not know much about the activity of the JI and question its relevance. It appears that neither prosecutors nor lawyers know details about the JI activities.

3.3 Initiating disciplinary proceedings

According to Article 10 of the Law on the DB, every member of the SCM is entitled to initiate disciplinary proceedings. Disciplinary proceedings against members of the SCM or the DB shall be initiated at the initiative of no less than three members of the Superior Council of Magistracy. Those entitled to initiate disciplinary proceedings may initiate such proceedings based on a notification, for instance a complaint submitted to the SCM or directly to a SCM member, or *ex officio*.

The right to initiate disciplinary proceedings *ex officio* is very important. Based on this right, the SCM can directly perform its duty of ensuring judges' ethics and discipline. Information notes submitted by the JI as a result of verification of courts' activities also represent an important source of information in this regard. The quality of examination of complaints submitted to the SCM and verifications carried out by the SCM depend to a large extent on the activity of the JI.

According to the Law on the DB, when initiating disciplinary proceedings, the person who initiates disciplinary proceedings or inspecting judges shall first check the grounds for holding a judge liable and shall request him/her to provide written explanations. The person against whom disciplinary proceedings are initiated shall have access to the documents related to the disciplinary proceedings before they are sent for examination by the DB. He/she shall be entitled to provide explanations, present evidence and request additional verifications (Article 12 of the Law on the DB). According to Article 8 of the Law No. 190, of 19 July 1994 on Petitioning, a petition shall be examined within 30 days. The Law does not clearly define the competencies of the inspecting judge and the SCM members, or the procedure to be followed in case the inspecting judge and the SCM member have different opinions related to the notification. There is no express obligation to perform preliminary verifications regardless of whether the proceedings are initiated based on a petition addressed to the SCM, or based on a petition addressed to a SCM member.

The following three SCM members were the most active in initiating disciplinary proceedings in 2010: Mr. Arseni (titular professor) initiated 23 proceedings; Mr. Zubco

(General Prosecutor) – 11 proceedings; Mr. Tănase (Minister of Justice) – four proceedings. Out of the 23 proceedings initiated by Mr. Arseni, 17 were concluded without any sanction, out of 11 proceedings initiated by Mr. Zubco, six went with no sanction. The following SCM members were the most active in initiating disciplinary proceedings in 2011: Mr. Arseni – 26 proceedings, in 15 cases there was no sanction; Mr. Zubco - 13 proceedings, in eight cases there was no sanction; Mr. Visternicean (judge) – nine proceedings, in four cases there was no sanction. The following SCM members were the most active in initiating disciplinary proceedings in 2012: Mr. Zubco - 15 proceedings, in nine cases no sanction; Mr. Efrim (the Minister of Justice) – 15 proceedings, in ten cases no sanction, and Mr. Arseni – 11 proceedings, in five cases no sanction.

In 2012, the number of information notes of the JI presented during the SCM meetings increased, and the number of disciplinary proceedings initiated directly by the SCM members decreased. According to the declarations of some members of the SCM, an increasing resistance to initiate disciplinary proceedings by the SCM members who did not initiate many disciplinary proceedings in the past, was noticed in 2012. There were many situations when information notes of the JI included arguments in favour of initiating disciplinary proceedings; however no SCM member wanted to assume responsibility to initiate such proceedings. As a result, an unwritten practice has been instituted, when a member-*rappporteur* on a certain information note would initiate disciplinary proceedings only when a majority of SCM members considered that there were grounds for initiating disciplinary proceedings. On the other hand, despite the fact that there were grounds to initiate disciplinary proceedings in a number of cases, the number of SCM decisions where it only “takes note” of the information presented by the JI and warns the respective judge about the need to apply the legislation correctly and consistently has increased considerably in 2012.¹¹⁰ These warnings however do not have any legal effect and are not regulated by law. This makes us question the value of such decisions and makes us assume that it might represent a way to avoid initiating necessary disciplinary proceedings. If the main reason for adopting decisions where the judge is merely “warned” is to warn the judge about violations considered by the SCM as minor offences, this type of decisions need to be expressly regulated by law, and should be taken into consideration when evaluating the judge or during further disciplinary proceedings.

Article 13 of the Law on the Disciplinary Board and Disciplinary Liability of Judges allows the SCM member who initiated disciplinary proceedings to revoke the decision on initiating the respective proceedings. As a result of revocation, the disciplinary proceedings are ceased. Usually the decision on revocation is not motivated. Some disciplinary proceedings

¹¹⁰ See, for instance: decision of the SCM 760/37, of 4 December 2012, where judges Aliona Corenco, Ana Albu and Galina Polivenco were warned about their obligation to apply the legislation correctly and consistently during examination of cases (when the resolution part of the judgment handed over to the parties did not correspond to the text adopted at the court hearing); decision of the SCM No. 803/38, of 18 December 2012, where the judge Aurelia Pleșca was warned (the judge issued *ex officio*, without participation of the prosecutor and defence lawyer, an order applying a preventive measure in the form of obligation not to leave a locality for 30 days); decision of the SCM No. 818/39, of 20 December 2012 where the judge Natalia Simciuc was warned (judge sent several signed warrants to the secretariat, and the secretariat issued warrants before the court decision became final).

were discontinued despite that particularly serious accusations were brought.¹¹¹ According to the Activity Report of the DB, decisions to cease disciplinary proceedings following revocation of the provision related to initiating disciplinary proceedings were adopted in five cases in 2010,¹¹² in 15 cases in 2011,¹¹³ and in one case in 2012.¹¹⁴ The high number of revocations adopted in 2010 and 2011 generated suspicions that at least some of these proceedings were initiated abusively, or that revocation aimed at avoiding sanctioning of judges. The right to revoke disciplinary proceedings was excluded by Law No. 153.

3.4 Activities of the Disciplinary Board

DB is the competent body to decide whether or not a judge has committed a disciplinary offence. Setting up a specialized body to examine cases related to the disciplinary liability of judges is in compliance with international recommendations.¹¹⁵

According to Article 2 of the Law on the DB, the DB shall be composed of ten members: five judges and five titular professors. The five judges shall be elected as follows: two judges from the SCJ, two judges from the courts of appeal and one judge from the district courts. The composition of this body seems to be in compliance with relevant European standards.¹¹⁶ According to Article 15 of the same law, the DB is deliberative when at least 2/3 of its members take part at the meeting, without specifying that the number of judges

¹¹¹ For instance, an unworthy attitude of the former judge Aureliu Colenco was invoked during the exercise of his office tasks in relation to his colleagues, lawyers, experts, witnesses and other participants during trial (decision of the SCM No. 228/17, of 10 May 2011).

¹¹² The General Prosecutor revoked disciplinary proceedings initiated against judges Valentina Lazareva and Serghei Namaşco; member of the SCM Alexandru Arseni (university professor) revoked disciplinary proceedings initiated against judges Ludmila Caraiani and Nina Cernat; chairperson of the SCM, Dumitru Visternicean (judge), revoked disciplinary proceedings initiated against judge Victor Boico.

¹¹³ Member of the SCM Alexandru Arseni (university professor) revoked disciplinary proceedings initiated against judges Nina Bănărescu, Petru Grumeza, Marina Anton (three proceedings), Aureliu Colenco and Victor Orîndaş; member of the SCM Dumitru Visternicean (judge) revoked disciplinary proceedings initiated against judges Gheorghe Marchitan, Petru Grumeza, Eugen Pşeniţă and Galina Moscalciuc; chairperson of the SCM Nicolae Timofti (judge) revoked disciplinary proceedings initiated against judges Nina Bănărescu and Aureliu Colenco; member of the SCM Anatol Țurcan (judge) revoked disciplinary proceedings initiated against judges Natalia Plugari and Grigore Şişcanu.

¹¹⁴ The proceedings were revoked by the member of the SCM Anatol Țurcan (judge) in relation to judge Mariana Pitic.

¹¹⁵ See, for instance, Kiev Recommendations on Judicial Independence in Eastern Europe, South *Caucasus* and Central Asia – administration of judicial system, selection and responsibility, 23-25 June 2010, particular paragraphs 2 and 5; Recommendation CM/Rec (2010) 12 p. 69.

¹¹⁶ See, for instance, Article 5.1 of the European Charter on the Statute for Judges, adopted in Strasbourg, 8-10 July 1998, which provides the following: "The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving a full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority."

should represent at least half of the members of the Board who are examining the respective case. When examining decisions adopted in 2012, it was established that in some cases the number of professors in the composition of the DB exceeded the number of judges.

The DB shall examine the disciplinary case and either rule on application of disciplinary sanction, or reject the proposal of applying disciplinary sanction or discontinue the disciplinary proceedings. If DB needs additional materials, it shall request them through the JI. DB members are not remunerated for their activity within the Board. The secretariat related work of the DB is performed by a member of the SCM secretariat, who also has other duties there.

The DB shall examine a disciplinary case only when initiated by a member of the SCM. After initiating proceedings, the materials of the case are sent to the Board by the JI. The procedure of examining the disciplinary case by the Board is not regulated in details by the Law on the DB or in any other acts. In 2012, the chairperson of the DB was assigning disciplinary cases received by the DB to a member of the Board according to the order in which they were received and according to the list of members, alternating members-judges and members-titular professors. After receiving a case, a member of the DB shall examine it and prepare it for the DB meeting. Two rapporteurs can be appointed for the examination of complex cases.

DB shall decide about disciplinary proceedings after the examination of the case in the meeting. The meeting shall be public; however the Board may declare a meeting closed “in order to prevent the disclosure of certain information in the interests of justice, or when this is necessary for the protection of the private life of the participants at the disciplinary proceedings”.¹¹⁷ Participation of third parties at the meetings of the Board is however rare. This could be explained by the lack of interest in these proceedings.

The judge who is subject to disciplinary liability is invited to the DB meeting where the case against him/her is examined, however the Board is entitled to examine the disciplinary case in the absence of the judge when his/her absence is unfounded.¹¹⁸ Despite the fact that the DB may examine the case in the absence of the judge when his/her absence from the meeting is unfounded, the DB is using this power very rarely. Situations were noted when the non-participation of the judge at the meeting had an obvious purpose of delaying the examination of the case.¹¹⁹

The proceedings before the DB offer more guarantees against the *arbitrary* nature of disciplinary proceedings. The judge who is subject to disciplinary liability may be assisted by a representative, may challenge members of the Board, has access to the materials of the case, and may submit evidence and provide additional explanations. Despite the fact that these guarantees suggest the intention of the legislator to ensure full hearing of the parties before

¹¹⁷ See Article 18 paragraph 1 of the Law on the DB.

¹¹⁸ See Article 17 paragraph 1 of the Law on the DB.

¹¹⁹ For instance, in 2012, judge Angela Cătană (Centru district court, mun. Chişinău) asked for adjournment of the examination of the disciplinary proceedings eight times on reasons of illness, despite the fact that meanwhile she continued examining cases as a judge. It appears that in this way the judge wanted to tergiversate the procedure until expiration of the statute of limitation for disciplinary liability.

the Board; the Law on the DB does not state who shall bring arguments against the judge. The Law provides that the SCM member who initiated disciplinary proceedings may participate at the Boards' meeting; however this is not compulsory¹²⁰ and rarely happens. In practice, the case is presented by the member of the DB to whom the case was assigned, and he/she acts more in the capacity of a prosecutor. Members of the DB may address questions to the judge. Representatives of the JI participate in the proceedings before the Board only if they are invited by the Board. However, in case the DB finds, before the examination of the case, that additional verifications are necessary, it shall ask the main inspecting judge to appoint an inspecting judge in order to supplement information received in the process of preliminary verification. Members of the DB have an active role in the investigation of the case. However, they should not act as prosecutors. For this reason, we recommend that arguments in favour of the prosecuting side always should be presented by the representatives of the JI.

The disciplinary case shall be examined by the DB within one-month from the date when the case was forwarded to the DB. This time limit shall not include the period of time when the judge was absent because of illness or leave.¹²¹ During interviews with representatives of the DB, they mentioned that this time limit is too short, especially in cases when additional verifications are required.

Article 11 of the Law on the DB regulates that the judge may be subject to disciplinary liability within a six-month time limit from the date his/her disciplinary offence was established, but not later than one year from the date when it was committed. It appears that this provision determines some judges to tergiversate the proceedings before the DB. Often, the alleged disciplinary offences followed a decision made by the judge in an individual case. Because the decision was appealed, the time limit of one year applicable for disciplinary liability would usually expire before the finalization of the judicial proceedings. For this reason, Article 11 of the Law on the DB was supplemented by Law No. 152, of 8 July 2010, with the provision stating that, "in case a disciplinary offence is considered committed by a judge as a result of a final decision adopted by a national or international court, the disciplinary sanction shall be applied within one year after the decision of the national or international court became final". Article 11 of the Law on the DB envisages that the statute of limitations shall run until the day when disciplinary proceedings are applied. Considering that the procedure of initiating disciplinary proceedings is quite complex, it would be unreasonable to discontinue the procedure because the time limit for disciplinary liability had expired. We consider it to be more reasonable for this time limit to be calculated until the day of initiation of disciplinary proceedings. Some time limits for examination of the case by the Board could also be established; however they should not be subject to statute of limitations.

