

The Selection and Promotion of Judges in the Republic of Moldova June 2017 – December 2018

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POLICY PAPER

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Abbreviations

LRCM's 2017 Analysis—Legal Resources Centre from Moldova, *Policy Paper: Selection and Promotion of Judges in the Republic of Moldova—Challenges and Needs*, July 2017, available at <https://crjm.org/wp-content/uploads/2017/07/CRJM-Selectia-si-cariera-jud-2017.pdf>

LRCM's 2015 Analysis—Legal Resources Centre from Moldova, *Policy Paper: Selection and Career of Judges—Duplication of Responsibilities or Additional Guarantees?*, 2015, available at <http://crjm.org/wp-content/uploads/2015/01/CRJM-DPP-Selectie-si-cariera.pdf>

CA— Court of Appeal

BPEJ or Board for Evaluation – Board for Performance Evaluation of Judges

BSCJ or Board for Selection – Board for Selection and Career of Judges SCJ – Supreme Court of Justice **SCM** – Superior Council of Magistracy

NIJ – National Institute of Justice

Law No. 514—Law No. 514 of 6 July 1995 on Judicial organization

Law No. 544—Law No. 544 of 20 July 1995 on the Status of Judge

Law No. 947—Law No. 947 of 19 July 1996 on the Superior Council of Magistracy

Law No. 152—Law No. 152 of 8 June 2006 on the National Institute of Justice

Law No. 154—Law No. 154 of 5 July 2012 on selection, performance evaluation and career of judges

The procedure for enrolment in the Register of competitors – The procedure for enrolment in the Register of competitors for filling of the vacant position of a judge, approved by the SCM Decision no. 87/4 as of 29 January 2013

Register of competitors – the Register of competitors for filling of the vacant position of judge, the chairperson or deputy chairperson of the court

Regulations of the BSCJ – Regulations on the organization of activity of the Board for Selection and Career of Judges, as of 22 January 2013, approved by the SCM Decision no. 60/3

Regulation on the selection criteria—the Regulation on the criteria for selecting, promoting, and transferring judges, approved by SCM Decision No. 211/8 of 5 March 2013

Regulations on the organization of the contest for the position of judge – Regulations on the way of organization and conducting of the contest for holding the vacant position of the judge, as of 15 October 2014, approved by the SCM Decision no. 741/31

Executive Summary

This policy paper provides an analysis of the system of selection (appointment of candidates for the position of judge) and the promotion of judges in the Republic of Moldova (promotion to a higher court or promotion to the position of the chairperson or deputy chairperson of the court). The document contains a review of the main provisions of law on the powers of the bodies involved in the appointment and promotion of judges, of the contest organization procedure and of the selection and promotion criteria, and the changes made to the legal framework on the selection and promotion of judges from 2017 through 2018.

The document also has an important component as empirical research. The authors analyzed the practice of appointing and promoting judges within the period of June 2017 through December 2018 and presented conclusions and recommendations regarding this practice. The findings are compared with the data from the previous research period of January 2013 through May 2017. Altogether, this study and the previous ones¹ cover the period from 1 January 2013 through 31 December 2018 — until significant changes to the selection and promotion system took effect on 1 January 2019.²

The empirical analysis of the appointments and promotions made from 1 June 2017 through 31 December 2018 are as follows:

1) The role of the evaluation by the Board for Selection (the given score):

- Selection of judges for the district level courts (first level courts): 45 (82%) out of 55 candidates selected by the Superior Council of Magistracy (SCM) were selected in contests that had more than one candidate, and 10 (18%) were selected by default in contests with a single candidate. At least 27 (60%) out of the 45 candidates selected in contests with more than one candidate had a lower score from the Selection Board, and 18 (40%), the highest.
- Promotion of judges to the courts of appeal: In contests for the promotion of judges to courts of appeal, the SCM selected 12 candidates. Four (33%) of them were selected by default in contests with a single candidate, and eight (67%) were

¹ LRCM, *Policy Paper: Selection and Promotion of Judges in the Republic of Moldova—Challenges and Needs*, July 2017, available at <https://crjm.org/wp-content/uploads/2017/07/CRJM-Selectia-si-cariera-jud-2017.pdf>.




LRCM, *Policy Paper: Selection and Career of Judges—Duplication of Responsibilities or Additional Guarantees?*, 2015, available at <http://crjm.org/wp-content/uploads/2015/01/CRJM-DPP-Selectie-si-cariera.pdf>.

² Law No. 137 of 27 September 2018 for Amending Certain Legislative Acts, effective since 19 October 2018, with some exceptions.

selected in contests with more than one candidate. Three (37%) out of the eight candidates selected in contests with more than one candidate had higher scores than their fellow candidates, and five (62%), lower.

- **Promotion of judges to the SCJ:** Four (67%) out of six judges the SCM nominated for promotion were selected in contests with a single candidate. One (50%) out of the two candidates selected in contests with more than one candidate had a higher score than their fellow candidate, and one (50%), lower. Two (33%) out of the six judges the SCM nominated for promotion to the SCJ were from district courts.³⁴⁵⁶

Table 1. The role of the score from the Selection Board in selecting judicial candidates for district courts and promoting judges to courts of appeal and the SCJ during the reference period

	 District courts	 Courts of appeal	 SCJ
Number of judges proposed by the SCM within the reference period	55	12	6
Number of judges proposed by the SCM for contests where they had opposing candidates	45	8	2
% ³	82%	67%	33%
Number of judges proposed by the SCM for contests where only one candidate participated	10	4	4
% ⁴	18%	33%	6%
Number of judges with a higher score (named following the contests where more than one candidate participated)	18	3	1
% ⁵	40%	37%	50%
Number of judges with a lower score (named following the contests where more than one candidate participated)	27	5	1
% ⁶	60%	62%	50%

- **Promoting judges for administrative positions at the district level courts:** During the reference period, the SCM conducted nine contests for administrative positions (of chief judge and deputy chief judge), which had nine applicants, all single candidate contests. Following the selection procedure, the SCM proposed eight judges for administrative positions. In one contest (11%), the candidate

³ In relation to all nominees selected in this court category.

⁴ In relation to all nominees selected in this court category.

⁵ In relation to the nominees selected in the competitions that had several candidates in this court category.

⁶ In relation to the nominees selected in the competitions that had several candidates in this court category.

failed to obtain the required votes from SCM members, and the competition was declared failed⁷

- The promotion of judges to administrative positions at courts of appeal: During the reference period, the SCM conducted three contests for promotion to chief judge or deputy chief judge of the courts of appeal, with a single candidate each. Three judges (100%) were selected by default in all three contests.
- The promotion of judges to administrative positions at the SCJ: From 1 June 2017 through 31 December 2018, the SCM organized three contests for promotion to chief judge and deputy chief judge at the SCJ and its panels for criminal and civil cases. One contest (15%) had two applicants, but because of lack of quorum at the Selection Board, the contest was put off and its application deadline extended. The other two contests had a single candidate each.

Table 2. The role of the score from the Selection Board in promoting judges to administrative positions at district courts, courts of appeal, and the SCJ during the reference period

	District courts	Courts of appeal	SCJ
Number of judges proposed by the SCM within the reference period	8	3	2
Number of judges proposed by the SCM for contests where they had opposing candidates	0	0	0
%⁸	0%	0%	0%
Number of judges proposed by the SCM for contests where only one candidate participated	8	3	2
%⁹	100%	100%	100%
Number of judges with a higher score (named following the contests where more than one candidate participated)	0	0	0
%¹⁰	0%	0%	0%
Number of judges with a lower score (named following the contests where more than one candidate participated)	0	0	0
%¹¹	0%	0%	0%

Thus, the highest number of appointments where the score given by the Board for Selection was disregarded is observed with appointments at the courts of appeal (62% of the eight judges nominated in contests with more than one candidate), and 50% at the SCJ—that is one candidate had a higher score, and the other one, lower.

⁷ The competition for deputy chief judge of the Chisinau Court (the Rîșcani office) of 31 October 2017. SCM Decision No. 685/131, available at <https://csm.md/files/Hotaririle/2017/31/685-31.pdf>.

⁸ In relation to all nominees selected in this court category.

⁹ In relation to all nominees selected in this court category.

¹⁰ In relation to the nominees selected in the competitions that had several candidates in this court category.

¹¹ In relation to the nominees selected in the competitions that had several candidates in this court category.

All contests for promotion to administrative positions at district courts, courts of appeal, and the SCJ that resulted in the nomination of judges—with the exception of one, which was put off—had one candidate each, meaning they completely lacked competition, thus leading to a situation that is even more concerning than the one during the previous period.

In addition, it is hard to appraise how carefully the SCM considered the score from the Selection Board in selecting candidates for promotion to administrative positions at courts of appeal and the SCJ, since all nominations (100%) were based on contests with a single candidate.

2) A single candidate participates in a large number of contests, the higher the court, the stronger the trend. Thus, from June 2017 through December 2018, the situation was as follows:

- Selection of judges for courts: 10 (18%) out of 55 candidates proposed were based on contests with a single candidate.
- Promotion of judges to the courts of appeal: four (33%) out of 12 candidates proposed were selected based in contests with a single candidate.
- The promotion of judges to the SCJ: four (67%) out of six candidates proposed were selected in contests with a single candidate.
- The promotion to administrative positions at district courts: *all eight candidates proposed (100%) were selected* in contests with a single candidate.
- The promotion to administrative positions at courts of appeal: all three candidates proposed (100%) were selected in contests with a single candidate.
- The promotion to administrative positions at the SCJ: both candidates proposed (100%) were selected in contest with one candidate.

The rate of contests with a single candidate increased from the previous period.¹² The large number of contests with a single candidate raises the question whether this was due to lack of a critical number of judges willing to participate or to their reluctance to participate for various reasons. Contests with a single candidate fail to ensure true competition and selection of the best candidate.

3) Many contests are declared by the SCM as failed, without any argumentation, being only specified that a candidate or the participating candidates did not obtain the required number of votes. Thus, from June 2017 through December 2018, the situation was as follows:

- *Appointment* to district courts: 13 (25%) out of 51 contests, were declared failed because the candidates did not get the required number of votes from the SCM members.
- Promotion to the courts of appeal: two (20%) out of 10 contests, were declared failed because the candidates did not get the required number of votes from the SCM members.