The decision of the DB shall be adopted in the deliberation room¹²² and needs to include the following information "name of the Board, its composition, date and place of case examination; last name, first name and function of the judge who is subject to disciplinary liability proceedings; last name, first name and function of the person who initiated

¹²⁰ See Article 18 paragraph 2 of the Law on the DB.

¹²¹ See Article 16 of the Law on the DB.

¹²² See Article 18 paragraph (5) of the Law on the DB.

the disciplinary proceedings; circumstances of the case; explanations provided by the judge subject to proceedings; information on the judge's personality; motivation of the adopted decision; evidence; disciplinary sanctions applied or reasons for discontinuing disciplinary proceedings; as well as the manner of appeal against the decision.”¹²³ During interviews with judges, they mentioned that the DB started to motivate its decisions and they started to represent an interest for judges only after change of the composition of the DB in 2009. Until then, the motivation of the decisions of the Board was very short, which even did not allow judges to understand the reasons of the decisions adopted in their regard.

The decisions of the DB need to be handed over to parties who did not participate at the examination of the case within three days after their adoption. Some representatives of the SCM and of the DB, interviewed for this Report, stated that they would prefer to change the mechanism of adopting the decisions, so that the decisions are adopted and handed over with all reasoning included within a certain time after the meeting of the Board where the case was heard.

In 2010, DB adopted 46 decisions, and in 16 cases (35%) disciplinary sanctions were proposed, in 2011, the Board adopted 62 decisions, and in 16 cases (26%) disciplinary sanctions were proposed, and in 2012, the Board proposed application of disciplinary sanctions in 19 decisions (42%) out of 45 adopted decisions.¹²⁴

Until 2010, there was no obligation to publish the decisions of the DB and they were not published. Law No. 153 introduced the obligation to publish all decisions of the DB on the SCM website within five days after their adoption. Starting March 2010 decisions of the DB are published on the SCM website, under the DB. This is the best structured section on the SCM website.

The activity of the DB has improved considerably over the last two years, especially due to the publication of all DB decisions and their grounds. Certain practice and interpretation of legal norms by the DB can already be tracked. The main problems attested during monitoring, which were also mentioned during interviews, are related to the validation of the DB decisions and insufficient motivation of the SCM or court decisions which amend or annul DB decisions.

In 2012, the Ministry of Justice initiated the process of elaboration of a new draft Law on the Disciplinary Responsibility of Judges. In March 2013, this draft Law was still with the Ministry of Justice, despite of being finalized. The draft Law proposes initiating disciplinary proceedings by a special panel of the DB, instituting the rule that the JI shall investigate and submit arguments in favour of disciplinary proceedings before the DB, as well as regulate in details the procedure of examination of cases by the Board etc.

3.5 Validation and examination of appeals against decisions made by the Disciplinary Board

Article 7 of the Law on the DB provides that the DB shall examine cases related to the disciplinary liability of judges. However, this law does not grant the right to the DB to apply disciplinary sanctions; According to Article 4 of the Law on the SCM such

¹²³ See Article 21 of the Law on the DB.

¹²⁴ According to data from the information notes on the activity of the DB for 2010, 2011 and 2012.

competence belongs to the SCM. For this reason, Article 21 of the Law on the SCM regulates that all decisions of the DB need to be validated by the SCM, even if they have not been appealed by the parties. After examining the decision of the DB, the SCM may refuse to validate it, and the legislation does not include grounds for refusing validation of the decision by the SCM.¹²⁵ In case of invalidation of the DB decision, it shall not have any consequences.

The requirement for DB decisions to be validated by the SCM significantly reduces the importance of DB decisions and generated discussions concerning the rationale for keeping the Board with such reduced competences. The current system of validation and examination of appeals against the decisions of the DB by the SCM actually means that the competences of the DB and SCM are duplicated. Therefore, despite the fact that the DB is the specialized body created for examination of disciplinary cases, its competence is limited to proposing a solution to a case only, which further needs to be validated by the SCM. Also, competences of the SCM within the disciplinary proceedings are duplicated, or are even contradictory, because, on the one hand, members of the SCM are entitled to initiate disciplinary proceedings, and on the other hand, they are validating or examining the appeals against decisions of the DB, even if there is a requirement that the member of the SCM who proposed or initiated the disciplinary proceedings shall not participate in the deliberations on the respective case.¹²⁶

Opinions about the need to validate decisions of the DB by the SCM are divided among members-judges of the SCM and representatives of civil society. Some consider validation necessary in the light of Article 123 of the Constitution, which envisages that the SCM shall ensure application of disciplinary measures against judges. Others consider that the constitutional provision does not necessarily mean the direct exercise of this task by the SCM, and that it can be delegated to a body especially created for disciplinary proceedings against judges. From decisions examined in 2010 - 2012 we conclude that most of the decisions of the DB, which were not appealed, were validated by the SCM.¹²⁷ In this way, it appears that the validation procedure is rather a formality than a necessity. Therefore, we consider that the institution of validation is useless and needs to be excluded.

In case the parties do not agree with the decision of the DB, they may appeal to the SCM within ten days after the decision was adopted. When examining the appeal, the SCM shall not re-examine evidence, but hear the judge concerned. The SCM may amend or quash the decision of the DB; however it cannot send the case for re-examination. The Law

¹²⁵ See Article 21 of the Law on the SCM.

¹²⁶ Ibidem, Article 24 paragraph 5.

¹²⁷ In 2012, three decisions of the DB were invalidated and 32 decisions were validated. By decision No. 27/8, of 7 September 2012, DB found that judge Gheorghe Bordea committed a disciplinary offence. By decision No. 626/31, of 16 October 2012, SCM invalidated the decision of the DB for the reason that on the respective date the judge was dismissed on the basis of his request for resignation. By decision of the SCM No. 738/36, of 20 November 2012, decision of the DB No. 33/9, of 12 October 2012, concerning judge Igor Vornicescu was also invalidated based on the dismissal of the judge from his position. By decision of the SCM No. 83/4, of 29 January 2013, decision of the DB No. 43/11, of 7 December 2012, concerning judge Grigore Zubati was invalidated based on the same reason.

does not specify on which grounds the SCM may amend or quash decisions of the DB. In 2012, SCM admitted seven out of 20 appeals examined. An important shortcoming in the activity of the SCM related to the examination of appeals against decisions of the DB is the insufficient motivation of the decisions. When a decision made by the DB is changed, the SCM usually does not indicate the reasons for applying a different sanction.¹²⁸ This shortcoming was mentioned by representatives of the DB, judges, as well as interviewed members of the SCM. The SCM practice of providing only a short motivation of these decisions does not contribute to the increase of trust in the SCM or to the standardization of the practice related to disciplinary offences.

During the monitoring of SCM activities, cases were noted when, during the validation or examination of appeals against DB decisions, the SCM ruled on sending the respective judge to attestation instead of applying a disciplinary sanction or motivating lack of a disciplinary offence. Take the decision of the SCM No. 466/24 of 17 July 2012 concerning judge Ion Țurcan for instance. DB applied a disciplinary sanction of “reprimand”, after establishing that he had violated the imperative norms of the legislation, as well as the obligation of being impartial. Although the SCM established that judge Ion Țurcan committed a disciplinary offence, the decision of the DB was quashed, and sanctioning of the judge was considered inopportune “considering the intention of Mr. Vasile Crețu, member of the Superior Council of Magistracy, to initiate attestation procedure of judge Ion Țurcan before the term”. This solution of the SCM is surprising, considering that on 5 July 2012, which is 12 days before the decision of the SCM, the Parliament adopted the Law on the Career of Judges, which aimed at excluding attestation for three months after the publication of the law. Attestation represents a procedure that refers strictly to the qualification and career of the judge and has nothing to do, at least according to the law, with disciplinary proceedings. For this reason, we do not encourage the use of such practices.

According to Article 25 of the Law on the SCM, a decision of the SCM can be appealed to the SCJ within 15 days after its communication. SCJ shall examine the appeal in a special panel of nine judges, whose decision shall remain final. Before Law No. 153 entered into force, the Chișinău Court of Appeal was examining appeals against decisions of the SCM according to administrative procedure. Subsequently, SCJ was examining appeals in cassation against decisions of the Chișinău Court of Appeal.

3.6 Resignation of judges

A judge can honourably resign from his/her position at any time. According to Article 26 of the Law on the Status of Judges, in case a judge is honourably resigning from his/her position, he/she is entitled to a non-recurrent compensation equal to his/her average monthly salary multiplied by the number of years during which he/she fully worked as a judge. If a judge who resigns has worked in a judicial position for at least 20 years, he/she shall also be entitled to a monthly life annuity of at least 80% of the average salary paid for the that judicial position. These social guarantees shall not be granted to judges who “committed acts which are disgracing for justice and compromise judicial honour and

¹²⁸ See, for instance, decision of the SCM No. 792/38 of 18 December 2012, where SCM decided to apply a milder punishment without explaining the reasons for it.

dignity". By Law No. 153, the Law on the Status of Judges was supplemented by Article 25 paragraph 3¹, which envisages that judges dismissed from their positions when it is established that they clearly do not correspond with the position held, or for committing disciplinary offences, lose the right to these social guarantees.

In many cases, after a complaint was submitted or disciplinary proceedings were initiated, the judge requested an honourable resignation. Usually, the SCM accepted the request for honourable resignation before the finalization of the disciplinary proceedings. In other cases, however, disciplinary proceedings were discontinued by the SCM. Over the last two years at least four similar cases have been noted. On 4 July 2011, disciplinary proceedings against judge Petru Grumeza were initiated. The judge asked for resignation on his own initiative, and the SCM accepted his request. By the decision of the SCM No. 600/41, of 15 November 2011, disciplinary proceedings against Mr. Grumeza were ceased based on his resignation. On 25 April 2012, disciplinary proceedings were initiated against judge Igor Vornicescu. He submitted his resignation and the request were accepted by the SCM based on the decision 506/26, of 21 August 2012, despite the fact that disciplinary proceedings were not finalized. By the decision of the SCM No. 755/37, of 4 December 2012, a request for resignation submitted by judge Valeriu Gîscă was also accepted, but this time it was established, by decision of the DB No. 41/10, of 16 November 2012, that the judge committed a disciplinary offence and it was recommended to apply disciplinary sanction against him. Subsequently, the decision of the DB was invalidated by the SCM based on the reason that the request of Mr. Gîscă for resignation was accepted. By Decision of the SCM No. 19/2, of 15 January 2013, the request for resignation of judge Ion Timofei was accepted, while DB was still examining disciplinary proceedings against him. In several other cases, the SCM did not initiate disciplinary proceedings despite the fact that these cases referred to extremely serious offences. Instead, the SCM chose not to propose reconfirmation of these judges to the position of judge.¹²⁹

By practices described above, SCM compromised any effort of the DB to apply disciplinary sanctions against judges. Moreover, SCM created conditions for the respective judges to receive considerable amounts of money from the state in the form of compensations. On the other hand, the fact that the SCM accepted the resignation of these judges allows them to become lawyers¹³⁰ or judges again. It appears that by admitting requests for resignation, the SCM encourages judges to leave the judicial position without being disciplinary sanctioned. This practice is alarming and compromises the idea of unavoidable disciplinary liability. We do not contest the right of judges to request resignation. However, when disciplinary proceedings are initiated against a judge who requests

¹²⁹ For instance, the case of judge Mihai Drosu – decision of the SCM No. 8/1, of 12 January 2010; judge Sergiu Crutco - decision of the SCM No. 9/1, of 12 January 2010; the case of judge Serghei Bodiu - decision of the SCM No. 420/23, of 10 July 2012.

¹³⁰ According to Article 10 of the Law on the Bar, in order to become a lawyer one needs to have an irreproachable reputation. The decision of Rîșcani District Court from mun. Chișinău of 25 March 2011 (dos. No. 3 c/a-109/2011), which was left in force by a final decision of the Chișinău Court of Appeal, noted that the judge has an irreproachable reputation until he/she is disciplinary or criminally sanctioned.

resignation, according to the spirit of the law, the request for resignation needs to be examined after disciplinary proceedings have been finalized.

3.7 Income, property and personal interests statements of judges

According to Article 4 of the Law on the SCM, the SCM shall have the following competencies related to the income, property and personal interests' statements of judges:

- a) To request information on the income and property statements of judges from the competent authorities;
- b) To request information from the tax authorities to check the authenticity of the income statements of the judges' family members;
- c) To place the income, property and personal interests statements of judges on its website and to keep it there for a year.

Some members of the SCM interviewed in the process of elaboration of this Report declared that the SCM does not have enough powers to exercise its competencies granted by the law in respect of judges' ethics and discipline to the full extent. According to them, the SCM has very limited competencies and possibilities to solve systemic problems that obstruct a good functioning of the judicial system. For instance, SCM has very limited competences related to verification of income, property and personal interests statements of judges, and its task is limited only to their publication on the website. As long as the mechanism of their verification is not functional, the mere publication on the website does not reveal errors committed by judges when filling in the respective statements.

At the same time, the Law on the SCM entitles the SCM to request information on the income and property statements of judges from the competent authorities, and to request the tax authorities to check the authenticity of the income statements of the judges' family members. SCM however, should not be obliged to investigate the correctness of income, property and personal interests' statements of judges or income statements of their family members, but it may have an important role, if it wished, by requesting verification of questionable statements. Media investigations or complaints addressed to the SCM concerning judges' possessions represent an important source of information for the SCM. During the monitoring of the SCM in 2012, we did not see any requests of the SCM in this regard, despite the fact that a number of journalists' investigations were published that raised doubts concerning the correctness of the statements submitted by judges.¹³¹ Taking into account the opinion of some members mentioned above, this field needs to be further discussed within the SCM in order to clarify the role the SCM can have, and needs to have in order to ensure judges' ethics and discipline.

¹³¹ See for instance the article "Judges, assisted by bad laws to hide their possessions", published by the newspaper *Adevărul* on 30 October 2012 (article referred to judges Nina Cernat and Sergiu Arnăuț), available here: <http://www.adevarul.ro/moldova/social/Judecatorii-ajutati-de-legi-proaste-sa-si-ascunda-averile-0-801519860.html>; the article "Magistrate without possessions, "tenant" in the house of millions belonging to his wife", published in the newspaper *Adevărul* on 23 November 2012 (article referred to the judge Ion Timofei), available here: <http://www.adevarul.ro/moldova/actualitate/Magistrat-fara-avere-chirias-in-casa-de-milioane-a-sotiei-0-815918431.html>; the article "Castle of "10 thousands Euro" belonging to a judge", published by *Ziarul de Gardă* on 28 February 2012 (article referred to the judge Maria Moraru), available here: <http://www.zdg.md/investigatii/galerie-foto-castelul-de-10-mii-de-euro-al-unei-judecatoare>.

3.8 Recommendations

General:

- 1) Clarification of the difference between ethics and disciplinary liability of judges from the point of view of the limits of the liability and the mechanism of ensuring observance of judicial ethics and application of disciplinary liability against judges;
- 2) Instituting a mechanism for consultation of judges on ethical problems and on sanctioning ethical violations that do not amount to disciplinary offences;
- 3) Amendment of the legislation to discontinue the time limit for disciplinary liability once disciplinary proceedings are initiated;
- 4) The Legal provision concerning validation of the DB decisions by the SCM needs to be excluded.

Judicial Inspection:

- 1) The tasks of the main inspecting judge need to be clearly defined in the law and he/she needs to bear responsibility for organizing the activity of the JI. The main inspecting judge has to randomly assign complaints/notifications for examination of inspecting judges without the involvement of the chairperson of the SCM, keep track of whether the time limits for their examination are observed, and, when necessary, re-assign complaints/notifications to another inspecting judge based on a motivated act etc.;
- 2) Until the new Law on the DB enters into force, the Judicial Inspection should inform each member of the SCM in writing weekly, about every individual complaint received related to the behaviour of judges;
- 3) Until the new Law on the DB enters into force, JI needs to present charges before the DB;
- 4) The new Law on the Disciplinary Responsibility of Judges shall clarify the role of the JI, and the SCM regulations shall be adjusted to the provisions of the new Law on the Disciplinary Responsibility of Judges;
- 5) JI shall urgently amend the way it presents its activities and make publish its annual activity reports;
- 6) By the end of 2013 or the beginning of 2014, the SCM shall assess the work load of the JI in order to determine the optimal number of inspecting judges.

Superior Council of Magistracy:

- 1) The SCM shall stop the practice of “warning” judges, as far as this procedure and sanction is not envisaged in the law. The attestation does not represent a disciplinary sanction and should not be used as a disciplinary sanction;
- 2) The SCM shall stop the practice of accepting requests for resignation from judges before the finalization of the disciplinary proceedings initiated against them;
- 3) The SCM shall motivate in a convincing manner its decisions cancelling or amending the DB decisions;
- 4) The SCM shall react to media investigations and articles published concerning possessions held by judges and eventual errors related to the income, property and personal interests statements of judges, and request further information from the competent authorities.

Administration of courts

4.1 The Role of the Superior Council of Magistracy

According to Article 4 paragraph 4 of the Law on the SCM, the SCM shall have the following main competencies related to the administration of courts:

- a) SCM examines the information provided by the Ministry of Justice on ensuring the organizational, material, and financial needs of the courts;
- b) SCM approves the Regulation on Random Assignment of Cases to Be Heard in Courts and ensures this process;
- c) SCM examines, confirms and proposes, in the way set by the legislation currently in force, the draft budgets of the courts.

According to the Law on the SCM the organizational, material, and financial needs of the courts are to be ensured by the Ministry of Justice, and the SCM competence is limited to the examination of the information provided by the Ministry. DJA is the responsible body within the Ministry of Justice for ensuring the organizational, material, and financial needs of the courts. The SCM has always stated that the administration of financial resources allocated to the judicial system by the Ministry of Justice does not allow it to efficiently administer the judicial system and could represent an instrument of influencing judges. At the beginning of 2013, the SCM and the Ministry of Justice were in the process of elaborating a draft law related to the transfer of the DJA under the subordination of the SCM. Apparently, this transfer shall take place by the end of 2013. Even so, according to the legislation, the SCM still has some duties related to the elaboration of draft budgets of the courts. They will be presented below.

The duties of the SCM related to the administration of the courts are not limited to those mentioned in Article 4 of the Law on the SCM. In 2006,¹³² random assignment of cases in courts became mandatory. In order to ensure it, the SCM adopted a Regulation on Random Assignment of Cases.

Law No. 247, of 21 July 2006, introduced the possibility of judges to audio record court hearings. This provision entered into force on 1 January 2008. In order to ensure its implementation 153 equipment units for audio recording of hearings and necessary software was purchased with the support of the US Government. This equipment was sufficient for

¹³² Mandatory random assignment of cases in courts was introduced by Law No. 247, of 21 July 2006, in force from 10 November 2006.

court rooms in all district courts and courts of appeal in the country. The installation of the equipment took place in 2009. According to Article 14 of the Law on the Organization of the Judiciary audio recording of court hearings shall be carried out according to the guidelines established by the SCM. By decision No. 212/8, of 18 June 2009, SCM adopted the Regulation on Audio Recording of Court Hearings.

This chapter will present the efforts undertaken by the SCM between January 2012 and March 2013 aimed at elaborating court budgets, ensuring random assignment of cases in courts, and ensuring audio recording of court hearings.

4.2 Verification of organizational activity of the courts

According to Article 7¹ paragraph 6 of the Law on the SCM, JI has competence to verify the organizational activity of the courts in the process of administration of justice. This competence was further described in Law No. 153 that introduced a new Article in the Law on the SCM, Article 7², named “Verification of the organizational activity of the courts in the process of administration of justice”. The Law provides two forms of verification: ordinary control, carried out for examination of an individual case or a distinct field of activity, and complex control, carried out for examination of the whole activity related to the administration of justice. Both controls may be performed in a planned manner or ad hoc. The planned complex controls of the organizational activity of each court shall be carried out at least once every three years.¹³³ Details related to the process of verification shall be regulated by the SCM Regulation on the Amount, Methods, Grounds and Procedure of Verification of the Organizational Activity of the Courts in the Process of Administration of Justice.

By the end of 2012, the verification of organizational activity of the courts was carried out through planned controls performed in accordance with the Annual Plan of the JI or as a result of petitions or information received from citizens during business hours.¹³⁴ According to interviews with the members of the SCM and JI, the first annual plan of verification of organizational activity of the courts was elaborated at the end of 2011 (when the position of the main inspecting judge was filled in). The planned controls for 2012, initially established as two per month, could not be fully carried out because practical circumstances proved that the plan was too ambitious. The main reasons invoked by the SCM that did not allow the execution of the plan are the following: the controls proved to be more complex than initially predicted and required more time; January is the month of reporting and therefore it is impossible to carry out verifications in January; poor quality of the SCM transport did not allow travelling in difficult conditions of winter and summer. Experience has also shown that carrying out two controls per month is too ambitious for the JI, at least in its current composition. For 2013, the Annual Plan of verification of the organizational activity of the courts includes 13 courts.¹³⁵ The decision of the SCM approving the Annual Plan of the JI does not explain the reasons for selecting those courts, and the information note of the JI which served as a basis for adopting this decision was not made public.

¹³³ See Article 7² paragraph 5 of the Law on the SCM.

¹³⁴ See decision of the SCM No. 365/20, of 11 June 2012.

¹³⁵ The annual plan of verification of the organizational activity of the courts was approved by the decision of the SCM No. 72/3, of 22 January 2013.

After carrying out the control for verification of the organizational activity of the court, which is different from court to court and depends on the complexity and the identified needs, JI shall elaborate an information note. Despite that a number of information notes of this type have been elaborated, none of them were published on the SCM website by 15 March 2013, even though these notes do not represent documents with limited access. According to the interviews with representatives of the SCM and the JI, these notes were sent to all courts for their information. At least two judges who were interviewed for this Report mentioned that they did not receive the reports of the JI related to the verification of the organizational activity of the courts. Even though the information notes related to the verification of the organizational activity of the courts are sent to all courts, they do not reach the parties in the trial. Others who interact with the judicial system, such as lawyers and prosecutors do not have access to these information notes either. Moreover, non-publication of information notes substantially reduces the efficiency of controls because other courts cannot learn from shortcomings found in the activity of the verified courts, and the parties in the trial do not have the possibility to see the conclusions of the JI and request the courts to observe the law. This shortcoming needs to be solved as Article 7² paragraph 7 of the Law on the SCM, introduced by Law No. 153, expressly requires the publication of the control act on the SCM website.

4.3 Elaboration of court budgets

Article 4 paragraph 4 of the Law on the SCM provides that the SCM examines, confirms and proposes, the draft budgets of the courts as set forth by law. This provision is further described in Article 22 paragraph 1 of the Law on the Organization of the Judiciary, which provides that the financial means necessary for the good functioning of the courts are approved by Parliament upon the proposal of the SCM, and are included in the state budget.

Despite the fact that the Law on the Organization of Judiciary clearly provides that the SCM shall propose the draft budget of the courts directly to Parliament, according to a Decision of the Government, the competence of “verification and finalization of draft budgets of the courts” belongs to the DJA. The same decision also obliges DJA to submit the draft budgets of the courts to the Ministry of Justice and to the SCM “for analysis and proposals for approval”.¹³⁶ It appears that the Government is interpreting these provisions as empowering DJA to compile the draft budgets of each district court and court of appeal and submit them to the SCM, which shall present the draft budget of the courts in Parliament.

Following the interviews with representatives of the SCM and DJA, it was established that, in practice, the situation is different. The Ministry of Finance sends a draft budget for each court to the DJA, taking the budget for the previous year and the forecasted budgetary limits for the next year into consideration. The DJA shall request draft budgets from the courts within limits established by the Ministry of Finance. According to representatives of the DJA, requests by the chairpersons of the courts for increase of expenditures are often not-motivated or exaggerated. Subsequently, DJA systematizes the draft budgets of the court and presents them to the Ministry of Finance, and not to the SCM.

¹³⁶ Article 7 letter b) of the Decision of the Government No. 1202, of 6 November, 2007 on approving the Regulation of the DJA.

Despite the fact that according to the law, the SCM is the body responsible for presenting the draft budgets of the courts directly to Parliament, the representatives of the SCM confirmed during interviews that this has occurred only once. In 2008, the SCM presented the budget of the courts for 2009 directly to Parliament, and the budget was approved by Decision of Parliament No. 183, of 10 July 2008. Later, the provisions of this decision were included in the Law on the State Budget for 2009. SCM considers that the limitations of draft budgets by the Ministry of Finance are illegal. According to representatives of the DJA, the budget of the justice sector should amount to a certain percentage of the state budget.

The SCM is dissatisfied with the fact that the DJA asks for draft budgets directly from the courts and does not enter into a dialogue with the SCM. In this way, SCM feels ignored in the process of discussing and planning court budgets. Despite the fact that until 2012 SCM did not actively contribute to the budgetary planning of the courts, in 2012, SCM intervened in the process of requesting draft budgets by the DJA and examined the budget of the courts for 2013 in a meeting where chairpersons of the courts were also invited. The authors of the Report consider that the DJA “ignoring” the SCM or the Ministry of Finance is explained to a large extent by the inactions of the SCM. Article 22 paragraph 1 of the Law on the Organization of the Judiciary allows the SCM to play a leading role in the process of the elaboration of court budgets. We recommend the SCM to fully exploit this opportunity, however without totally neglecting the financial constraints and opinions of the Ministry of Finance. The practice of 2010 - 2012 confirmed that, even in times of crisis, the Ministry of Finance accepted substantial increases of the court budgets.

It seems that another problematic aspect of the judicial system lies in the execution of budgets. DJA considers that the courts are not very efficient in the execution of their budgets. According to official data on budget execution, only 93% of the budgets of the district courts and courts of appeal were assimilated in 2011. Despite the fact that most courts executed more than 95% of their budgets, in several courts, execution of budgets was less than 90%. Soroca district court for instance, spent only 75% of the allocated budget, and Cantemir district court only 78%. As a result, the budgets of some courts decreased during the year. Thus, Buiucani district court did not manage to spend money allocated for capital investments in the amount of 19 million lei (79% of the budget of the court for 2011), intended for repairs on the building. 10 million lei was redistributed to other courts, and 9 million lei were returned to the state budget. The lack of capacity of the judicial system to spend the allocated money in 2011 represented an impediment for efforts aimed at increasing the budget allocated to the courts. Apparently the situation has improved in 2012. 99% of the budget allocated to the district courts and courts of appeal was executed. Only Ciocana district court mun. Chişinău executed less than 95% of the budget (it spent only 87% of the budget).