¹² 1 January 2013 – 31 March 2017.

- Promotion to the SCJ: one (14%) out of seven contests were declared failed because the candidates did not get the required number of votes from the SCM members.
- *Promotion to administrative positions at district courts*: in one (11%) out of nine conducted contests, the candidate failed to gain the required number of votes.
- Promotion to administrative positions at courts of appeal: none of the three conducted contests were declared failed.
- Promotion to administrative positions at the SCJ: none of the three announced contests was declared void, but one did not take place during the reference period and was extended.

The large number of failed contests for the reasons of not getting the required number of votes of the SCM members raises questions about the reasons for not granting these votes. The SCM should explain the reasons for not granting votes or change the rules of the contest organization to exclude the possibility of declaring a contest failed due to the lack of votes. The lack of votes could also mean a simple absence of quorum, and this is not sufficiently explained in the SCM decisions.

4) The number of contests for promotion to courts of appeal that were cancelled due to lack of candidates or their withdrawal before voting and were followed by a repeated announcement of competition decreased from the previous period.¹³ All contests for administrative positions at courts of appeal and the SCJ had applicants. Thus, from June 2017 through December 2018, the situation was as follows:

- Promotion to courts of appeal: two contests announced in the same month for the same court of appeal were joined.¹⁴
- Promotion to administrative positions at courts of appeal: all contests had candidates.
- Promotion to administrative positions at the SCJ: all contests had candidates. One of the three announced contests was cancelled due to lack of quorum at the Selection Board, but then resumed, and the application deadline was extended. When a quorum was made up, the SCM extended the application deadline. After that, the SCM did not organize other contests for this vacancy during the reference period. Thus, even though there were candidates, the SCM extended the application deadline due to lack of quorum at the Selection Board. After that, the SCM did not organize other contests for deputy chief justice of the SCJ during the reference period.¹⁵

The insufficient reasoning of SCM's decisions and the invalidation of many contests are among the causes that could account for judges' unwillingness to participate in contests. The lack of candidates for administrative positions at courts is indicative of a systemic problem that needs appropriate response from the SCM.

¹³ 1 January 2013 – 31 March 2017.

¹⁴ For example, the SCM joined competitions for judicial vacancies at the Chisinau Court of Appeals announced on 8 May 2018 and 29 May 2018: <https://www.csm.md/files/Hotaririle/2018/18/345-18.pdf>.

¹⁵ As of 31 December 2018.

5) The frequent organization of contests for every vacancy

- The selection of judges. Only in isolated instances, the SCM joined contests for certain courts with other contests.¹⁶ Overall, however, no significant changes were noticed compared with the previous period (January 2013 through June 2017), when the SCM had had two contests per month on average.¹⁷
- The promotion of judges. In comparison with the previous period,¹⁸ contests were not very frequent. The only exception was contests for promotion to courts of appeal, which took place once in a month (20 contests in 17 months).
- Promotion to administrative positions. Although there were not many contests for administrative positions at district courts, courts of appeal, and the SCJ, it was noted that judges were not interested in them. The insufficient reasoning of SCM decisions and the relatively frequent organization of contests, many of which were invalidated, are among the causes that could account for judges' unwillingness to participate.

The analysis of the practice from June 2017 through December 2018 did not reveal significant progress in comparison with previous findings. The entities involved in the selection process, namely the SCM and the Selection Board, still have duplicated responsibilities. The SCM still fails to provide reasoning in its decisions concerning judicial career, especially when they are at odds with the score offered by the Selection Board. This perpetuates the perception that SCM members' personal beliefs outweigh the score offered by the SCM Boards to select candidates. The insufficient reasoning of decisions fuels suspicions that selection in the judiciary is guided by other criteria than those reflected in SCM's regulations. This negatively impacts confidence in the judiciary, discourages aspiring judges, and can weaken the judicial selection and promotion system in the long run.

In autumn 2018, the Parliament enacted a series of important legislative amendments on the selection and promotion of judges, which became effective in October 2018 and were first applied by the SCM in January 2019.¹⁹ Many of the novelties from those amendments were recommended in the LRCM's 2017 Analysis and represent a much awaited positive change. As a result, in late 2018, the SCM decided to reset the selection and promotion system so that all candidates for judge, administrative positions, transfer, or promotion to higher courts who passed the selection process and were in the Register of contestants would have to pass a repeated evaluation by the Selection Board.²⁰ We hope that this step will a start point of a new phase, where meritocracy and transparency is at the forefront of an independent, accountable, and professional judicial system.

¹⁶ SCM Decision No. 411/20 of 2 October 2018, https://www.csm.md/files/Hotaririle/411_20.pdf.

¹⁷ Legal Resources Centre from Moldova, *Selection and Promotion of Judges in the Republic of Moldova—Challenges and Needs*, July 2017, p. 18, available at <https://crjm.org/wp-content/uploads/2017/07/CRJM-Selectia-si-cariera-jud-2017.pdf>.

¹⁸ 1 January 2013 – 31 March 2018.

¹⁹ Law No. 137 of 27 September 2018 for Amending Certain Legislative Acts, effective since 19 October 2018, with some exceptions.

²⁰ SCM Decision No. 614/29 of 20 December 2018, <https://www.csm.md/files/Hotaririle/2018/28/614-29.pdf>.

Methodology

This document analyses the practice of the selection and promotion of judges (promotion to higher courts and to administrative positions) from June 2017 through December 2018 (*the reference period*). The purpose of the document is to find out whether anything has changed in the selection and promotion practice of judges since the LRCM published their conclusions and recommendations in the policy paper *Selection and Promotion of Judges in the Republic of Moldova—Challenges and Needs (the LRCM’s 2017 Analysis)* in June 2017.²¹ The LRCM’s 2017 Analysis includes findings concerning the selection and promotion practice that are based on the analysis of all contests announced and conducted from 1 January 2013 through 31 May 2017.

Another purpose of the document is to complement LRCM’s previous analyses on the selection and promotion of judges, which were mentioned earlier and cover the period from 2013 through June 2017. In autumn 2018, the Parliament enacted a series of legislative amendments on the selection and promotion of judges, which became effective in October 2018.²² The LRCM’s 2017 Analysis covers the laws on the selection and promotion of judges, including SCM’s regulations on the criteria for the selection, promotion, and transfer of judges and the organization of contests for judicial positions. It also examined SCM decisions on contests for selection and promotion to higher courts and to administrative positions conducted from January 2013 through May 2017. The data collected from SCM decisions is available on the LRCM’s website (www.crjm.org). The LRCM’s 2017 Analysis focused on three main aspects that required urgent improvements:

- 1) The score offered by the Selection Board, and SCM’s selection and promotion decisions, including their reasoning
- 2) A high rate of contests with a single candidate
- 3) The organization of contests (contests for single vacancies, the rate of invalidated contests, and the reasoning for invalidation)

²¹ The Legal Resources Centre from Moldova, *Policy Paper: Selection and Promotion of Judges in the Republic of Moldova—Challenges and Needs*, July 2017, available at <https://crjm.org/wp-content/uploads/2017/07/CRJM-Selectia-si-cariera-jud-2017.pdf>.

²² Law No. 137 of 27 September 2018 for Amending Certain Legislative Acts, effective since 19 October 2018 with some exceptions.

The LRCM's 2017 Analysis was preceded by the policy paper *Selection and Career of Judges—Duplication of Responsibilities or Additional Guarantees?*²³ published in 2015. That policy paper offered an extensive analysis of the legal framework on the selection and promotion of judges, including the transfer of judges, the powers of the involved entities, and the applied criteria. The document also offered recommendations for changing the criteria for the selection and promotion of judges, which were carried over into the LRCM's 2017 Analysis since they had not been implemented and remained relevant.

Applied terminology:

- The selection of candidates/the nomination for judge—the selection of candidates by the SCM
- The promotion of judges—the nomination of judges for promotion to higher courts (either courts of appeal or the SCJ) and to administrative positions (chief judge and deputy chief judge) at courts of any level

This policy paper includes an analysis of relevant changes made from June 2017 through December 2018 and an analysis of all SCM decisions announcing contests for selection and promotion of judges and their results published from July 2017 through December 2018. Just like in 2017, the data analysis on the selection and promotion of judges centers around three main aspects:

- 1) The score offered by the Selection Board, and SCM's selection and promotion decisions, including their reasoning
- 2) A high rate of contests with a single candidate
- 3) The organization of contests (contests for single vacancies, the rate of invalidated contests, and the reasoning for invalidation).

²³ The Legal Resources Centre from Moldova, *Policy Paper: Selection and Career of Judges—Duplication of Responsibilities or Additional Guarantees?*, 2015, available at <http://crjm.org/wp-content/uploads/2015/01/CRJM-DPP-Selectie-si-cariera.pdf>.

The Legal Framework and Procedure for the Selection and Promotion of Judges

A. Introductory Explanations

The first references to the selection and promotion system are found in the **Constitution of the Republic of Moldova**. Article 116 regulates the status of judges and lists the core qualities of the position (independence and impartiality) as well as one of the guarantees for sitting judges (the principle of irremovability of judges). The same article entrusts the institution empowered to appoint judges (the SCM) and other authorities involved in the procedure of selecting and promoting judges (the President of the Republic of Moldova and Parliament). Article 116 (2) of the Constitution sets the initial five-year tenure for the judicial posts, followed by life tenure that remains valid until the age limit of 65, whereas paragraphs (3) and (4) to the length of the term in office for chief judges and deputy chief judges (four years) and the criterion of work seniority of minimum 10 years for the selection of chief justices of the Supreme Court of Justice (SCJ). Another important rule set out in the Constitution refers to the promotion and transfer of judges, which is to be possible only by consent (paragraph (5)). Article 116 (7) of the Constitution states that the judges post is incompatible with any other paid position except academic and scientific activities.

The main regulatory acts that transpose the provisions of the Constitution and regulate the judge selection and promotion mechanism are **Law No. 514 on Judicial Organization**,²⁴ **Law No. 544 on the Status of Judge**,²⁵ and **Law No. 154 on the Selection, Performance Evaluation, and Career of Judges**.²⁶ These laws are further transposed in detail in the **regulations** approved and regularly revised by the SCM. Currently, the selection and promotion mechanism is described in four regulations: (i) the Regulation on the criteria for selecting, promoting, and transferring judges;²⁷ (ii) the Regulation on the criteria, indicators, and procedure for evaluating judges' performance;²⁸ (iii) the Rules of Procedure of the Board

²⁴ Law No. 514 of 6 July 1995 on Judicial Organization.