4.4 Random assignment of cases in courts

Starting in 2006, case files have to be assigned to court panels randomly, through the Integrated Program of Case Management (hereinafter “IPCM”). This rule was instituted through Law No. 247, of 21 July 2006, which supplemented the Law on the Organization

of the Judiciary with Article 61.¹³⁷ The process of random assignment of cases is overseen by the chairperson of the court. The purpose of this measure was to combat irregularities in the process of assignment of cases in courts rather than increasing the efficiency of the courts. According to Article 22 paragraph 1 letter f of the Law on the Status of Judges, non-compliance with the rules related to random assignment of cases represents a disciplinary offence.

The Regulation on Random Assignment of Cases in Courts was approved by decision of the SCM No. 68/3, of 1 March 2007. This Regulation refers only to civil and criminal cases, and not to contravention cases. According to the Regulation, the chairperson of the court has to set up panels of judges at the beginning of the year, and cases were to be assigned according to the rule “first registered case – first assigned case”. The Regulation of 1 March 2007 was meant to serve as an interim measure until the implementation of the IPCM. The IPCM was completed in 2009. By decision of the SCM No. 259/12, of 17 September 2009 the use of this program became mandatory starting 1 October 2009. The introduction of this program was met with resistance by many court chairpersons. Apparently, based on this reason, the IPCM allows both manual assignment of cases by the chairperson of the court, as well as automatic assignment of cases by the computer. The use of the second option of automatic assignment of cases was left at the discretion of the chairperson of the court. In case of manual assignment of cases, the chairperson shall independently select the judge who shall examine the case, from the list of all judges of the court. In case of automatic assignment of cases, the cases are randomly assigned within the IPCM, and the human factor is excluded. Most chairpersons of the courts are using the manual system of assigning cases. However, this system has also been manipulated in some instances.

Following interviews within the SCM, the monitoring of SCM meetings and of decisions by the SCM on information notes of the JI related to the results of controls carried out in courts, it was established that the rule of random assignment of cases was often not observed. In the autumn of 2007, the SCM established that cases were not randomly assigned at the Chişinău Court of Appeal. On 20 March 2008, the SCM established that random assignment of cases was not observed in Ceadir-Lunga district court. None of these decisions are available on the SCM website. Despite the fact that the respective Regulation of the SCM was adopted on 1 March 2007, the SCJ did not manage to set up permanent panels of judges before 2010.¹³⁸ In 2010, a commission composed of judges found that the SCJ had problems with the consecutive registration and assignment of civil and economic cases.¹³⁹ Even if the SCM

¹³⁷ Article 6¹ had the following text: “(1) Examination of cases by the court shall be based on the principle of random assignment of cases, except cases when the judge cannot participate at the court hearing based on objective reasons. (2) Cases assigned to a panel of judges cannot be transferred to another panel of judges except under conditions provided by law.”

¹³⁸ By the order of the chairperson of the SCJ No. 1, of 10 January 2010. Until then, panels of judges were constituted on each day of court hearing.

¹³⁹ On 9 April 2010, the interim chairperson of the SCJ set up a commission composed of judges of the SCJ in order to evaluate whether random assignment of cases was observed at the SCJ from 2006 until May 2010. According to an information note of 1 June 2010, in civil cases, the number of the case file was offered by the chairperson of the Board at the moment when the case was assigned by him to a judge, and not by the secretariat after registration of the appeal in cassation. In economic cases, assignment was carried out exclusively at the discretion of the chairperson of the Board, without observing the consecutivity of the assignment.

was informed about these violations, it did not take any decision in this regard. The practice of eluding random assignments of cases was also mentioned by the JI in 2012 following the controls carried out in courts.¹⁴⁰

Failure to randomly assign cases in courts always generated suspicion in society. The above mentioned data confirm the fact that these suspicions were not ill-founded. SCM may verify the compliance of the courts with the rule related to random assignment of cases by carrying out planned and ad hoc controls of the courts. SCM also has access to the IPCM and can see how cases are being assigned in the courts. Nevertheless, until 2013 no such measures were undertaken. The SCM has not attempted to undertake any complex evaluation of the way cases are being assigned.

Taking into consideration the level of non-observance of the rules related to random assignment of cases, the SCM can use disciplinary proceedings as a way of influence in order to remedy these violations. In 2010, the non-observance of the provisions related to random assignment of cases was invoked in five orders related to initiating disciplinary proceedings,¹⁴¹ and in 2011, the number increased to ten.¹⁴² It is not clear from the annual activity reports of the SCM how many of these acts led to application of disciplinary sanctions by the DB and how many of them were validated by the SCM. Some chairpersons of the courts were also asked in SCM meetings about the frequent situations of repeated assignment of cases. Nevertheless, no disciplinary proceedings were initiated against them. This proves the lack of will to take decisive and drastic measures to ensure random assignment of cases.

Taking into consideration the lack of actions by the SCM in this field, the rules related to random assignment of cases in courts were further regulated through Law No. 153.¹⁴³ Following these amendments, in force since 31 August 2012, cases shall now be assigned on the day when the case is received by a person from the court's secretariat assigned by the chairperson of the court, and the latter is responsible for verify the process of random assignment of cases. The file with data related to random assignment of cases must be attached

¹⁴⁰ See decision of the SCM No. 639/31, of 16 October 2012, on the Information Note of the JI related to complex control of the activity of Ialoveni district court, pag. 3, available at: <http://SCM.md/files/Hotaririle/2012/31/639-31.pdf>.

¹⁴¹ See the Report on the activity of the SCM, the manner of organization and operation of the courts in 2010, pag. 24, available at: <http://SCM.md/files/RAPOARTE/Raport2010.pdf>.

¹⁴² See the Report on the activity of the SCM, the manner of organization and operation of the courts in 2011, pag. 14, available at: <http://SCM.md/files/Hotaririle/2012/11/129-11-Raport.pdf>.

¹⁴³ Article 6¹ of the Law on the Organization of the Judiciary was formulated in a new version and has the following text: "(1) Examination of cases in court shall be carried out by observing the principle of random assignment of cases through an electronic program of case management. In case the judge to whom the case was assigned cannot continue examining the case, the responsible person, based on a motivated decision of the chairperson of the court, through the electronic program of case management, shall ensure random assignment of the case to another judge. The file that includes data related to random assignment of cases must be attached to each case. (11) A panel of judges shall be constituted and their chairpersons shall be appointed at the beginning of the year based on a decision of the chairperson of the court. Change of members of the panel shall be done in exceptional cases, based on a motivated decision of the chairperson of the court and according to objective criteria established by the regulation approved by the Superior Council of Magistracy. The motivated decision concerning change of members of the panel shall be attached to the materials of the case file. (2) Cases assigned to a panel of judges cannot be transferred to another panel except in conditions provided by the law."

to each case file. Members of the panel responsible for examining the case shall be changed only in exceptional situations and only based on a motivated decision of the chairperson of the court. The motivated decision on the change of the panel members shall be attached to the materials of the case. Following these amendments, a new Regulation was adopted by the decision of the SCM No. 110/2, of 5 February 2013 on random assignment of cases for examination in courts. Despite the fact that these provisions are encouraging, earlier experience proved that, without a rigid and strong position of the SCM, the situation in the field of random assignment of cases will not change substantially.

4.5 Audio recording of court hearings

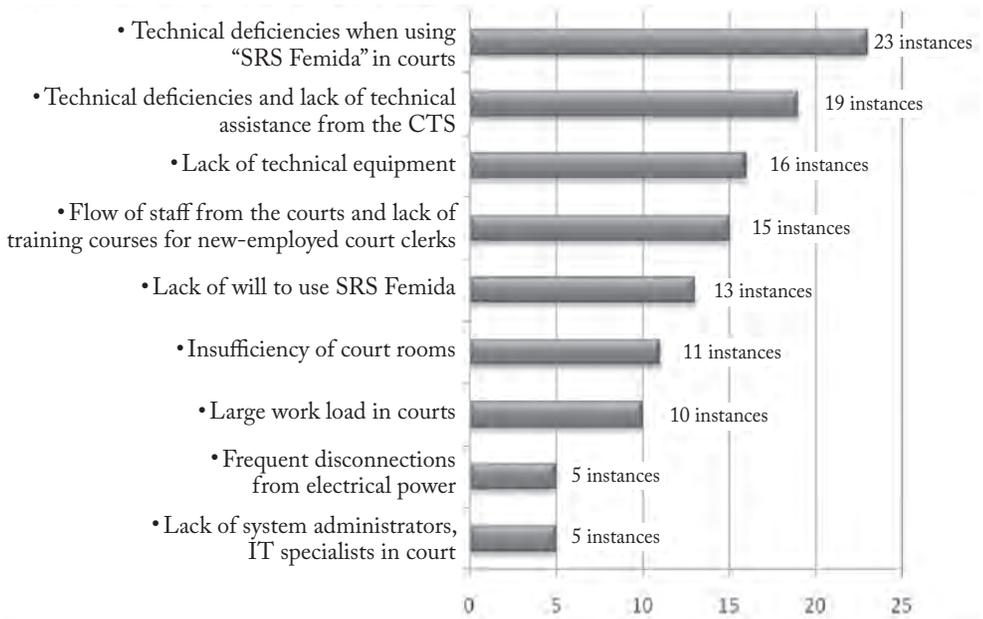
Law No. 247, of 21 July 2006 introduced the possibility for judges to audio record court hearings. The Civil Procedure and Criminal Procedure Codes were amended by Law No. 15, of 3 February 2009 legalizing audio recordings of court hearings. However, these amendments also allow non-recording of court hearings on exceptional basis, when the use of technical audio recording means is not possible. In this case, the judge shall issue a motivated ruling.

In 2009, due to international financial support, all court rooms in the Republic of Moldova (153) were equipped with audio recording sets for the hearings. The audio recording system “SRS Femida” includes periphery equipment (computers and microphones) and special recording software. The manner of recording and the responsibility for making, keeping and archiving audio recording is regulated by the Regulation on Digital Audio Recording of Courts Hearings, approved by the Decision of the SCM No. 212/8, of 18 June 2009. In the period from 2009 through 2011, all court clerks were trained in the use of the equipment and software “SRS Femida”.

According to decision by the SCM No. 259/12, of 17 September 2009, starting from 1 January 2010, audio recording of court hearings became mandatory in all courts of the country. However this obligation was not applied in all courts. In June 2011, a joint evaluation team composed of representatives of the SCM, JI and USAID Program of Immediate Assistance for Good Governance visited the courts of the Republic of Moldova in order to evaluate the extent to which the audio recording systems “SRS Femida” were used during court hearings, to document cases where the system was not used and to collect proposals for eliminating such cases. A report in this regard was issued in July 2011.¹⁴⁴

According to the report, out of a total of 53 courts in the country, “SRS Femida” is regularly used for recording court hearings only in 12 courts, sometimes in 9 courts, and not at all in 32 courts. According to the Report the reasons for the failure to use “SRS Femida” are quite diverse, “from lack of will of the court management to use the system, technical deficiencies that make the use of equipment impossible, insufficient number of audio recording equipment and court rooms for recording all hearings, as well as lack of permanent training of court clerks, especially of those who have just started their activity in this position”. The following reasons for failure to use “SRS Femida” were listed:

¹⁴⁴ Available at <http://www.zdg.md/wp-content/uploads/2011/12/Raport-SCM.pdf>. This report was published on the SCM website, however it was later deleted. Now it is not available on the SCM website.



On 23 October 2012, the SCM adopted decision No. 655/32 on the results of evaluating the implementation of the audio recording system “SRS FEMIDA” in court hearings. According to this decision, in summer 2012, only six courts (12%) were audio recording all hearings. SCM indicated that the main reasons for the failure to use the system are technical, such as lack of court rooms and examination of cases in the offices of judges. Based on this decision, the SCM asked the Government to allocate financial means in order to purchase the necessary number of voice recorders for all judges in Moldova in order to be able to record court hearings that take place in the offices of judges also. The SCM did not refer to the unwillingness of the management of the courts to use the audio recording system in its decision. Apparently the Government rejected the request of the SCM because of lack of funds, and the SCM asked the USAID Rule of Law Institutional Strengthening Program (ROLISP) to purchase approximately 200 voice recorders.

In order to redress this situation, by decision No. 712/34, of 6 November 2012 the SCM set up a working group composed of judges and staff of courts chaired by the Chairperson of the SCM. The group was tasked to contribute to the introduction of mandatory practices of audio recording of court hearings, and to adjust the Regulation on Digital Audio Recording of the Court Hearings respectively. By March 2013, the working group elaborated the draft of the new Regulation on Audio Recording of Court Hearings, and in the same month the Regulation was to be discussed with the judges, and subsequently adopted by the SCM.

Apparently the improvement of audio recordings of court hearings in the Republic of Moldova is among the priorities of ROLISP. In 2013, SCM requested ROLISP to provide technical assistance for purchasing 38 sets of equipment for audio recordings. They are intended for equipping courts rooms built after 2009. As a consequence, all court rooms in the country shall be equipped with audio recording equipment.

Considering the above-mentioned, SCM undertook a number of measures aimed at creating conditions for audio recording of court hearings. However, these measures did not prove to be sufficient to improve the situation related to audio recording of court hearings. On the contrary, in 2011 audio recording were regularly carried out in 12 courts, in 2012 court hearings were recorded only in six. During the interviews, both judges and members of the SCM and the DJA mentioned that the failure to ensure audio recording of court hearings is primarily explained by the reticence of the chairpersons of the courts. For instance, judges of the Chişinău Court of Appeal examine cases only in court rooms, and all court rooms have necessary equipment for audio recording. However, only a few hearings have been recorded in this court, while the other four courts of appeal in the country were regularly recording. In 2012, the SCM made only general statements about the need to ensure audio recording, without going further. We are convinced that without sound measures, the situation will not substantially change. Moreover, the failure to use the recording equipment, which is quite expensive, would send a signal to the international donors who wish to support the judicial reform that judges do not adequately exploit the investments made in the judicial system.

4.6 Recommendations

- 1) The capacity of the JI needs to be re-evaluated, in order to ensure that it may effectively verify the organizational activity of the courts;
- 2) The SCM shall publish the documents drafted by JI after it has carried out the verification of the organizational activity of the courts;
- 3) The SCM shall have the role of a leader in the process of elaboration of court budgets, and shall send them for adoption directly to the Parliament, taking the rules concerning the elaboration of budgets for public institutions into consideration;
- 4) The SCM shall carry out a comprehensive evaluation of how assigning of cases is undertaken in all the country's courts;
- 5) The SCM shall take radical and sound measures to ensure that the courts comply with the rules on the random distribution of cases;
- 6) The SCM shall take radical and sound measures to ensure audio recording of hearings in all the courts of the country.

Internal organization of the Superior Council of Magistracy

5.1 Secretariat of the Superior Council of Magistracy and its duties

The Secretariat of the SCM oversees the activities of the SCM and of the affiliated institutions. The activity of the SCM Secretariat was regulated by the Regulation on Organization and Activity of the SCM Secretariat, approved by decision of the SCM No. 68/3 of 1 March 2007, in force until the beginning of 2013. The observations in the Report mostly refer to activities of the SCM from 2010 to 2012, and therefore this Report also makes reference to the Regulation of 2007.

The term “Secretariat” of the SCM was introduced by the Law No. 153, which amended and supplemented the Law on the SCM. This term aims to replace the term “Apparatus” of the SCM.¹⁴⁵ On 5 February 2013, a new Regulation on the Activity of the SCM Secretariat was approved by decision of the SCM No. 112/5, and was later published on the SCM website. The Report also makes reference to the Regulation of 2013.

The SCM Secretariat has the following main tasks:¹⁴⁶

- organizes the conducting and documentation of the SCM meeting;
- organizes the conducting and documentation of the Selection Board meeting;
- organizes the conducting and documentation of the Evaluation Board meeting;
- organizes the conducting and documentation of the DB meeting;
- provides organizational assistance to the JI;
- keeps track of the participants in the selection process for the vacant positions of judges, chairpersons or deputy chairpersons of courts;
- keeps record of judges and their personal files;
- keeps track of the continuous training of judges at the NIJ;
- keeps record of judges who were decorated with state distinctions or diplomas of honour, and ensures the activity of the commission responsible for awarding diplomas to the respective judges;
- keeps record of human resources within the SCM;
- ensures implementation of protocol procedures of SCM members, Secretariat staff and judges;
- carries out analysis of judiciary statistics;

¹⁴⁵ However, the term “Apparatus” of the SCM continues to be used in the Law on the SCM.

¹⁴⁶ See p. 4 of the Regulation of the SCM Secretariat of 2013.

- organizes the General Assembly of Judges;
- carries out other tasks according to current regulations and legislation.

The regulations on the SCM Secretariat of 2013 describes the tasks of the Secretariat relative detail, compared to the Regulation on the SCM Apparatus of 2007, This constitutes a positive qualitative development, and creates improved conditions for a more productive activity of the SCM Secretariat. Empowering the Secretariat to represent the SCM in court and to draft opinions of the SCM on legislative or normative acts (Legal Department on Documentation) represents an important amendment to the tasks of the Secretariat.¹⁴⁷ Before adopting the Regulation of the SCM Secretariat of 2013, besides its other tasks provided by the law, JI was also representing the SCM in courts, which took a lot of its time.

a. The Staff of the SCM Secretariat

Before Law No. 153 entered into force, the Law on the SCM provided that the Secretariat should consist of 13 persons, without making any distinction between civil servants and support staff. On 27 December 2011, by decision No. 709/47 by the SCM, the structure of the staff of the SCM Secretariat was clarified, and it had to include 13 civil servants and seven support staff. In July 2012, 6 civil servants were *de facto* acting within the SCM Secretariat. During the interviews with representatives of the Secretariat, the existing gap between positions envisaged in the staff structure and persons actually employed was explained by small salaries, which lead to a reduced number of people employed, and therefore salaries provided for 13 positions were distributed to the civil servants actually employed. The SCM is the guarantor of judicial independence, and a low number of staff of the secretariat combined with poor remuneration does not strengthen the independence of this institution. In July 2012, there was no one within the SCM Secretariat exclusively responsible for the organization of QB and DB activities. The person responsible for ensuring the activity of the SCM Boards was also carrying out other tasks within the Secretariat. The Head of the Secretariat should be responsible for organization and administration of the unit; however, because of the reduced number of staff and high work load, he/she also carries out tasks assigned to the staff of the Secretariat.

According to the amendments introduced by Law No. 153, the staff of the General Department for Judicial Self-Administration of the SCM Secretariat shall be composed of civil servants who are subject to provisions of the Law No. 158, of 4 July 2008 on Public Function and Statutes of Civil Servants.¹⁴⁸ The staff structure of the SCM Secretariat shall be approved by the SCM.¹⁴⁹ By decision No. 845/40, of 26 December 2012 the SCM approved a new staff structure of the SCM Secretariat that includes 36 people, including 29 civil servants and seven support staff. By 15 March 2013, the staff of the SCM Secretariat was not complete.

b. Employment of Secretariat staff

The regulations of the SCM Secretariat of 2007 and of 2013 do not include provisions related to organization of the competition process for selecting the Secretariat staff.

¹⁴⁷ See p. 9.6 of the Regulation of the SCM Secretariat of 2013.

¹⁴⁸ See Article 27³ paragraph 1 of the Law on the SCM.

¹⁴⁹ See Article 27³ paragraph 3 of the Law on the SCM.

Nevertheless, the Secretariat staff with the status of civil servants has to be employed following a selection process organized according to conditions of the Law on Public Function and Statute of Civil Servants.

The announcements for the recruitment of the Secretariat staff are usually published on the website under “Vacancies”,¹⁵⁰ where all announcements for supplementing vacant positions of judges, chairpersons and deputy chairpersons of the courts are published. Announcements are published on the website chronologically and for someone not familiar with the structure of the website it is quite difficult to find employment opportunities within the SCM Secretariat. The results of the selection process are published in the section “News”. In our opinion, announcements concerning the selection of the staff of the SCM Secretariat and those aimed at supplementing vacant positions of judges, chairpersons and deputy chairpersons of courts, should be published separately on the website.

According to those interviewed within the SCM, in July 2012 the Ministry of Finance approved an increase in the number of staff of the Secretariat by five. On 24 July 2012, SCM adopted a decision to initiate a selection process for six civil servants.¹⁵¹ The applications for the participation in the selection process had to be submitted to the SCM by 30 August 2012. In January 2013, a list of persons selected for the interview for supplementing 3 vacant positions on the basis of a written test was published on the SCM website under “News”.¹⁵² By 15 March 2013, the recruitment process for these positions was still not finalized.

c. Collecting and storing information

A large part of the duties belonging to the SCM Secretariat are related to the accumulation and processing of data on judges, such as keeping records of them, continuous training, preparing personal information about judges who participate in the selection process etc. Usually all these data are manually processed, which requires considerable effort and time on the part of the Secretariat staff. The establishing of a database of judges in the form of an Electronic Registry of Judges is highly recommended. This would considerably increase the efficiency of keeping record of judges, of information concerning their training, and of statistics of judges according to different criteria (court, qualification degree, age etc.).

Another aspect of SCM Secretariat activities is the keeping of archives of personal files of judges. Due to insufficient space, the archive of personal files of judges is kept in a very small room. Following interviews conducted within the SCM, it was established that because of limited capacity of the Secretariat staff, as well as of the inadequate space where the archive is placed, record of personal files of judges is kept with many deficiencies.

5.2 Organization of the meeting and adoption of the decisions of the Superior Council of Magistracy

According to Article 15 of the Law on the SCM, the SCM, as a collegial body, shall exercise its duties in plenary meetings.¹⁵³ Meetings of the SCM shall be set up at the initiative

¹⁵⁰ See http://SCM.md/index.php?option=com_content&view=article&id=152&Itemid=149&lang=ro.

¹⁵¹ See <http://SCM.md/files/Hotaririle/2012/25/495-25.pdf>.

¹⁵² See <http://SCM.md/files/Noutati/2013/01/17/ListaSecretariat.pdf>.

¹⁵³ See Article 15 paragraph 1 of the Law on the SCM.

of its chairperson.¹⁵⁴ SCM meetings may also be set up at the initiative of at least 3 members of the Council.¹⁵⁵ By proposal of the head of the Secretariat, the chairperson of the SCM shall decide on the dates of SCM meetings and issues to be included in the agenda. The members of the SCM have limited influence in introducing issues on the agenda of the meetings.¹⁵⁶ Each issue included in the agenda shall be assigned by the chairperson of the SCM to one SCM member, called rapporteur. Following interviews, it was established that the SCM chairperson appoints rapporteurs according to their informal specializations. SCM meetings are usually held once a week, on Tuesdays.

According to the Law on the SCM, the agenda of the SCM meeting, as well as the draft decisions and additional materials to be examined shall be posted on the SCM website at least three days before the meeting.¹⁵⁷ This provision was introduced in July 2012. In the past, the Law on the SCM required publication on the SCM website only of the decisions and other acts issued by the SCM which are necessary for the exercise of its activity. Without express requirement of the law, the SCM started publishing agendas of its meeting in 2009. Usually, the agendas of the SCM meetings were published on the website 3 - 4 days before the day of the meeting, including weekends, ie. the agenda was usually published on Fridays. Nevertheless, there is also a questioned practice of submitting an additional agenda that includes urgent issues and is approved by the chairperson of the SCM one day before the meeting. Usually, the additional agenda is published on the website on the day of the meeting. In several cases, it was published later or was not published at all. Apparently the late publication or non-publication of the additional agenda was due to technical reasons and was not related to lack of transparency in organizing the meetings.

Members of the SCM met 40 times in 2012, usually on Tuesdays. More than 950 issues included in the agenda were examined at these meetings and 848 decisions were adopted. Depending on the total number of issues submitted, the activity of the members of the SCM is described as follows:

- a) Detached members of the SCM - 65.3% (Anatol Țurcan - 138 (12.9%), Dina Rotariuc - 134 (12.6%), Dumitru Visternicean - 136 (12.8%), Nichifor Corochii - 237 (22.2%), Nicolae Timofti¹⁵⁸ - 51 (4.8%).
- b) Ex officio members of the SCM - 9.1% (chairperson of the SCJ - 52 (4.9%); Minister of Justice - 42 (3.9%); General Prosecutor - 3 (0.3%).)
- c) Titular professors - 25.6% (Alexandru Arseni - 65 (6.1%), Boris Negru - 69 (6.5%), Igor Dolea - 92 (8.6%), Vasile Crețu - 47 (4.4%).)

According to the statistical data presented above, there is no proportional assignment of work among the SCM members. Detached judges of the SCM are assigned, on average, 50% more tasks than titular professors. This difference could be explained by the fact that titular professors do not work permanently within the SCM and receive only 50% of the

¹⁵⁴ See Article 16 paragraph 1 of the Law on the SCM.

¹⁵⁵ See Article 16 paragraph 2 of the Law on the SCM.

¹⁵⁶ One expert expressed his opinion that this situation is caused by lack of interest on the part of SCM members.

¹⁵⁷ See Article 8/1 paragraph 4 of the Law on the SCM.

¹⁵⁸ Since spring 2012, Mr. Timofti is no longer a member of the SCM.

salary granted to the judges-members of the SCM. On the other hand, in 2012, the work load among judges or professors-members of the SCM was not proportionally assigned. Therefore, Mr. Corochii had almost twice the number of tasks than other judges-members of the SCM, and Mr. Dolea – twice the number of tasks than those of Mr. Crețu. In order to enhance its efficiency, the SCM needs to establish a mechanism of proportional assignment of work load among the SCM members belonging to the same professional groups (judges and titular professors).

The task of preparing SCM meetings is performed by the SCM Secretariat. Usually, 25-35 issues are included in the agenda, without taking into consideration the limited capacities of the Secretariat. The large number of issues is an urgent problem which needs to be solved as soon as possible. A large number of issues do not allow the SCM to discuss conceptual issues, as it is forced to examine important problems expediently, as well as routine issues. As a result, the quality of the SCM decisions is affected. The exaggerated number of issues included in the agenda is explained both by the imperfect legal framework, which assigns inappropriate or unimportant tasks to the SCM (tasks that could be delegated to the Secretariat or affiliated entities), as well as by dangerous practices rooted in the activity of the SCM. Concerning the legal framework, in our opinion the SCM should limit the number of issues it handles in its meetings¹⁵⁹ but needs to, and delegate them to the Secretariat - or set up sections of three SCM members to handle them.