²⁵ Law No. 544 of 20 July 1995 on the Status of Judge.

²⁶ Law No. 154 of 5 July 2012 on the Selection, Performance Review, and Career of Judges.

²⁷ SCM, Regulation on the criteria for selecting, promoting, and transferring judges, approved by SCM Decision No. 211/8 of 5 March 2013.

²⁸ SCM, Regulation on the criteria, indicators, and procedure for evaluating judges' performance, approved by SCM Decision No. 212/8 of 5 March 2013.

for the Evaluation of Judges' Performance;²⁹ and (iv) the Rules of Procedure of the Selection Board.³⁰

While the laws on the selection and promotion of judges are mostly compliant with international standards,³¹ a survey conducted in 2015³² showed that only 62% of judges agreed with the statement that the mechanism for the initial selection of judges was fair and meritocratic, whereas 34% disagreed. Likewise, 54% of judges agreed with the statement that the procedure for the promotion of judges was fair and meritocratic, whereas 43% disagreed.³³ Another survey, this time conducted among lawyers in 2018, showed that only 25% of the respondents agreed, and as many as 71% disagreed, with the statement that the SCM promoted judges based on their merits.³⁴

B. Procedure and the Powers of the Involved Entities

The procedure for selecting and promoting judges in the Republic of Moldova represents a complex mechanism involving at least three specialized entities. To be eligible for a judge position, the candidates need to have a bachelor's degree and a master's degree in law³⁵ and 18 months of specialized training at the National Institute of Justice (NIJ). Another path into the system, which does not require the 18-month training at the NIJ, is gaining work experience. Aspirants must have at least five years of experience as court clerk, judicial assistant, lawyer, prosecutor, or other similar officer.³⁶ Candidates who have the required work experience must take an exam from the NIJ's Examination Commission. Upon completion of the training and the exam at the NIJ, or passing the exam given by the NIJ's Examination Commission for candidates with work experience, if relevant, candidates have to go through another at least two filters: evaluation by the Board for the Selection and Career of Judges (Selection Board) and interview with the SCM. Thus, an aspiring judge is initially examined by the NIJ, then by the Selection Board, and then by the SCM.

²⁹ SCM, Rules of Procedure of the Board for the Review of Judges' Performance, approved by SCM Decision No. 59/3 of 22 January 2013.

³⁰ CM, Rules of Procedure of the Board for the Selection and Career of Judges, approved by SCM Decision No. 60/3 of 22 January 2013.

³¹ See, Recommendations of the Venice Commission CDL-AD(2007)028 on Judicial Appointments, paras. 46 – 47; CDL-AD(2010)004 on the Independence of the Judicial System. Part I: The Independence of Judges; OSCE/ODIHR's Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus, and Central Asia, 2010, paras. 2, 4, 8, 16, 17, 21, and 23; and Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary. ENCI, 2012, Chapter II, para. 2.

³² Legal Resources Centre from Moldova, *Survey: Perception of Judges, Prosecutors, and Lawyers on Justice Reform and Fight against Corruption*, 2015, available at <http://crjm.org/wp-content/uploads/2016/01/CRJM-Percepts-reformelor-just-1.pdf>.

³³ LRCM, *Survey: Perception of Judges, Prosecutors, and Lawyers on Justice Reform and Fight against Corruption*, 2015, available at <http://crjm.org/wp-content/uploads/2016/01/CRJM-Percepts-reformelor-just-1.pdf>.



³⁴ LRCM, *Survey: Lawyers' Perception of the Justice Reform and the Fight against Corruption*, 2018, available at <https://crjm.org/wp-content/uploads/2019/02/2018-CRJM-Sondaj-Independenta-justitiei-EN.pdf>.

³⁵ Prior to 2018, aspirants for the NIJ had to have a bachelor's degree in law. In September 2018, a master's degree in law became another mandatory condition for training at the NIJ.

³⁶ Article 6 (2) of Law No. 544 on the Status of Judge provides for selections based on work experience for judges and assistant judges of the Constitutional Court, judges from international courts, prosecutors, tenure law professors from accredited higher education institutions, law trainers of the NIJ, lawyers, judicial assistants, and clerks if they have worked in their respective positions for the past five years.

Judges which are already in office are initially evaluated by the Board for Evaluation of Judges' Performance (Board for Performance Evaluation of judges). The Evaluation Board evaluates the judge's work over the past three years and offers them a descriptive grade (*Excellent, Very Good, Good, or Insufficient*), which is then integrated into the final score. After the evaluation by the Board for Evaluation, the judge must pass evaluation by the Selection Board, which uses another set of criteria, and finally the evaluation by the SCM. The president of the country appoints judges at district courts and courts of appeal on SCM's proposal, and Parliament appoints judges at the SCJ.

Table 3. The phases of the selection and promotion of judges

 The selection of judges	ETAPA	 The promotion of judges
Training and exams at the NIJ ³⁷ or exams from the NIJ's Examination Commission ³⁸	1	Evaluation by the Board for the Evaluation of Judges' Performance
Evaluation by the Board for the Selection and Career of Judges	2	Evaluation by the Board for the Selection and Career of Judges
Interview with, and nomination by, the SCM	3	Interview at, and nomination by, the SCM
Selection by the president of the country	4	Selection by the president of the country ³⁹ or Parliament ⁴⁰

C. The Criteria and the Score

The criteria for evaluating candidates for judge, promotion, and transfer are set out in the Regulation on the criteria for selecting, promoting, and transferring judges.⁴¹

Judge Selection Criteria

Under paragraph 10 of the Regulation on the selection criteria, candidates to the judge posts are evaluated by the following criteria:

³⁷ For aspirants who completed training at the NIJ.



³⁸ For aspirants with minimum five years of work experience according to Article 6 (2) of Law No. 544-XIII of 20 July 1995 on the Status of Judge.

³⁹ The president may reject the nominations put up by the SCM one time, explaining the reasons. The SCM may put up the same nominees repeatedly by the vote of two thirds of its members, in which case the president must accept the nominations.

⁴⁰ Just as with judicial appointments, the president may reject the nominations put up by the SCM for promotion one time, explaining the reasons. The SCM may put up the same nominees repeatedly by the vote of two thirds of its members, in which case the president must accept the nominations. Nominations for promotion to the SCJ put up by the SCM go to Parliament, whose Plenum decides on it by the majority vote of MPs. Current laws, however, do not provide for the possibility to force Parliament to vote for a nominee whom the SCM put up repeatedly after he/she failed to gain enough votes.

⁴¹ Regulation on the criteria for selecting, promoting, and transferring judges, approved by SCM Decision No. 211/8 of 5 March 2013.

Table 4. Selection criteria and the maximal score offered to judicial candidates (2013 – 2018)

 CRITERIA	 MAXIMAL SCORE		
	Dec. 211/8 of January 2013	Dec. 739/31 of November 2013	Dec. 141/7 of March 2018
a) Candidates' results at the initial training at the NIJ and at the examination taken from the NIJ's Examination Commission.	30	30	30
b) Experience in legal profession	<u>10</u>	<u>10</u>	5
c) The type of work in legal profession	<u>10</u>	<u>10</u>	5
d) The knowledge of information technology (IT skills)	5	5	<u>excluded</u>
e) The knowledge of the languages of the European Court of Human Rights (ECtHR)—English or French	5	5	<u>excluded</u>
f) Scientific degrees, teaching experience, thematic publications and articles*	<u>10</u>	5	1
In March 2018, the criterion (f) was reframed as “teaching and scientific activity, research, thematic analyses reflected in the personal file and confirmed by diplomas, workbooks, certificates, manuals, brochures, and magazines.” Candidates who satisfy this criterion get maximum one point, and if they have a separate scientific degree, they also get one point.			
g) Personality traits and skills appropriate for judicial office (integrity, fairness, stress management skills, analytical skills, etc.)	<u>15</u>	<u>15</u>	1
h) Candidates' motivation laid out in writing in their motivation letters and verbally at interviews with the Selection Board	15	<u>20</u>	5
i) Other extrajudicial activities confirmed by certificates, diplomas, judgments, decisions, orders	—	—	1
Total	100	100	49

To get admitted to a contest, candidates must gain the following minimal score:

Table 5. Excerpt from the SCM's Regulation on the minimal score required for selection as judge

Text according to SCM Dec. No. 211/8 of 5 March 2013	Text according to SCM Dec. No. 739/31 of 15 October 2013	Text according to SCM Dec. No. 141/7 of 6 March 2018
Para. 6. To be admitted to a competition, candidates must gain at least 75 points.	Para. 6. To be admitted to a competition, candidates must gain at least 70 points.	Para. 6. To be admitted to a competition, candidates must gain at least 26 points.

From 2013, once the new selection and promotion mechanism became functional, the SCM has regularly revised the criteria and indicators set out in the regulation. So, the weight of the nomination criteria and the total score varied with time. Graph 1 below presents more details about how the weight of the selection criteria changed from January 2013 through December 2018.

Graph 1. *Changes in the weight of the criteria for selection*

a) March 2013 – October 2013

<p>Max. 30 points (30%)</p> <p>Results at the initial training at the NIJ and at the examination taken from the NIJ's Examination Commission</p>	<p>Max. 15 points (15%)</p> <p>Personality traits and skills appropriate for judicial office</p>	<p>Max. 15 points (15%)</p> <p>Motivation in writing and the interview with the Selection Board</p>	<p>Max. 10 points (10%)</p> <p>Work seniority</p>	<p>Max. 10 points (10%)</p> <p>Type of work</p>	<p>Max. 10 points (10%)</p> <p>Scientific degrees, teaching experience, publications, and articles</p>	<p>Max. 5 points (5%)</p> <p>The knowledge of information technology (IT skills)</p>	<p>Max. 5 points (5%)</p> <p>The knowledge of the languages of the ECtHR</p>
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b) October 2013 – March 2018

<p>Max. 30 points (30%)</p> <p>Results at the initial training at the NIJ and at the examination taken from the NIJ's Examination Commission</p>	<p>Max. 20 points (20%)</p> <p>Motivation in writing and the interview with the Selection Board</p>	<p>Max. 15 points (15%)</p> <p>Personality traits and skills appropriate for judicial office</p>	<p>Max. 10 points (10%)</p> <p>Work seniority</p>	<p>Max. 10 points (10%)</p> <p>Type of work</p>	<p>Max. 5 points (5%)</p> <p>The knowledge of information technology</p>	<p>Max. 5 points (5%)</p> <p>The knowledge of the languages of the ECtHR</p>	<p>Max. 5 points (5%)</p> <p>Scientific degrees...</p>
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c) March 2018 – October 2018 (applied before the resetting of the selection system in January 2019)

<p>Max. 30 points (61%)</p> <p>Results at the initial training at the NIJ and at the examination taken from the NIJ's Examination Commission</p>	<p>Max. 5 points (10%)</p> <p>Work seniority</p>	<p>Max. 5 points (10%)</p> <p>Type of work</p>	<p>Max. 5 points (10%)</p> <p>Motivation in writing and the interview with the Selection Board</p>	<p>Max. 2 points (4%)</p> <p>Scientific degrees, teaching experience, publications, and articles</p>	<p>Max. 1 point (2%)</p> <p>Other extrajudicial activities</p>
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The weight of certain selection criteria was regularly revised, while other criteria were completely dropped. Some changes, such as the increase of the weight of the *results at the initial training at the NIJ* (from 30% to 61%) or the decrease of the weight of *candidates' motivation in writing and the interview* (from 20% to 10%), are very welcomed. The LRCM has recommended on multiple occasions to decrease the weight assigned to candidates' motivation as having little relevance, considering that they had already studied for 18 months at the NIJ or had applied after at least five years of work. Assigning 20 points to candidates' motivation (previously, two thirds of the score assigned to training at the NIJ) was not reasonable and left the door open for arbitrariness.⁴²



That said, the decrease of the weight of *personality traits and skills appropriate for judicial office* (from 15% to 2% of the total score) is not clear. There is no explanation for a drastic reduction of the weight of this criterion. Without official explanations, we can only cite civil society's reports that, during the reference period, the evaluation by this criterion was subjective or formal.⁴³

Neither did the SCM explain the reasons for excluding another two evaluation criteria— (i) *the knowledge of the languages of the European Court of Human Rights* and (ii) *the knowledge of information technology*—both having a maximum weight of five points. It seems that this change was determined by a finding the Center for the Analysis and Prevention of Corruption made while monitoring the work of the Selection Board⁴⁴ that the Selection Board's evaluation of, and scoring for, the documents submitted by candidates was often subjective.⁴⁵ In this case, however, it would have been more useful to revise the “sources of verification” rather than to exclude the criteria altogether.

Criteria for Promotion to a higher Court

According to paragraph 12 of the Regulation on the selection criteria, judges seeking promotion to a higher court are evaluated by the following criteria:

Table 6. Criteria and maximal score for promotion to a higher court (2013 – 2018)



 CRITERIA AND THE PERIOD OF THEIR APPLICATION	 MAXIMAL SCORE	
	Dec. 211/8	Dec. 141/7
	January 2013 – March 2018	March 2018 – October 2018
a) Seniority in judicial office confirmed by workbook records	20	20

⁴² LRCM, *Policy Paper: Selection and Career of Judges—Duplication of Responsibilities or Additional Guarantees?*, 2015, p. 11, available at <http://crjm.org/wp-content/uploads/2015/01/CRJM-DPP-Selectie-si-cariera.pdf>.

⁴³ CAPC, Report on the monitoring of the Selection Board and the Judicial Performance Board (September 2016 – May 2017), 2017, p. 14, available at http://capc.md/files/Raport%20de%20monitorizare%20CAPC_30.05.17.pdf.

⁴⁴ See www.capc.md.

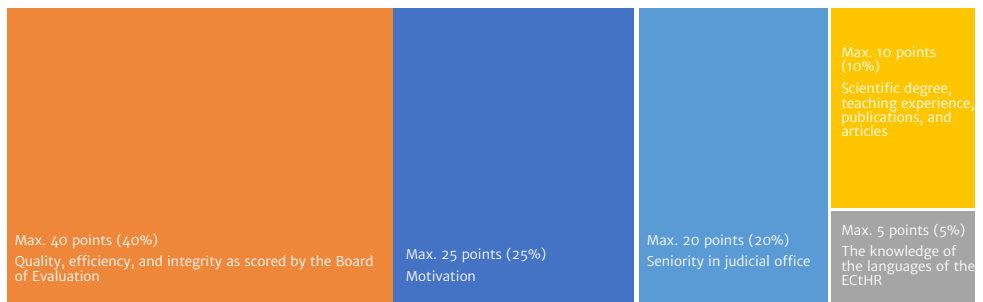
⁴⁵ CAPC, *Report on the monitoring of the Selection Board and the Judicial Performance Board* (September 2016 – May 2017), 2017, p. 13 and 14.

 CRITERIA AND THE PERIOD OF THEIR APPLICATION	 MAXIMAL SCORE	
	Hot. 211/8	Hot. 141/7
	January 2013 – March 2018	March 2018 – October 2018
b) Quality, efficiency, and integrity in judicial office. This criterion is scored according to the grade from the decision of the Judicial Performance Board.	<u>40</u>	<u>20</u>
c) The knowledge of the languages of the European Court of Human Rights, confirmed by certificates or appropriate documents	5	excluded
d) Scientific degree, teaching experience, thematic publications and articles, participation in the development of draft regulatory acts or comments to regulatory acts, participation as an expert or consultant in national or international working groups reflected in the personal file and confirmed by diplomas, workbooks, certificates, publications, and articles or other relevant acts	<u>10</u>	5
e) Candidates' motivation for promotion to a higher court, laid out in writing and presented verbally to the Selection Board	<u>25</u>	5
Total	100	50

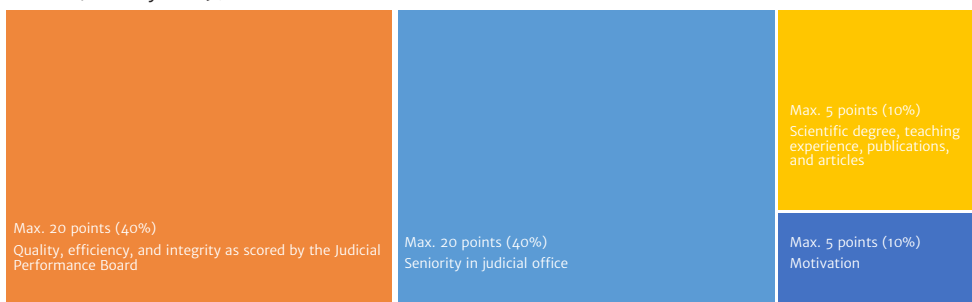
Graph 2 below presents more details about how the weight of the criteria for selecting judicial candidates changed from January 2013 through December 2018.

Graph 2. Changes in the weight of the criteria for the promotion of judges

a) January 2013 – March 2018



b) March 2018 – October 2018 (applied before the resetting of the selection system in January 2019)





The evaluation of candidates for promotion to a higher court is mostly influenced by the performance evaluation by the Board of Evaluation and judge’s work seniority. Prior to March 2018, candidates’ motivation was one of the most decisive in the evaluation as it could gain candidates up to 25 points (a quarter of the total score of 100 points). As mentioned earlier, the LRCM welcomes this change. However, candidates’ motivation has less relevance for promotion. The desire to get promoted to a higher court is natural for career judges and cannot play a decisive role in the evaluation of candidates.

Just as in the case of candidates to the judicial posts, it is not clear why *the knowledge of the languages of the ECtHR* was completely dropped. Considering that both the Convention and ECtHR’s judgments are mandatory and directly applicable in the national laws, it would have been more useful to revise the sources of verification rather than to exclude this criterion altogether.

Criteria for Promotion to Chief Judge or Deputy Chief Judge of a Court

Under the Regulation on the criteria for selecting, promoting, and transferring judges, to get promoted to chief judge or deputy chief judge of a court, judges must pass evaluation, just like judges who seek promotion to a higher court (see the previous section). In addition, judges competing for administrative positions must also pass an additional evaluation which tests their managerial skills.

Table 7. Criteria and maximal score for promotion to administrative positions (2013 – 2018)

 CRITERION	 MAXIMAL SCORE	
	Hot. 211/8	Hot. 141/7
	January 2013 – March 2018	March 2018 – October 2018
a) The preparation of a development plan or strategy for the next four years by the candidate	10	5
b) Former Participation in administrative matters (commissions, decision-making, the organization of contests, commissions for evaluating personnel's performance, working groups for procurements, other working groups from the court, etc.)	5	5
c) The submission of proposals to improve court organization and administration in the past three years	5	excluded
d) (Previous) experience in administrative positions (including as an acting administrative officer)	5	2

Graph 3. Changes in the weight of the criteria for promotion to administrative positions (2013 – 2018)

a) January 2013 – March 2018



b) March 2018 – October 2018 (applied before the resetting of the selection system in January 2019)



During the reference period, the criterion *the submission of proposals to improve court organization and administration in the past three years* has been dropped. The SCM did not explain this change. According to the monitoring report of the Center for the Analysis and Prevention of Corruption (CAPC), evaluation by this criterion was often formal or lacking clarity, with no way to know candidates' proposals that could be considered eligible and scored appropriately.⁴⁶ Moreover, the report identified a situation where a candidate who did not submit concrete proposals received the maximal score.⁴⁷ Thus, as relevant as this evaluation criterion seems to be for promotion to administrative positions, its practical evaluation was problematic. This issue reinforces the presumption that the SCM or its specialized boards fail to conduct an objective evaluation by this criterion rather than the irrelevance of the criterion, which is why we consider that its exclusion was not well thought.