There are a number of time-consuming aspects for the SCM related to the organization of the meetings. For instance, when SCM announces competitions for the appointment, confirmation or promotion of judges, the judges are invited to the meeting only to confirm their application to participate in the competition. Consequently, judges' as well as SCM members' time is lost. The SCM Secretariat could decide to admit a person to the competition based on the application submitted by him or her. In general, it's provided that the new system of organizing the selection process in case of the appointment or confirmation regulated by Law No. 153 should substantially improve the manner of organizing competitions and increase the efficiency of the SCM activity. Similarly, the selection process related to the employment of staff of the SCM Secretariat should not be discussed within the SCM meetings. In cases where a number of similar issues are included in the agenda, they could be joined and presented together, without discussion of each of item separately.

The date, hour and place of the meeting, as well as the agenda, draft decisions to be adopted and supporting materials have to be presented to the members of the SCM at least three days before the meeting, except for extraordinary cases¹⁶⁰. The members of the Secretariat are responsible for preparing the materials for the meetings, which they have to send to the members of the SCM by email. At the same time, the record of materials for the meeting is kept manually, which significantly hampers the process. One solution would be to elaborate software in order to create an electronic file to integrate all materials of the meetings, with indication of their circuit and statute (approved, not approved, postponed etc.).

¹⁵⁹ For instance, delegation of judges for participation in seminars, conferences, training courses and duty trips; granting annual leaves to the chairpersons and deputy chairpersons of courts; examination of manifestly ill-founded petitions.

¹⁶⁰ See Article 16 paragraph 3 of the Law on the SCM.

The meetings of the SCM have to be deliberative if at least two thirds of its members are present.¹⁶¹ “During the meetings, SCM members discuss issues included in the agenda of the meeting.” The examination of the issues to be settled at the meeting shall start with the report by the chairperson of the SCM or by one of the Council’s members who is rapporteur, followed by hearing the individuals invited to the meeting, and examining the documents and materials attached to the agenda¹⁶². Usually, a rapporteur is appointed for each issue included in the agenda, and he/she shall present the issue and propose solutions. All SCM members need to examine the materials of the meeting in advance. During our monitoring however, we were often under the impression that some members of the SCM were reading materials included in the agenda for the first time during the meeting. This certainly leads to lack of efficiency in the activity of the SCM and lack of strategic approach on solving problems from the judicial system.

A positive example in this regard was noticed in the practice of the SCM from Romania. The decisions of the SCM of Romania are adopted by the Plenum. Apart from sitting in the SCM Plenum, members of the SCM are also acting in three working commissions, namely: Commission No. 1 – Independence and responsibility of justice, enhancing efficiency of its activity and increase of the judicial performance, integrity and transparency of the judicial system; Commission No. 2 – Enhancing efficiency of the SCM activity and activity of the coordinated institutions, partnership with internal institutions and civil society; and Commission No. 3 – Relations with the European Union and international organizations. The number of Commissions and the topics covered by them may vary and are established by the SCM Plenum of Romania at the beginning of each year. The members of the SCM may be part of several working commissions. The members of the commissions meet once per week and discuss and examine problems which are further decided by the Plenum of the SCM. Commissions adopt a position of principle, which is later presented to and decided by the Plenum. This mechanism ensures a preliminary examination of the issues included in the agenda of the SCM Plenum, as well as editing of draft decisions of the SCM before the meeting of the Plenum.

SCM meetings in the Republic of Moldova are public, except the cases when, upon motivated request of the chairperson or at least three members of the SCM, the majority of the SCM members present at the meeting decide by vote that the meeting needs to be closed, and when public debate of the issues included in the agenda could do damage to peoples private lives.¹⁶³ However, there is no clear delimitation between issues to be discussed in public meetings and those to be decided in closed meetings. At the same time, it is not known in advance what issues are to be discussed in closed meetings; this decision is taken during examination of issues included in the agenda. This situation can lead both to abuses, and to suspicions of abuses.

After the SCM meeting, the members of the Secretariat shall prepare minutes of the meeting, which, according to Article 8¹ paragraph 5 of the Law on the SCM, shall be

¹⁶¹ See Article 15 paragraph 2 of the Law on the SCM.

¹⁶² See Article 17 of the Law on the SCM.

¹⁶³ See Article 8/1 paragraph 2 of the Law on the SCM.

published on the SCM website. Since this provision entered into force in August 2012, no minutes of the SCM meetings were published on the website. On the one hand, this situation could be explained by unwillingness to provide access of the society and mass-media to all issues discussed within the meetings and, implicitly, by lack of transparency in the SCM activity. On the other hand, it can also be justified by limited capacities of the Secretariat and impossibility to perform a large amount of work. A solution to this situation was noted in the activity of the SCM of Romania, where the minutes (in the form of a settled agenda) are published after each meeting of the Plenum and commissions, which include problems discussed within the meeting and decisions adopted. In this way, the publication of the settled agenda on the day of the SCM meeting would ensure the transparency of the SCM activity, the public would have the possibility to take note of the operative part of the SCM decisions and any suspicions would be eliminated.

The Law on the SCM provides that the SCM shall adopt decisions by open vote of the majority of its members.¹⁶⁴ Voting shall be carried out in the absence of the person whose case is being examined, and in the absence of other invited persons.¹⁶⁵ In practice, the voting of decisions by the SCM members is carried out in closed meetings in almost all cases. The same procedure is applied in cases which are not complex, where voting in public meetings would not affect this process. Alongside with the SCM members, the General Secretary and the members of the Secretariat, the representatives of mass-media and of civil society are also present at the SCM meetings. When the deliberation is announced, they are asked to leave the room. After deliberation, only the resolution part of the decision or the summary of the decision of the SCM is announced. During the monitoring of the SCM meetings, we noted that the “deliberation” is announced very often even when the issue had still not been discussed and the time for deliberation or for taking decisions by the SCM had not yet come. This practice significantly reduces the SCM transparency.

Voting on all issues included in the agenda in the closed meeting significantly hinders the process of examination. This could be avoided by an open vote, in the presence of all those present at the meeting. In general, the application of the principle of secret deliberation for the SCM is not clear, as it is not a judicial body. In fact, the SCM appears to be the only administrative body in the country which discusses its decisions “in deliberation”. We recommend the SCM to abolish the practice of “deliberations” and request excluding Article 24 paragraph 2 from the Law on the SCM. When issues that justify non-divulgation of information are discussed during the SCM meeting, SCM could declare the whole meeting closed, not only for “deliberation”.

If a member of SCM has a separate opinion, it shall be motivated and attached to the decision without reading it out.¹⁶⁶ However, It is clear from monitoring of the SCM meetings and its website that separate opinions are rather an exception, despite the fact that during discussions at the SCM meetings, its members have different opinions regarding the final solutions.

¹⁶⁴ See Article 24 paragraph 1 of the Law on the SCM.

¹⁶⁵ See Article 24 paragraph 2 of the Law on the SCM.

¹⁶⁶ See Article 24 paragraph 4 of the Law on the SCM.

After being drafted, the SCM decisions are published on the SCM website. The time limit for editing varies from several days to one month. Following the interviews, it was established that the decisions of the SCM are, usually, edited by the members of the Secretariat and, considering their large amount of work, some decisions are edited with delay. During 2010, SCM adopted 607 decisions¹⁶⁷, in 2011 – 713 decisions,¹⁶⁸ and in 2012 – 848 decisions.¹⁶⁹

5.3 Representation of the Superior Council of Magistracy in Courts

Before Law No. 153 entered into force, the Law on the SCM Article 25 provided that decisions of the SCM could be appealed to the Chişinău Court of Appeal by any interested person within 15 days from the moment of communication of the decision. Subsequently, the decisions of the Chişinău Court of Appeal could be appealed to the SCJ under the conditions of the law. Therefore, SCM decisions were subject to judicial control by two levels of courts – Chişinău Court of Appeal and the SCJ.

In July 2012, Law No. 153 amended the content of Article 25 of the Law on the SCM, and it now provides that the decisions of the SCM may be appealed to the SCJ by any interested person¹⁷⁰ within 15 days from the moment of communication of the decision, but only in the part related to the procedure of the adoption of the decision. Appeals shall be examined by a panel of nine judges.” This amendment strengthens the statute of SCM decisions, which now can be appealed only on issues related to the procedure of adoption, and not the merits. This rule however, should not be interpreted very rigidly. We consider that this provision needs to be interpreted as providing the right to the SCJ to examine situations where decisions of the SCM seem to be manifestly groundless or arbitrary.

Before Law No. 153 was adopted and following the interviews, it was established that the decisions of the SCM were appealed most frequently in the following situations:

- disagreement with the answer of the SCM to petitions;
- appeal against disciplinary sanctions;
- appeal against decisions of the SCM adopted as a result of a competition process (for appointment to the position of judge or for promotion of judges).

According to the Annual Activity Report for 2010, the SCM participated in 60 trials initiated against the SCM, 24 cases ended in a court ruling, in 19 cases the applications were rejected, and in five cases the applications were admitted.¹⁷¹ In 2011, the SCM was a party in

¹⁶⁷ See Report on the SCM activity, the manner of courts’ organization and activity in 2010, pag. 6, <http://SCM.md/files/RAPOARTE/Raport2010.pdf>.

¹⁶⁸ See Report on the SCM activity, the manner of courts’ organization and activity in 2011, pag. 6, <http://SCM.md/files/Hotaririle/2012/11/129-11-Raport.pdf>.

¹⁶⁹ See Report on the activity of the SCM and judicial system in 2011, pag. 2, <http://SCM.md/files/Noutati/2013/02/21/Raportul%20dlui%20Corochi.pdf>.

¹⁷⁰ By decision of the SCJ of 11 May 2011 (file No. 3r-837/11), SCJ considered that the party that submits an appeal in cassation “cannot be considered as an interested person when his/her rights and interests are not affected in any way by the contested decision. Or, from the provisions of Article 25 of the Law on the Superior Council of Magistracy, it follows that “interested persons” shall include persons who participated at the examination of the decision within the Disciplinary Board and the Superior Council of Magistracy, as well as persons who are directly affected by the consequences of the decisions of the Superior Council of Magistracy.”

¹⁷¹ See Report on the SCM activity, the manner of courts’ organization and activity in 2010, pag. 41.

56 cases, and in 46 cases court rulings were adopted. In 29 cases actions were dismissed, and in 14 cases actions were admitted. Three proceedings were discontinued.¹⁷² SCM reports do not include information on the subject of the cases lost by the SCM in courts. The annual activity report of the SCM for 2012 mentions that the SCM was involved in 73 judicial proceedings, and final decisions were adopted in 53 proceedings. Nevertheless, the Report of the SCM does not describe the solutions adopted in those 53 cases.

In cases when the SCM decisions are appealed, it needs to be represented in courts by a member of the Secretariat. Considering the limited number of the members of the Secretariat, as well as their lack of experience in representing cases in courts, the SCM appointed one of the inspecting judges as the SCM representative in courts. SCM argued that this is a temporary solution, until a qualified staff will be employed to carry out these tasks within the Secretariat. This temporary solution however, is dangerous, taking into account the incompatibility of the inspecting judge to represent SCM cases in court when the answers of the JI or SCM are appealed.

Following the interviews conducted within the SCM, it was established that the activity of the SCM representative in courts mainly includes the following:

- receiving relevant materials from the chairperson of the SCM;
- drafting references;
- when necessary, elaboration of appeals in cassation which need to be coordinated with the chairperson of the SCM or a member of the SCM with experience in the field relevant to the appeal;
- participation in court hearings.

The procedural documents that represent the position of the SCM as respondent in a trial are not discussed among SCM members during the meetings of the SCM Plenum. Apparently this activity is coordinated partially only with the chairperson of the SCM. The SCM is informed only about the final result of the proceedings. After the decisions become final, the subject is included in the agenda of the SCM meeting for informative purposes only. At the same time, during interviews it was established that the SCM Secretariat does not keep track of decisions by the courts related to SCM decisions. This probably represents a consequence of the fact that the Secretariat staff does not exercise the duties of SCM representative in courts, and there is lack of communication between the Secretariat and the inspecting judge responsible for representation of the SCM in courts.

The practice of SCM representation in courts in Romania serves as a positive example. The representative of the SCM in courts elaborates an opinion which needs to be approved by the director of Department for legislation, documentation and administrative procedure. Subsequently, it needs to be discussed within a SCM Section (Section for judges, Section for judges in disciplinary cases, Section for prosecutors, Section for prosecutors in disciplinary cases), and then in the Plenum. If the issue is urgent, the opinion shall be sent directly to the Plenum. In this way, the opinion elaborated by the employee of the Bureau for administrative procedure is reviewed, and the final position of the SCM is collectively adopted by the Plenum. In this way, transparency and efficiency of the SCM position regarding appeals

¹⁷² See Report on the SCM activity, the manner of courts' organization and activity in 2011, pag. 18.

formulated against its decisions is ensured. This practice could also be taken over by the Direction on documentation and administrative procedure of the SCM from the Republic of Moldova, when the newly created positions will be filled in.

5.4 Recommendations

Secretariat of the SCM:

- 1) Elaboration and publication of the structure / organizational chart of the SCM Secretariat on the SCM website;
- 2) Urgent recruitment of new staff introduced through decision of December 2012;
- 3) Regulating the manner of conducting the selection process and organizing the competition for selecting the staff of the Secretariat, including support staff;
- 4) Elaboration of an Electronic Registry of Judges, and introducing certain rules for keeping personal files of judges through a SCM decision.