An important change introduced during the reference period,⁴⁸ in addition to the evaluation criteria, was the exclusion of the requirement from paragraph 13 (a) of the Regulation that candidates for administrative positions could be selected only from among judges appointed prior to the age limit of 65 years. This change ensured that administrative positions could be also filled by judges with an experience of less than five years, including those who had not been appointed prior to the age limit. According to a research conducted by the LRCM on 1 August 2018, 49% of all judges sitting in district courts had an experience of less than five years.⁴⁹ Thus, the admission of these judges to administrative positions becomes a necessity sometimes, considering that many courts do not have enough judges with an experience of five or more years. This change is welcomed, also because the International Commission of

⁴⁶ CAPC, *Report on the monitoring of the Selection Board and the Judicial Performance Board*, op. cit., p. 14.

⁴⁷ Ibidem, p. 14.

⁴⁸ SCM, Regulation on the criteria for selecting, promoting, and transferring judges, amended by SCM Decision No. 830/36 12 December 2017.

⁴⁹ LRCM, Infographic, *49% of judges at the court of the Republic of Moldova have less than five years of experience*, available at <http://crjm.org/en/en-49-din-judecatorii-din-instantele-de-fond-din-moldova-au-o-experienta-mai-mica-de-5-ani-si-inca-nu-au-fost-numiti-in-functie-pe-viata/>.

Jurists (ICJ) has recommended to abolish the initial five-year tenure for judges in general, arguing that the requirement to reconfirm appointment after a probationary period was contrary to the principle of judicial independence.⁵⁰

D. The Organization of Contests

Under Article 9 (3) of Law No. 544, contests for selection of judges are organized three months before the job opening. Persons put on the Register of candidates opt for any of the contests announced by the SCM by submitting a confirmation of their willingness to participate.⁵¹

The SCM announces contests and application deadlines, which are usually set to 15 or 30 days after the publication of the decision in the Official Gazette.⁵² The SCM publishes its decisions announcing contests on its website. Article 6² of Law No. 544 requires the registration of candidates in the Register of candidates, regardless of whether a competition was announced or not. The registration of candidates in the Register is regulated by SCM Decision No. 87/4 of 29 January 2013.⁵³ The Register of candidates includes four lists of candidates: (1) the list of candidates for judge; (2) the list of judges seeking promotion to a court of the same or higher level; (3) the list of judges seeking transfer to a lower court; and (4) the list of judges seeking promotion to chief judge or deputy chief judge of a court. These lists contain candidates' last and first names, their positions, the level of court they apply for, and the registration dates.

During the reference period, the SCM organized contests for selection and, promotion to higher courts, and promotion to chief judge or deputy chief judge of a court separately for each vacancy, failing to ensure predictability for potential candidates. The organization of many contests puts considerable logistical burden on the SCM and prevents potential candidates from planning their career properly. On the other hand, not all current or upcoming vacancies were put out for competition in bulk. This creates the impression that certain vacancies were not put out for competition deliberately.

⁵⁰ International Commission of Jurists (ICJ), *The Undelivered Promise of an Independent Judiciary in Moldova*, 2019, p. 31, available at <https://www.icj.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ROM.pdf>.

⁵¹ Para. 16 of the SCM Regulation on competitions for judicial vacancies.

⁵² For example, [SCM Decision No. 433/15](#) of 15 May 2014, [SCM Decision No. 461/16](#) of 27 May 2014 (amended by [SCM Decision No. 600/19](#)), [SCM Decision No. 462/16](#) of 27 May 2014, [SCM Decision No. 498/17](#) of 3 June 2014, etc.

⁵³ Procedure for registration in the Register of competitors for vacancies of judge, chief judge, or deputy chief judge of a court, approved by SCM Decision No. 87/4 of 29 January 2013, available at http://csm.md/files/Acte_normative/Registru_procedura.pdf.

Practice from June 2017 through December 2018

1. The Selection of Judges







As part of this research, we analyzed 51 contests for selection held from June 2017 through December 2018. These contests had 256 applications. Based on the selection procedure, the SCM selected 55 candidates. According to official data for the reference period, the President of the Republic of Moldova appointed 53 of them as judge, which makes approximately 97% of all candidates proposed by the SCM.

1.1. The Organization and Number of Contests

During the reference period, the SCM organized on average one or two contests for candidates to a judge's post in a month. The SCM continued organizing separate contests for each vacancy. In isolated cases, the SCM ordered to merge the contests for certain courts.⁵⁴ Overall, however, no changes were noticed compared with the previous period (1 January 2013 through 31 May 2017), when the SCM had had two contests per month on average.⁵⁵

1.2. Competition Results and Main Findings:

Table 8. The results of contests for the selection of judges

Period					
JUNE 2017			DECEMBER 2018 ⁵⁶		
					
Number of contests	Candidates selected by the SCM	Nominated in contests with a single candidate	Nominated in contests with at least two candidates	Nominated with a lower score	Nominated with the highest score
51	55	10 (18%)	45 (82%)	27 (60% din 45)	18 (40% din 45)

⁵⁴ SCM Decision No. 411/20 of 2 October 2018, https://www.csm.md/files/Hotaririle/411_20.pdf.

⁵⁵ LRCM, *Selection and Promotion of Judges in the Republic of Moldova—Challenges and Needs*, July 2017, p. 18, available at <https://crjm.org/wp-content/uploads/2017/07/CRJM-Selectia-si-cariera-jud-2017.pdf>.

⁵⁶ As of 31 December 2018.

45 (82%) out of 55 candidates selected by the SCM were selected in contests that had more than one candidate, and 10 (18%) were selected by default in contests with a single candidate. At least 27 (60%) out of the 45 candidates selected in contests with more than one candidate had a lower score from the Selection Board, and only 18 (40%), the highest.

The main identified shortcomings include (1) the SCM's disregard of the score from the Selection Board without sufficient reasoning (60% of the 45 candidates who participated in contests that had more than one candidate); (2) a high rate of contests that had a single candidate (18%); and (3) the failure to explain the invalidation of 13 contests (25%). In what follows, we will present data to exemplify each of these shortcomings.

1.2.1. The SCM's Disregard of the Score from the Selection Board

During the reference period, the SCM continued ignoring the decisions of the Selection Board and the score offered by it in most cases. Thus, 27 (60%) out of the 45 candidates selected in contests with more than one candidate had a lower score from the Selection Board, and the SCM did not explain why it disregarded the score. Tables 9 through 13 below present the results of several contests held during this period.

Table 9. *The results of the competition for judge held on 11 July 2017 for the Orhei Court (offices of Orhei, Șoldănești, and Rezina)*

 Date	 Candidates	 Score from the Selection Board
5 September 2017	Ion COJOCARI	82
	Vladislav SCHIBIN	77.5
	Mihail PROCA	76
	Valeriu CÎRLAN	74
	Petru PĂUN	70
	Ivan PARII	70
	Ion COJOCARI	82
	Valeriu CÎRLAN	74
	Ivan PARII	70

By Decision No. 564/26 of 5 September 2017,⁵⁷ the SCM nominated Mihail PROCA and Ivan PARII for office. Two of their fellow candidates had higher scores from the Selection Board than Mihail PROCA. Seven had higher scores from the Selection Board than Ivan PARII. The gap between the scores of the candidates and those of their fellow candidates with higher scores was **6 points** for Proca and **12 points** for Parii. The SCM explained their choice by simply stating that this is the exclusive vote of SCM members.

57 SCM Decision No. 564/26 of 5 December 2017, available at <https://csm.md/files/Hotaririle/2017/26/564-26.pdf>.

Table 10. The results of the competition for judge held on 3 October 2017 for the Chişinău Court

 Date	 Candidates	 Score from the Selection Board
5 December 2017	Veaceslav CARAGIA	86
	Mariana FONDOS-FRAȚMAN	82
	Diana CORLĂTEANU	79
	Adrian GRIGORIȚCHI	78
	Vladislav SCHIBIN	77.5
	Sergiu BRIGAI	77
	Elena NOROȘEANU	75
	Tudor STAMBOL	74
	Valeriu CÎRLAN	74
	Dan SÎRBU	73.5
	Igor PULBERE	72
	Aliona POSTU	71
	Arina CIPILEAGA	70
	Victor STRATU	70
	Petru PĂUN	70

By Decision No. 783/35 of 5 December 2017,⁵⁸ the SCM nominated Mariana FONDOS-FRAȚMAN, Petru PĂUN and Dan SÎRBU. One of their fellow candidates had a higher score from the Selection Board than Mariana FONDOS-FRAȚMAN. Another 12 had higher scores from the Selection Board than Petru PĂUN. The gap between the scores of the candidates and those of their fellow candidates with higher scores was **4 points** for Fondos-Frațman, **12.5 points** for Sîrbu, and **16 points** for Păun. Just as in the previous example, the SCM explained its choice by simply stating that this is the exclusive vote of the SCM members.

Table 11. The results of the competition for judge held on 4 July 2017 for the Orhei Court (the office of Orhei)

 Date	 Candidates	 Score from the Selection Board
8 August 2017	Ion COJOCARI	82
	Mihail PROCA	76
	Valeriu CÎRLAN	74
	Aliona POSTU	71
	Cristina TROIANOVCHI	70.5




By Decision No. 535 of 8 August 2017,⁵⁹ the SCM nominated Cristina TROIANOVCHI. Four of her fellow candidates had higher scores from the Selection Board. The gap between

⁵⁸ SCM Decision No. 783/35 of 5 December 2017, available at <https://csm.md/files/Hotaririle/2017/35/785-35.pdf>.

⁵⁹ SCM Decision No. 535 of 8 August 2017, available at <https://csm.md/files/Hotaririle/2017/25/535-25.pdf>.

her score and those of her fellow candidates with higher scores was **11.5 points**. In this case, the SCM explained its choice by that the candidate had completed training at the NIJ, which presumably confirmed her better qualification.⁶⁰

Table 12. The results of the competition for judge held on 21 January 2018 for the Chişinău Court

 Date	 Candidates	 Score from the Selection Board
3 April 2018	Elizaveta BUZU	93
	Andrei MAȚCO	91
	Marcel POPESCU	87
	Alina GORCEAC	83.5
	Viorica ALEXEEVA	82
	Olga FIODOROV	81.5
	Nina CHILAT	80
	Diana CORLĂTEANU	79
	Corneliu CREȚU	79
	Victor STRATU	78.5
	Sergiu BEȘLIU	78
	Vladislav SCHIBIN	77.5
	Lilia POPA	77
	Alexandra ROMANAȘ	77
	Alexandru MARDARI	75.5
	Aurelia BALMUȘ	76.5
	Olga URSU	76
	Tudor STAMBOL	75
	Elena NOROȘEANU	75
	Ion TICU	retras
	Elena MARANDACI	74.5
	Eugenia CULINCA	74.5
	Valeriu CÎRLAN	74
	Igor PULBERE	72
	Mihai ȚURCANU	71.5
	Elena UNGUREANU	71
	Vitalie MUNTEAN	71
	Alexandru BUGAI	70.5
	Arina CIPILEAGA	70
	Vitalie BOTNARI	retras




By Decision No. 167/9 of 3 April 2018,⁶¹ the SCM nominated Alexandru MARDARI, Tudor STAMBOL, Igor PULBERE, and Elena UNGUREANU. Fourteen of their fellow candidates had

⁶⁰ Ibidem.

⁶¹ SCM Decision No. 167/9 of 3 April 2018, available at <https://csm.md/files/Hotaririle/2018/09/167-9.pdf>.

higher scores from the Selection Board than Alexandru MARDARI. Another 18 had higher scores from the Selection Board than Tudor STAMBOL. The gap between the scores of the candidates and those of their fellow candidates with higher scores was **17.5 points** for Mardari, **17 points** for Stambol, **16 points** for Pulbere, and **22 points** for Ungureanu. The SCM explained its choice by the exclusive vote of SCM members.

Table 13. The results of the competition for judge held on 8 May 2018 for the Chişinău Court

 Date	 Candidates	 Score from the Selection Board
27 November 2018	Elizaveta BUZU	93
	Andrei MAȚCO	91
	Marcel POPESCU	87
	Alina GORCEAC	83.5
	Viorica ALEXEEVA	82
	Olga FIODOROV	81.5
	Nina CHILAT	80
	Cristina PĂUN	79.5
	Diana CORLĂTEANU	79
	Corneliu CREȚU	79
	Denis GUZUN	77 (maxim 100)
	Aurelia BALMUȘ	76.5
	Elena NOROȘEANU	75
	Elena MARANDICI	74.5
	Eugenia CULINCA	75.5
	Valeriu CÎRLAN	74
	Olesea CLEVADÎ	73
	Vitalie MUNTEAN	71
	Aliona POSTU	71
	Arina CIPILEAGA	70
	Lilia PASCAL	70
	Valeriu ARHIP	42 (maxim 49)
	Veaceslav CERNALEV	41 (maxim 49)
	Sergiu ZMEU	37.5 (maxim 49)
	Alexandru APARATU	27 (maxim 49)

By Decision No. 552/25 of 27 November 2018,⁶² the SCM nominated Denis GUZUN and Veaceslav CERNALEV. At least five of their fellow candidates had higher scores from the Selection Board than Veaceslav CERNALEV (according to the new score).

⁶² SCM Decision No. 552/25 of 27 November 2018, available at <https://www.csm.md/files/Hotaririle/2018/25/552-25.pdf>.

Table 14. The weight of the final score after the amendment of the SCM Regulation on the maximal score obtained by fellow candidates

Maximal score (prior to amendment)		Maximal score (after amendment)	
100	100%	50	100%
93	93%	42	84%
91	91%	41	82%
87	87%	37.5	75%
83.5	84%	27	54%
82	82%		
81.5	82%		
77	77%		

Another 12 of their fellow candidates had higher scores from the Selection Board than Denis GUZUN. The gap between the scores of the candidates and those of their fellow candidates with higher scores was **11 points** for Cernalev and **16 points** for Guzun according to the new procedure. The SCM explained its choice by the exclusive vote of SCM members.

SCM members argue that training at the NIJ or Selection Board's evaluations are often subjective and that some evaluation criteria are vague or inaccurate.⁶³ There are very few cases, however, when the SCM offers an explanation/reasoning in its decisions that ignore the score from the Selection Board. Moreover, the SCM has never requested the Selection Board to reevaluate candidates when it did not agree with their scores. The gap between the scores of the selected candidates and those of the candidates with the highest score may be as high as 45 points.

Most nomination decisions invoke the "exclusive vote" of SCM members rather than any evaluation criterion as reasoning. However, the mere counting of ballots may not stand in place of sufficient and fair reasoning. Decisions should lay out the majority's arguments in favor of candidates proposed.

During the reference period, the SCM offered reasoning only in one decision, when it argued that, although the candidate's score was 11.5 points lower than that of the highest scoring candidate, the candidate had completed training at the NIJ, which confirmed a better qualification.⁶⁴ This reasoning, however, is discouraging for judicial candidates who compete based on work seniority, and the regulations on selection and promotion do not provide for this criterion. Should it be so, then the SCM should amend the regulations by expressly prioritizing the candidacies of NIJ graduates or reintroducing the former 80/20 quota, by which at least 80% of candidates had to have completed training at the NIJ.

⁶³ SCM Decision No. 292/15 of 2 May 2017, available at <http://www.csm.md/files/Hotariile/2017/15/292-15.pdf>.

⁶⁴ Ibidem.

The perpetuation of the practice of nominating candidates with lower scores without offering clear reasons diminishes transparency, quality, and predictability in the selection procedures. This can discourage judges from striving for the best examination results to meet the selection criteria. This seriously dents the SCM's credibility both in the eyes of the public and of aspiring judges.

The changes to the selection procedure made in late 2018 by which candidates must opt for a vacancy in the descending order of their score are welcomed and should be implemented in full.

1.2.2. Contests that Had a Single Candidate

During the reference period, the SCM continued organizing contests separately for each vacancy. Again, contests for judicial vacancies in certain courts were more attractive. For example, in Chişinău, there were 12.5 candidates per competition on average in comparison with 12.2 during the previous period. On the other hand, candidates were not interested in vacancies outside Chişinău. On average, these vacancies attracted only 2.7 candidates per competition in comparison with 2.2 during the previous period. Moreover, 10 candidates (18% of the total) were selected in contests with a single candidate. Most of them competed for vacancies outside Chişinău.

The practice of organizing a competition for each vacancy is inconvenient both for the SCM and for candidates. For the SCM, because it wastes considerable amounts of administrative resources without ensuring the filling of all vacancies because candidates will always be looking for “more attractive” vacancies in Chişinău. For candidates, because it generates uncertainty and does not ensure predictability for career planning. Moreover, unplanned contests also put strain on SCM members and/or SCM's administrative staff due to potential suspicions that they could use their positions to inform some candidates about “more attractive” positions. As long as confidence in justice remains low,⁶⁵ it is advisable to avoid any situation that can damage it or add to corruption risks.

In autumn 2018, the Parliament enacted a series of legislative amendments on the selection and promotion of judges, which became effective in October 2018. The amendments introduced the mandatory requirement that all candidates on the Register of candidates opt for the vacancies put out to contests and that priority in the option to choose a vacancy be given to candidates with the highest scores, in the descending order of the average score obtained in the contest. The new system gives advantage to the best candidates and ensures the filling of all vacancies, including those from less-popular regions that are farther from the capital city.

1.2.3. Failed Contests

Although the number of those who leave judicial profession should generate a greater need for new judges, during the reference period, the SCM invalidated 13 contests (25% of the 51 organized). More details are presented in the following table:

⁶⁵ Legal Resources Centre from Moldova, *Analytical Note: Confidence in the Justice System of the Republic of Moldova in 2001 – 2018. Trends and Determinants*, available at <https://crjm.org/wp-content/uploads/2019/02/2018.12-Increderea-in-justitie.-Evolutii.pdf>.

Table 15. Invalidated contests (first-tier courts)

Competition date	Court of law	Candidate/Judge	Score from the Selection Board	SCM Decision	SCM's conclusion
11 July 2017	Hîncești (Hîncești) – 1 position	Adrian CERBU	57	469/22	Invalidated
11 July 2017	Cimișlia (Leova) – 1 position	Dandăș VEACESLAV	80	475/22	Invalidated
11 July 2017	Cimișlia (Basara-beasca) – 1 position	Valeriu CÎRLAN	74	476/22	Invalidated
8 August 2017	Soroca (Soroca) – 1 position	Alexandr GALBEN	70	536/25	Invalidated
5 September 2017	Hîncești (Hîncești) – 1 position	Adrian CERBU	57	563/26	Invalidated
5 December 2017	Cimișlia (Cimișlia) – 1 position Cimișlia (Basarabeasca) – 1 position Cimișlia (Leova) – 1 position	Valeriu CÎRLAN	74	768/35	Invalidated
23 January 2018	Cimișlia (Cimișlia) – 1 position Cimișlia (Basarabeasca) – 1 position Cimișlia (Leova) – 1 position	Valeriu CÎRLAN	74	43/3	Invalidated
3 April 2018	Orhei (Rezi-na) – 3 positions Orhei (Șoldănești) – 1 position	Mihai ȚURCANU	71,5	170/9	Invalidated
29 May 2018	Comrat – 1 position	Vitali CEBOTARI	79	277/14	Invalidated
16 October 2018	Sîngerei – 1 position	Mihai ȚURCANU	71,5	422/21	Invalidated
16 October 2018	Drochia – 1 position	Victoria ROBU	38,3	423/21	Invalidated

Competition date	Court of law	Candidate/Judge	Score from the Selection Board	SCM Decision	SCM's conclusion
16 October 2018	Soroca (Florești) – 2 positions	Mihai ȚURCANU	71,5	434/21	Invalidated
16 October 2018	Cahul (Cantemir) – 1 position	Mihai ȚURCANU	71,5	426/21	Invalidated

SCM decisions do not offer explanation or arguments why the SCM declared these contests failed. SCM just invokes the lack of votes for candidates. Moreover, in one competition, even though according to the announcement, the SCM was to select two candidates and, according to the decision of the Selection Board, there were candidates with appropriate qualification, the SCM selected only one candidate and announced a new competition for the remaining vacancy.⁶⁶

Without a clear reasoning, the practice of organizing such contests raises doubts about the impartiality of SCM members. Support for one candidate or lack of it without clear arguments gives impression of arbitrariness and personal and subjective preference, the more so that the same candidates were involved. This perception is reinforced when some candidates who participated in contests declared void get nominated by the SCM for other positions shortly afterward. Thus, it is not clear what makes SCM members consider a candidate unsuitable for judicial position in one court and, shortly after that, find them suitable for another court. More details about this situation are presented in the following table:

Table 16. *The results of contests with the same registered candidate (district courts of Hîncești and Dubăsari)*

Competition date	Court of law	Candidate	Score from the Selection Board	SCM Decision	SCM's conclusion
5 September 2017	Hîncești (Hîncești) –transfer	Adrian CERBU	57	563/26	Invalidated
19 September 2017	Criuleni (Dubăsari) –transfer	Adrian CERBU	57	610/28	Nominated

In this case, it is not clear why SCM members changed their mind. In 2017, alerted of a similar situation, SCM explained verbally⁶⁷ that contests in which the SCM fails to make up a quorum or where there are not enough fellow candidates are usually declared void. It remains unclear, however, why, in such cases, the SCM does not postpone decision for a meeting that has a quorum or at least explain the reasons for invalidation.