Organization of the meetings and adoption of the decisions of the SCM:

- 1) Discontinue the practice of adopting SCM decisions “in deliberation” and request to exclude Article 24 paragraph 2 of the Law on the SCM;
- 2) Elaboration by the SCM of a mechanism aimed at proportional distribution of tasks among the SCM members from the same professional group;
- 3) Publication on the SCM website, together with the agenda of the SCM meeting, of any additional materials that need to be examined at the SCM meetings three days before the meeting;
- 4) Publication on the SCM website of additional agenda of the SCM meeting at least one day before the SCM meeting;
- 5) Publication on the SCM website, on the day of the meeting or the next day, of the settled agenda and the minutes of the SCM meeting;
- 6) Reviewing legal framework related to the SCM competence in order to allow delegation of the right to examine minor issues to the SCM Secretariat or the Judicial Inspection, in order to allow the SCM to concentrate on more important aspects of the administration of the judicial system;
- 7) Discontinue the practice of inviting judges to the SCM meetings only to reconfirm their application for participation in the selection process or for other reasons when the judge’s presence is not crucial.

Representation of the SCM in courts in cases when its decisions are appealed by one of the parties:

- 1) Elaboration of the rules concerning the representation of the SCM in courts, in order to regulate the manner of coordinating the SCM position and the procedural documents submitted to courts with the members of the SCM;
- 2) Elaboration of a Registry for keeping record of the contested SCM decisions and the results of such proceedings.

Transparency of the activity of the Superior Council of Magistracy

6.1 Publication of information on the website

SCM has a website (www.csm.md) that was created in 2009 with the support of the Joint Programme of the Council of Europe and the European Commission and it aimed at increasing independence, transparency and efficiency of justice in the Republic of Moldova. Earlier, the SCM website had another design. The new version of the website does not include the decisions which were available on the old website of the SCM.

According to the Law on the SCM, the SCM must publish the following documents on its website: income, property and personal interests statements of judges (Article 4 paragraph 3 letter g), control acts of the SCM concerning the activity of the courts (Article 7² paragraph 7), the agendas of the SCM meetings, draft decisions and additional materials to be examined at the meetings (Article 8¹ paragraph 4), minutes of the SCM meetings (Article 8¹ paragraph 5), decisions of the SCM and annual reports of the SCM (Article 8¹ paragraph 6).

Information on the current website of the SCM is published in five main categories: News, SCM, SCM Boards, DJA and JI. Many of the sub-sections of the website are empty or include outdated information. The CVs of the members of the SCM, head of the SCM Secretariat, staff of the SCM Secretariat, members of the SCM Boards and members of the JI are not published on the website. The section of the website dedicated to the JI does not include any acts elaborated by the JI. After the activity of the QB ceased by law, the information about the activity of that Board was removed from the website. Many pages include outdated information. Concerning the functionality of the website, the process of finding necessary information is a real challenge for a user who is not familiar with the SCM activity. For instance, the section “Relations with the public” or “Relations with mass-media”, which should facilitate finding information by the public and the press, is missing. The website has a search engine; however it is not easily visible. Moreover, it allows search only according to key-word, and not according to other criteria. Despite the fact that the website does not include all relevant information, and certain settings of the website design do not seem to help users, according to interviews conducted in July 2012, the SCM budget does not include any financial resources for improving the website.

Moreover, the SCM website does not include any documents related to certain important information in the activity of justice, approved by the decisions of the SCM. An example here could be the Report on the results of evaluating the implementation of the audio recording system “SRS Femida” for court hearings in the Republic of Moldova,¹⁷³ elaborated in July 2011. This Report was examined within the meeting of the SCM of 26 July 2011 and mentioned in the decision of the SCM No. 480/28 of 26 July 2011,¹⁷⁴ However, even by 2012 it was not available on the SCM website. Despite the requirement from Article 7² paragraph 7 of the Law on the SCM, no control acts elaborated by the JI as a result of verification of the courts’ organizational activity was published on the website.

Starting 2009, the SCM has to publish income statements of judges on its website. They shall be published in the sub-section “SCM Activity”. Despite the fact that in 2008-2011, statements by most of the judges were published on the SCM website, on 15 March 2013 statements for 2012 were still not available on the website. Moreover, on the same date, statements by judges for 2009-2011 were not available on the website either, despite the fact that they were available for 2008.

“SCM Activity” is the most important page from the category “Superior Council of Magistracy”. The most important information that reflects the essential activity of the SCM in this subcategory is the information related to decisions adopted by the SCM. The publication of the SCM decisions on the SCM website has however, a number of deficiencies. First of all, “Decisions” of the SCM is a sub-category of the main category “Superior Council of Magistracy” and it is published in the second level of the main menu. Secondly, the decisions of the SCM are published chronologically, which makes access to the decisions according to category almost impossible. The only available criteria for searching a decision is the date of its adoption. The website of the SCM of Romania represents an example of positive practice.¹⁷⁵ The SCM decisions on this website are published in the main menu and are classified according to the following categories: opinions, delegations, detachments, dismissals, appointments, promotions, regulations, suspensions, transfers, etc. In Moldova, despite the fact that the law requires that all decisions of the SCM be published on the website, some decisions are not. Therefore, as a result of the monitoring conducted within the project, it was established that 89 out of 607 decisions of the SCM (14.7%) were not published in 2010, 56 out of 713 (7.9%) decisions were not published in 2011, and 25 out of 848 decisions (3%) were not published in 2012.

Concerning the information on agenda and organization of the SCM meetings, the agenda is usually published 3-4 days before the day of the meeting. After the publication of the agenda, the SCM may still introduce other issues. They are included in the additional agenda, which is published on the website on the day of the meeting, or even after the SCM meeting has taken place.¹⁷⁶ Despite the fact that the agenda usually refers to some documents

¹⁷³ See <http://www.zdg.md/wp-content/uploads/2011/12/Raport-SCM.pdf>.

¹⁷⁴ See <http://www.SCM.md/files/Hotaririle/2011/28/420-28.pdf>.

¹⁷⁵ See <http://www.SCM1909.ro/SCM/index.php?cmd=0301>.

¹⁷⁶ Usually, an additional agenda is published on the day of the SCM meeting, however there were cases when it was published the following days, or not at all.

that need to be discussed by the SCM, in most cases these documents are not published on the website. Usually only lists of persons who participate in the selection process (for supplementing vacant positions of judges, for promotion and employment) are attached to agenda. Information notes of the JI concerning petitions related to actions of judges, appeals against decisions of the DB, opinions to the draft laws etc. are not published on the website. It was stated during the interviews that the non-publication of documents is explained by financial constraints and the lack of permanent support staff to maintain the website. Despite this, the members of the SCM have access to all additional materials published on the intranet network, so it appears that there may be a lack of will to make materials of the meetings public. The failure to publish materials of the SCM meetings represents an obstacle for the efficiency of mass-media. Representatives of mass-media and civil society who monitor the activity of the SCM have repeatedly expressed their dissatisfaction in this respect.

By Law No. 153, the Law on the SCM was supplemented by Article 8¹ paragraph 4. According to this Article, SCM has to publish its draft decisions on the website at least three days before the meeting. Following the monitoring of the website, we have however established that this does not happen. Taking into consideration the limited capacity of the SCM Secretariat, as well as the manner of organizing the activity of the SCM members in plenary meetings (examined above), we consider that the implementation of this provision is premature. Nevertheless, in our opinion only the drafts of the normative decisions of the SCM need to be published. Many of these draft decisions were published on the SCM website for public consultations between December 2012 and January 2013. No minutes of the SCM meetings were published on the SCM website, despite the fact that this was contrary to Article 8¹ paragraph 5 of the Law on the SCM.

According to Article 9 paragraph 4 of the Law on the Status of Judges, the announcements concerning vacant positions of judges shall be published on the SCM website. These announcements need to be published in chronological order in the category “Vacant positions”, where announcements related to employment of the members of the SCM Secretariat and JI shall also be published.

After the adoption of Law No. 153, the SCM had to elaborate and adopt a number of regulations. Towards the end of 2012 and in the beginning of 2013, SCM published a number of draft regulations on its website for public consultations. They were published on the page “News”, which could enhance public attention. However, they also need to be published in the subcategory “Legislation”, “Draft normative acts”, in order to make search easier. This did not happen, and it would be very difficult for people who are not familiar with the SCM to find these draft documents taking into account that the SCM publishes new information in the category “News” several times a week, placing only five announcements on the page.

Concerning information published on the website related to the second category, “SCM Boards”, the activity of the DB was best reflected. This might be explained by the fact that DB was annually adopting and editing a relatively small number of decisions comparing to the SCM and therefore the search for its decisions is easier, despite the fact that they are also listed in chronological order. During the lifetime of the QB (until December 2012), no decision adopted by it was published on the website.

Despite the fact that according to amendments introduced by Law No. 153 the SCM has to broadcast its meetings on-line, by 15 March 2013, which is more than six months after these provisions entered into force, SCM meetings were still not broadcasted. It seems however, that this will happen in the near future. By the end of March 2013, the SCM was preparing a special room to facilitate broadcasting of SCM meetings live. It appears that this video signal will be on-line on the SCM website as well.

6.2. Elaboration and publication of the Annual activity report

In order to improve the administration of justice, it is necessary to evaluate the activity of the SCM and the judicial system. According to European standards in the field, the SCM “should publish a report of its activities periodically for the purpose of describing the importance of its activities and difficulties encountered and to suggest its own measures. The publication of this report may be accompanied by press conferences and meetings with judges and spokespersons of judicial institutions to improve on the dissemination of information and the interactions within the judicial institutions”.¹⁷⁷ Moreover, the SCM “must set acquire the necessary tools to evaluate the justice system, to report on the state of services, and to ask relevant authorities to take necessary steps to improve the administration of justice”.¹⁷⁸

Before Law No. 153 entered into force, Article 29 of the Law on the SCM stated that the SCM had to publish an annual report on its activity and the activity of the judiciary in the previous year by the 1st of April. A copy of the report had to be provided for the President of the Republic of Moldova and for the Parliament for information. Law No. 153 amended Article 29 of the Law on the SCM moving the deadline forward to the 1st of February. The activity report has to be presented to the general public and is subject to debate at the General Assembly of Judges. A copy of the report shall be provided for the President of the Republic of Moldova and for the Parliament.

The report on the SCM activity and the organization and activity of the courts shall be elaborated annually and published on the SCM website. The report should refer to the activity of the SCM, SCM Secretariat, JI, and SCM Boards and include statistical data on the activity of the courts. The report is mainly prepared by the Secretariat, which needs to describe successes and deficiencies in the activity of the SCM and the Secretariat. JI and SCM Boards shall provide information about their activities carried out in the respective year. DJA is sending statistical data about the activity of the courts to the SCM on a quarterly and annual basis.

In March 2013, Annual activity reports for 2009, 2010, 2011 and 2012 were available on the SCM website. Despite the fact that the Law on the SCM envisages that Activity reports of the SCM need to be debated within the General Assembly of Judges, the 2012 Report was read by the chairperson of the SCM within the General Assembly of Judges organized on 15 February 2013 and published on the SCM website on 21 February 2013.¹⁷⁹

¹⁷⁷ See Opinion No. 10/2007 of the Consultative Council of European Judges, paragraph 96, available at <https://wDB.coe.int/ViewDoc.jsp?id=1254135&Site=COE>.

¹⁷⁸ Ibidem, paragraph 10.

¹⁷⁹ See <http://SCM.md/files/Noutati/2013/02/21/Raportul%20dlui%20Corochi.pdf>.

Therefore, the report could not be debated as required by the Law on the SCM. Despite legal provisions requiring the SCM to elaborate and publish the Report until 1st of February of the next year, the final text of the Report for 2012 was published on the SCM website in March 2012.¹⁸⁰

The 2010 Report is the most detailed of the four reports available on the SCM website. It includes a separate chapter concerning the activity of all courts in the country.¹⁸¹ The Annual report for 2011 includes very little analytical information concerning the activity of the judiciary. In comparison, the SCM of Romania annually produces two reports, one dedicated to the activity of the SCM and another to the situation of the justice sector.¹⁸² The SCM is the only official source that can provide judicial statistics and assess the judicial system. We are of the opinion that the SCM also needs to prepare an annual report on the situation of the judiciary. Information about the organization and activities of the courts is disclosed in the reports for 2009, 2010 and 2012 in the form of statistical data without an ample analysis. We consider that this is not sufficient. The Reports on the situation of the judiciary need to represent radiography of the system, it needs to evaluate the real situation of the judiciary and describe the structures and mechanisms of the system, with the indication of both successes and shortcomings in the activities of the judiciary, and their reasons. Moreover, this Report needs to plan future actions by the SCM in the field of the administration of the judiciary.

We consider that the Annual activity report of the SCM could be supplemented by individual reports by the SCM members on their activities during the respective year. Even though these reports are not regulated by law, they could become a good practice which would enhance transparency with regards to the activities of the SCM members, as well as their responsibilities. These reports would need to be published on the SCM website.