⁶⁶ See SCM Decision No. 171/9 of 3 April 2017 on the competition for judge at the Balti Court, available at <https://www.csm.md/files/Hotaririle/2018/09/171-9.pdf>.

⁶⁷ LRCM, *Policy Paper: Selection and Promotion of Judges in the Republic of Moldova—Challenges and Needs*, July 2017, p. 29, available at <https://crjm.org/wp-content/uploads/2017/07/CRJM-Selectia-si-cariera-jud-2017.pdf>.

Conclusions

The analysis of the practice applied from June 2017 through December 2018 did not reveal significant progress in comparison with the previous period. The entities involved in the selection process, namely the SCM and the Selection Board, still have duplicated responsibilities. The SCM still does not provide reasoning in its decisions concerning judicial career, especially when they are at odds with the score offered by the Selection Board. This perpetuates the perception that SCM members' personal beliefs outweigh the score offered by the specialized panel empowered to select candidates. The insufficient reasoning of decisions fuels suspicions that selection in the judicial system is guided by other criteria than the ones stated in SCM's regulations. This negatively impacts confidence in the judiciary, discourages aspiring judges, and can weaken the judicial recruitment and career system in the long run.

2. Promotion to Administrative Positions at District courts

2.1 The Organization and Number of Contests

During the reference period, the SCM conducted nine contests for administrative positions (of chief judge and deputy chief judge), which had nine candidates, all told (one candidate per contest). Following the selection procedure, the SCM nominated eight judges for administrative positions. In one competition (11%), the candidate failed to obtain the required votes from SCM members, and the competition was declared as invalid (failed).⁶⁸

2.2 Competition Results and Main Findings:

During the reference period, the SCM nominated eight judges for promotion to administrative positions at district courts. All candidates were selected by default in contests that had a single candidate each.

2.2.1 Contests that Had a Single Candidate

Just like contests for judge, those for administrative positions at district courts are never planned and are announced for each vacancy. However, unlike contests for judge, where the major issue was the SCM's disregard of the score from the Selection Board, contests held during the reference period for administrative positions at district courts had a single candidate each. More details about these contests are presented in the following table:

⁶⁸ The competition for deputy chief judge of the Chisinau Court (the Riscani office) of 31 October 2017. SCM Decision No. 685/131, available at <https://csm.md/files/Hotaririle/2017/31/685-31.pdf>.

Table 17. Contests for administrative positions at district courts (June 2017 – December 2018)

Date	Court of law	Admin. position	Candidate	Score from the Judicial Performance Board	Score from the Selection Board	SCM Decision
11 July 2017	Drochia	chief judge	Vasile NOGAI	<i>very good</i>	73	470/22
11 July 2017	Anenii Noi	chief judge	Ghenadie MÎRA	<i>very good</i>	55	471/22
11 July 2017	Anenii Noi	deputy chief judge	Aurelia PLEȘCA	<i>very good</i>	72	472/22
11 July 2017	Cahul	deputy chief judge	Mihail BUȘULEAC	<i>very good</i>	66	473/22
11 July 2017	Cimișlia	deputy chief judge	Petru VACULA	<i>good</i>	66	474/22
5 September 2017	Chișinău (Botanica)	deputy chief judge	Vitalie STRATAN	<i>very good</i>	76	562/26
31 October 2017	Chișinău (Rîșcani)	deputy chief judge	Lilia LUPAȘCO	<i>very good</i>	81	685/31
25 April 2018	Orhei	deputy chief judge	Elvira LAVCIUC	<i>very good</i>	67	214/11
29 May 2018	Chișinău (Rîșcani)	deputy chief judge	Corneliu GUZUN	<i>excellent</i>	48	288/14

Although administrative positions at district courts imply managerial duties, they also come with some advantages. The status of chief judge or deputy chief judge entitles the holder to bonuses and a reduced workload. These advantages, however, seem to be unable to persuade judges to take part in these contests. Candidates could feel discouraged to participate, not least because the results of performance review and the score from the Selection Board are insufficient to ensure promotion to chief judge or deputy chief judge. Whatever the causes of judges' low interest in administrative positions, the SCM should certainly consider this issue to identify them.

2.2.2 Invalidated Contests

The SCM invalidated only one (11%) out of the nine contests. More details are presented in the following table.

Table 18. Invalidated contests (the promotion to administrative positions at district courts)

Date	Court of law	Admin. position	Candidate	Score from the Judicial Performance Board	Score from the Selection Board	SCM Decision
31 October 2017	Chișinău (Rîșcani)	deputy chief judge	Lilia LUPAȘCO	<i>very good</i>	81	685/31

It is not clear why the SCM considered the candidate unsuitable for administrative position even though the Judicial Performance Board had graded her as “very good” and the Selection Board had offered her a high score.

Conclusions

The analysis of the practice applied during June 2017 – December 2018 showed that the major issue of the contests for administrative positions was the lack of fellow candidates. The advantages of administrative positions at district courts seem to be unable to persuade judges to take part in these contests. Candidates could feel discouraged to participate because the results of performance review and the score from the Selection Board are insufficient to ensure promotion to chief judge or deputy chief judge. Whatever the causes of judges' low interest in administrative positions, the SCM should certainly consider this issue to identify them. Just like with contests for judge, the lack of sufficient reasoning in SCM decisions poses major threats for the judicial system and society. It sends out a clear message to candidates that performance review does not matter very much and the individual beliefs of SCM members are more important. Finally, the insufficient reasoning of some decisions fuels suspicions that promotion to administrative positions is guided by other criteria than those stated in SCM's regulations.

3. The Promotion of Judges to Courts of appeal

3.1 The Organization and Number of Contests

From 1 June 2017 through 31 December 2018, the SCM announced 17 contests for the promotion of judges to courts of appeal. Another three contests were announced in December 2018, after Law No. 137 of 27 September 2018, which changed the selection and promotion procedure, came into effect. On average, during the reference period, the SCM announced one contests per month for promoting judges to courts of appeal (20 contests in 17 months).

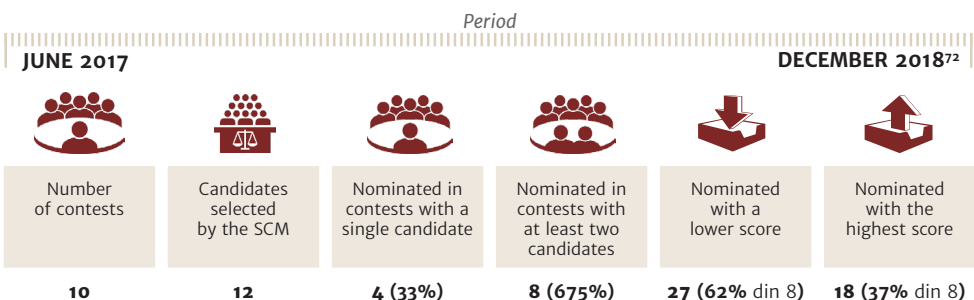
During the reference period,⁶⁹ the SCM held 10 contests out of the 20 announced. One competition (10% of the contests that were held) was joined, and another two (20%) were declared void because the candidates failed to gain the required number of votes. Due to the change to the judge selection and promotion procedure, two contests (10% of all announced contests) were cancelled.

In comparison with the previous period,⁷⁰ the number of contests that did not take place decreased due to either the absence of applications or the candidates' withdrawal before the competition date. During the reference period, this happened in two (10%) out of the 20 announced contests in comparison with the 46% during the previous period.

The SCM continues not putting the announced contests to full use. For example, in the 13 November 2018 competition for promotion to the Chişinău Court of Appeals,⁷¹ the SCM did not select any candidate out of the seven candidates because none gained the required number of votes, failing to lay out the reasons for that decision. In addition, the SCM did not hold 10 (50%) out of the 20 announced contests.

3.2. Competition Results and Main Findings:

Table 19. The results of contests for the promotion of judges to courts of appeal



⁶⁹ Data for the period from 1 June 2017 through 31 December 2018.

⁷⁰ 1 January 2013 – 31 March 2017.

⁷¹ SCM, Decision No. 520/24 of 13 November 2018, <https://www.csm.md/files/Hotaririle/2018/24/520-24.pdf>.

⁷² As of 31 December 2018.

In contests for the promotion of judges to courts of appeal, the SCM selected 12 candidates. Four (33%) of them were selected by default in contests with a single candidate, and eight (67%), in contests with more than one candidate. Three (38%) out of the eight candidates selected in contests with more than one candidate had higher scores than their fellow candidates, and five (62%), lower.




In one competition, the president of the country rejected the candidate proposed by the SCM for promotion to the Cahul Court of Appeals. When the candidate requested that the SCM put him up repeatedly for selection by the president, the SCM rejected the request and announced another contest for that vacancy.

The selection of candidates in contests with a single candidate is not a good practice and is not a competition in earnest, but the SCM continued this practice during the reference period. In comparison with the previous period, the rate of the admission of candidates with lower scores increased by 23%.

3.2.1. The SCM's Disregard of the Score from the Selection Board

Only in one out of all eight contests that resulted in promotion to courts of appeal⁷³ did the SCM nominated the candidate whose score from the Selection Board was the highest. The competition in which the SCM nominated the candidate with the highest score for promotion to the courts of appeal is the only example of practice from this reference period that the SCM should follow in the future. But even in this case where the highest scoring candidates were nominated for promotion to courts of appeal, the SCM did not indicate in its nomination decision that it had prioritized the score from the Selection Board. Because of that, we can conclude that, not even during this reference period did the SCM use highest scores from the Selection Board as the main criterion for promotion to courts of appeal.