6.3 Relations with mass-media and civil society

One person responsible for communication with mass-media is working within the SCM Secretariat. This person is responsible for disseminating the information about SCM activity and provides information about the agenda of the SCM meetings and its content etc. Information in the form of agendas of SCM meetings published on the SCM website represents the main source of news about the activity of the SCM and issues discussed. The website does not include a special section dedicated to mass-media or visitors.

Visibility and activities of the SCM are mainly based on interviews with and participation in public debates by some members of the SCM. Information about the activity of the SCM through social networks is currently promoted by publication of some information on the website of the Ministry of Justice.¹⁸³ Until present, the SCM does not have a page in social networks dedicated to its activities, unlike many other institutions. The authors of this report are not aware of whether the SCM has established a communication strategy or not.

¹⁸⁰ See <http://SCM.md/files/Hotaririle/2013/6/149-6.pdf>.

¹⁸¹ See Report on the SCM activity, the manner of courts' organization and activity in 2010, pag. 67.

¹⁸² See <http://www.SCM1909.ro/SCM/index.php?cmd=24>.

¹⁸³ See <https://www.facebook.com/ministerul.justitiei?ref=ts&cfref=ts>.

The SCM does not have a practice of organizing press-conferences, briefings or issuing press releases about the relevant issues for the SCM and judicial system, contrary to QBJE Recommendations.¹⁸⁴ The lack of such, particularly with regards to sensitive cases from a social point of view,¹⁸⁵ brings suspicions concerning the good-faith of the SCM. Lack of press conferences leads to members of the SCM to giving press statements.

Members of the SCM get acquainted with materials published by mass-media on topics related to ethics, integrity, property or professional activity of judges. However, there is no one within the SCM Secretariat responsible for monitoring mass-media and informing the SCM members about publications related to the activity of the judiciary. There are cases where SCM members have initiated necessary proceedings *ex officio* based on newspaper articles. Authors of mass-media articles are not informed when their articles are included in the agenda of SCM meetings, and it is almost impossible to identify the respective magistrates or authors.¹⁸⁶

Representatives of mass-media stated during interviews that they are not satisfied with the quality and amount of information offered by the SCM, the lack of access to the materials on issues included in the agenda of the SCM meetings, the lack of recent data and information about the functioning of the judicial system and the SCM Boards etc. Also, the interviewees mentioned the lack of contact information of the person responsible for communication with mass-media who could offer explanations when needed. Particularly, TV journalists referred to inconveniences created for the participants at the SCM meetings because of limited use of technical equipment in a limited space. This incommodity could be avoided by on-line broadcasting of the meetings.

6.4 Reaction of the SCM to public interest issues

The *Justice Sector Reform Strategy* for the years 2011-2016 determined a number of NGOs to send public appeals, on several occasions, where they requested the SCM to improve its activity. They referred to the process of electing the chairperson of the SCJ and appointment by the SCM of the two members of the Constitutional Court.¹⁸⁷ Only some of these public

¹⁸⁴ Opinion No. 10/2007 of the Consultative Council of European Judges, envisages:

“81. Again in its Opinion No.7(2005), the CCJE pointed out the role of an independent body – which could well be identified in the Council for the Judiciary or in one of its committees, if necessary with the participation of media professionals – in dealing with problems caused by media accounts of court cases”.

82. In the same Opinion, the CCJE considered that when a judge or a court is challenged or attacked by the media (or by political or social figures through the media), “judges involved should refrain from reacting through the same channels, the Council for the Judiciary or a judicial body should be able and ready to respond promptly and efficiently to such challenges or attacks in appropriate cases.”.

¹⁸⁵ Such as cases related to deprivation of immunity, initiation or examination of disciplinary proceedings, discussion of reports related to verification of courts’ activities, eventual budgetary limitations for financing justice sector, state distinctions granted to judges, proposals for amendment of the legislation etc.

¹⁸⁶ For instance, the formulation “on information note of the JI related to the control carried out based on article published in the press on 13 December 2012”, available on: - http://www.SCM.md/files/Ordinea_SCM/2012/38/1/Suplimentara_nr_38_18_12_12.pdf.

¹⁸⁷ Public appeals related to ensuring transparency and probity in the process of appointment of judges of the Constitutional Court of 22 January 2013, 7 February 2013 and 19 March 2013 on www.cjrm.org.

appeals were discussed at the SCM meetings. Moreover, in a response to an appeal where the SCM was asked to select judges for the Constitutional Court in a transparent manner, on 7 February 2013 the SCM issued a press release where it expressed its puzzlement with “great concern manifested towards selection of the future judges of the Constitutional Court”.¹⁸⁸ Such an attitude cannot contribute to enhancing trust in the SCM.

Taking into account that judges should not react to accusations brought against them in the press, based on reasons related to professional ethics, the SCM needs to react in cases when mass-media or politicians bring serious and unjustified accusations against judges. In 2012, the SCM did not prove to conduct any special activity in such cases. At the beginning of 2013, mass-media published a number of materials about fabulous properties held by some judges. On 27 March 2013, the SCM made a statement where it referred to a campaign against judges and asked mass-media and other persons not to exercise pressure against judges.¹⁸⁹ Nevertheless, the SCM did not explain in its declaration which cases it specifically referred to, and media institutions interpreted this statement as an attempt to limit freedom of expression.¹⁹⁰ In order to avoid such situations in the future and improve its image, the SCM has to be very explicit in its reactions. General statements only support the perception that the SCM wants to preserve the existing situation in the justice sector.

6.5 Recommendations

- 1) Changing the design of the SCM website to have an accessible and efficient format for users, and supplementing and updating information on the website;
- 2) Introducing an advanced system for search of SCM decisions and of other information on the website;
- 3) Publication on the SCM website, together with the agenda of the SCM meeting, of any additional materials that need to be examined at the SCM meetings, and of control acts issued by the JI;
- 4) Publication on the SCM website of the minutes of the SCM meetings;
- 5) On-line broadcasting of SCM meetings on the website of the SCM, including archiving them for future access ;
- 6) Publication of income statements of judges for the years 2009-2012;
- 7) Publication on the website of the SCM, in a separate column, of statistical information about the activity of the judicial system;
- 8) Elaboration of an Annual Activity Report of the SCM that needs to include analysis of all spheres of the SCM activity and activity of its affiliated entities;
- 9) Elaboration and publication of a separate Annual Report concerning the functioning of the judicial system. It needs to include a thorough analysis of the functioning of the judicial system (the situation of the justice sector), with indication of successes and deficiencies of the system and their reasons;

¹⁸⁸ See http://SCM.md/index.php?option=com_content&view=article&id=359%3Acomunicat&catid=55%3Anews&Itemid=133&lang=ro.

¹⁸⁹ See <http://SCM.md/files/Noutati/2013/03/27/DECLARATIE%20SCM.pdf>.

¹⁹⁰ See http://www.ijc.md/index.php?option=com_content&task=view&id=799&Itemid=1.

- 10) Publication on the website of contact information of the person responsible for relations with mass-media;
- 11) Elaboration of separate categories on the SCM website dedicated to mass-media and visitors;
- 12) Holding press-conferences, briefings and issuing press releases about relevant issues related to the SCM activity and the judicial system;
- 13) Appeals of the SCM need to be clear in order to avoid their distorted interpretation.

Main recommendations

General aspects:

- 1) Introducing in the law the objective of the SCM to promote quality and efficiency of justice. The Law on the SCM could include the following phrase: “The Superior Council of Magistracy is an independent body created in order to guarantee the independence of the judicial system, promote the quality and efficiency of justice, and manage and administer the judicial system”;
- 2) Elaboration and publication by the Parliament of the rules concerning the process of appointment of SCM members by the Parliament, in order to ensure a transparent process based on the merits and avoid speculations of their appointment being based on political or other criteria;
- 3) Amendment of Article 123 of the Constitution of the Republic of Moldova in order to exclude the General Prosecutor from the list of ex officio members of the SCM or add the Chairperson of the Bar as ex officio member of the SCM;
- 4) Amendment of the provisions concerning the SCM composition in order to replace the requirement concerning titular law professors with “representatives of civil society”, and thus ensure the representation of different professional groups within the SCM;
- 5) Reviewing legal provisions related to the mandate of SCM members in order to introduce the prohibition of holding two consecutive mandates for all members of the SCM (not just for titular law professors), or cancel the prohibition of holding two consecutive mandates by members who are titular-professors;
- 6) Instituting a mechanism for consultation of judges on ethical issues and on sanctioning ethical violations that do not amount to disciplinary offences.

Internal activity of the SCM:

- 7) Urgent clarification of the SCM’s position concerning persons who exercise interim positions of the ex officio members of the SCM;
- 8) Reviewing legal framework related to SCM competence in order to allow the delegation of the right to examine minor issues to the SCM Secretariat or Judicial Inspection, in order to allow the SCM to concentrate on important aspects of the administration of the judicial system;
- 9) Including a sub-division within the SCM Secretariat responsible for the legislative process, and to strengthen SCM capacity to effectively get involved in the process of elaboration of public policies and normative acts in the field of justice;

- 10) Excluding the task of the Judicial Inspection to verify requests related to the SCM consent to initiate criminal investigation against judges;
- 11) Establishing an Electronic Registry of Judges and introducing certain rules for keeping personal files of judges through a SCM decision;
- 12) Elaboration of a Registry for keeping record of contested SCM decisions and the results of such proceedings;
- 13) Elaboration of rules concerning representation by the SCM in courts, in order to regulate the way of coordinating the SCM position and the procedural documents submitted to courts by the members of the SCM;
- 14) Discontinue the practice of adopting SCM decisions “in deliberation” and request to exclude Article 24 paragraph 2 of the Law on the SCM;
- 15) Elaboration of software for creating an electronic file to keep track of additional materials examined by the SCM.

Career and professional training of judges:

- 16) Organizing general selection process for all vacant position in courts. The competition for selecting judges needs to be organized two or three times per year;
- 17) Each selection process for a vacant position in courts needs to be open for all candidates;
- 18) Elaboration by the SCM of a study in order to forecast the number of new judges necessary for the judicial system for the following years;
- 19) Increasing the number of trainees of the NIJ for the position of judge in order to ensure that most of the candidates proposed for the position of judge are graduates of the NIJ, and to eliminate the chances of NIJ trainees with poor educational results to become judges;
- 20) Discontinue the SCM practice to repeatedly evaluate candidates for the position of judge. The score awarded to the candidates by the Selection Board for Judges should not be questioned by the SCM. Final decision could be left at the SCM discretion only in cases when candidates receive equal score at the Selection Board for Judges;
- 21) Urgent election by the SCM of two members of the Evaluation Board for Judges;
- 22) The SCM shall request amendment of the Law on the Career of Judges in order to exclude provisions related to the publication of individual decisions of the Evaluation Board for Judges, as well as provisions related to the public character of its meetings where judges who were already evaluated are interviewed.

Judges' ethics and discipline:

- 23) Until the new Law on the DB enters into force, Judicial Inspection should inform each member of the SCM weekly, in writing, about each individual complaint received related to the conduct of judges;
- 24) The SCM should give up the practice of examining complaints concerning the conduct of judges based on the Law on Petitioning;
- 25) Until the new Law on the DB enters into force, Judicial Inspection needs to present charges before the DB;

- 26) Amendment of the legislation to discontinue time limits for disciplinary liability once disciplinary proceedings are initiated;
- 27) The SCM shall stop the practice of “warning” judges, so far as this procedure and sanction is not envisaged in the law. The attestation does not represent a disciplinary sanction and should not be used as a disciplinary sanction;
- 28) The tasks of the main inspecting judge need to be clearly defined in the law and he/she needs to bear responsibility for organizing the activity of the Judicial Inspection;

Administration of courts:

- 29) The capacity of the Judicial Inspection needs to be re-evaluated, in order to ensure that it may effectively verify the organizational activity of the courts;
- 30) The SCM shall carry out a complex evaluation of the manner of assignment of cases in all courts of the country and take radical and sound measures to ensure observance of the provisions concerning random assignment of cases;
- 31) The SCM shall take radical and sound measures to ensure audio recording of the hearings in all courts of the country;
- 32) The SCM shall publish the documents drafted by the Judicial Inspection after it carried out the verification of the organizational activity of the courts;
- 33) The SCM shall assume the role of a leader in the process of elaboration of court budgets and shall send them for adoption directly to the Parliament, taking into consideration the rules concerning elaboration of budgets for public institutions.

Transparency of SCM activity:

- 34) Improving the manner of presenting information and the content of the SCM website, especially by placing and constantly updating information, and introducing an advanced system for search for SCM decisions and other information on the website;
- 35) Publication on the SCM website, together with the agenda of the SCM meeting, of any additional materials that need to be examined at the SCM meetings, as well as publication of the minutes of the SCM meetings;
- 36) On-line broadcasting of the SCM meetings on the website of the SCM, including archiving them for future access;
- 37) Judicial Inspection shall urgently amend the manner of presenting its activity and publish information notes, control acts and annual activity reports;
- 38) Publication of all income, property and conflict of interest statements of judges for the years 2009-2012;
- 39) Publication on the website of the SCM, in a separate column, of statistical information about the activities within the judicial system;
- 40) Elaboration of an Annual Activity Report of the SCM and affiliated entities, as well as the elaboration and publication of a separate annual Report concerning the functioning of the judicial system;
- 41) Holding press-conferences and briefings, and issuing press releases on relevant issues related to the SCM activity and the judicial system.



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