Table 20. A positive example—the competition for promotion to the Chişinău Court of Appeals of 3 April 2018⁷⁴

 Candidates	 Score from the Selection Board	 Outcome
Mihail DIACONU	82	admitted
Aureliu POSTICA	68	rejected
Aliona MIRON	63	rejected
Ina DUTCA	55	rejected
Alexandru SANDU	54	rejected
Diana CRISTIAN	51	rejected
Tudor ANDRONIC	38	rejected




⁷³ During the reference period, the SCM announced 16 competitions. Another three, albeit announced previously, were also to take place during the reference period. Eight of them did not happen because either there were no candidates or they had withdrawn before SCM members voted.

⁷⁴ SCM Decision No. 166/9 of 3 April 2018, <https://www.csm.md/files/Hotaririle/2018/09/166-9.pdf>.

In another two contests that had several fellow candidates each, the SCM selected only one candidate out of three and, respectively, two fellow candidates who had the highest scores.




At the competition of 31 October 2017 for two vacancies at the Chişinău Court of Appeals, out of the two fellow candidates with the highest scores from the Selection Board, the SCM admitted only the second one, rejecting the highest scoring one. Another candidate had 67 points—the same as another competitor, who was not admitted—and the SCM did not explain why they chose that candidate. The last candidate had 63 points—that is **four points fewer** than their two fellow candidates with 67 points, one of whom was rejected, and **14 points fewer** than the highest scoring competitor, who was also rejected.

Table 21. Competition at the Chişinău Court of Appeals of 31 October 2017⁷⁵

 Candidates	 Score from the Selection Board	 Outcome
Boris TALPĂ	77	rejected
Virgiliu BUHNACI	75	admitted
Iurie OBADĂ	67	rejected
Galina MOSCALCIUC	67	admitted
Steliana IORGOV	63	admitted
Lilia LUPAŞCO	62	rejected
Ala MALÎI	59	rejected
Arina IALANJI	59	rejected
Ina DUTCA	55	rejected
Alexandru SANDU	54	rejected
Aurelia CAZACLIU	54	rejected
Diana CRISTIAN	51	rejected




In the joint contest held on 24 July 2018 for two vacancies at the Chişinău Court of Appeals, the first candidate had the highest score. The second candidate had a score that was **lower than her fellow candidates' by 6, 9 and, respectively, 11 points** (the competition used the new and the old evaluation procedures). Again, the SCM did not explain in its decision what criteria they used to nominate a candidate with a lower score.

Table 22. Competition at the Chişinău Court of Appeals of 24 July 2018⁷⁶

 Candidates	 Score from the Selection Board	 Outcome
Anatolie GALBEN	40 (maximum 50)	admitted
Igor CHIROŞCA	27 (maximum 50)	rejected
Dumitru BOŞÎI	25 (maximum 50)	rejected
Boris TALPĂ	77	rejected

⁷⁵ SCM Decision No. 684/31 of 31 October 2017, <https://www.csm.md/files/Hotaririle/2017/31/684-31.pdf>.

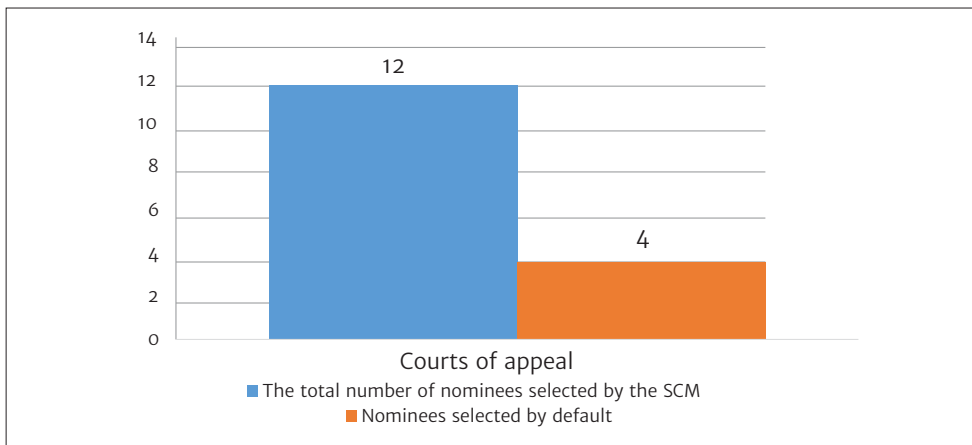
⁷⁶ SCM Decision No. 345/18 of 24 July 2018, <https://www.csm.md/files/Hotaririle/2018/18/345-18.pdf>.

 Candidates	 Score from the Selection Board	 Outcome
Ghenadie PLAMADEALĂ	74	rejected
Olga COJOCARU	66	admitted
Iurie POTÎNGA	66	admitted
Elena COJOCARI	63	rejected
Viorica URUSU	63	rejected
Aliona MIRON	61	rejected
Maria CHIPERI	61	rejected
Ina DUTCA	55	rejected
Alexandru SANDU	54	rejected
Aurelia CAZACLIU	54	rejected
Diana CRISTIAN	51	rejected
Tudor ANDRONIC	38	rejected

3.2.2. Contests that had a single candidate

In contests for promotion to courts of appeal with a single candidate, the SCM nominated four candidates, which is 33% of all 12 candidates proposed made by the SCM for such promotions. During the previous period,⁷⁷ the rate of contests for promotion to courts of appeal with a single candidate was 31%, and, during the reference period, it was 33%. This data reveals that the SCM keeps its practice of promoting judges to courts of appeal based on contests with a single candidate.

Graph 4. Candidates selected by the SCM for courts of appeal by default






1.2.3. Invalidated Contests

Most contests fail because candidates do not gain enough votes from the SCM and none is selected. This is particularly worrying, especially when the SCM rejects fellow candidates with quite high scores from the Selection Board without offering any reasoning.

⁷⁷ Data for the period from 2013 through 31 May 2017.

On 24 July 2018, the SCM announced a competition for two vacancies at the Chişinău Court of Appeals, which had seven candidates.⁷⁸ In that competition, which was held on 13 November 2018,⁷⁹ none of the candidates gained enough SCM votes to get appointed by the President of the Republic of Moldova, and the competition was declared failed. It is not clear why the SCM did not admit judges for at least one vacancy, considering that two fellow candidates had 35 points of maximum 50 and, respectively, 77 points of maximum 100 from the Selection Board.

Table 23. Invalidated competition for judge at the Chişinău Court of Appeals of 24 July 2018

 Candidates	 Score from the Selection Board	 Outcome
Svetlana GARŞTEA-BRIA	35 (maximum 50)	invalidated
Igor CHIROŞCA	27 (maximum 50)	invalidated
Angela BRAGA	26 (maximum 50)	invalidated
Dumitru BOŞÎI	25 (maximum 50)	invalidated
Boris TALPĂ	77 (maximum 100)	invalidated
Ghenadie PLAMADEALĂ	74 (maximum 100)	invalidated
Elena COJOCARI	63 (maximum 100)	invalidated

On 4 December 2018, the SCM announced a competition for three vacancies at the Chişinău Court of Appeals.⁸⁰ In other contests, the SCM promoted judges with lower scores, like 59 points, to courts of appeal.⁸¹ The SCM did not lay out any reason in its decision to reject the candidates, which does not make it more appealing for judges to apply for other promotion contests. This may also lead to the lack of applications and impossibility to fill judicial vacancies at courts of appeal.

On some occasions, the SCM rejected candidates with a higher score, but admitted them in the following contest without explaining what made SCM members change their mind. For example, in the 6 June 2017 competition for promotion to the Chişinău Court of Appeals,⁸² judge Virgiliu BUHNACI was rejected, and in the 31 October 2017 competition for promotion to the same court,⁸³ he was admitted despite having a contestant with a higher score.

SCM's practice further shows that, in adopting decisions on the promotion of judges, the SCM does not prioritize the score from the Selection Board and, in the reasoning from its decisions, does not refer to other criteria that make it consider that a score is sufficient or insufficient for promotion.

⁷⁸ SCM Decision No. 345/18 of 24 July 2018, <https://www.csm.md/files/Hotaririle/2018/18/345-18.pdf>.

⁷⁹ SCM, Decision No. 520/24 of 13 November 2018, <https://www.csm.md/files/Hotaririle/2018/24/520-24.pdf>.

⁸⁰ SCM Decision No. 579/26 of 4 December 2018, <https://www.csm.md/files/Hotaririle/2018/26/579-26.pdf>.

⁸¹ On the competition held on 23 January 2018, the SCM nominated Judge Ala MALÎ, 59 points, for promotion to the Chişinău Court of Appeals, <https://www.csm.md/files/Hotaririle/2018/03/39-3.pdf>.

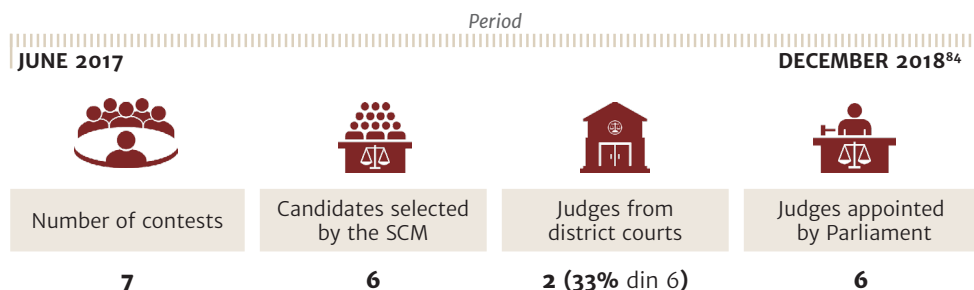
⁸² SCM Decision No. 381/18 of 6 June 2017, <https://www.csm.md/files/Hotaririle/2017/18/381-18.pdf>.

⁸³ SCM Decision No. 684/31 of 31 October 2017, <https://www.csm.md/files/Hotaririle/2017/31/684-31.pdf>.

4. The Promotion of Judges to the Supreme Court of Justice

4.1 The Organization and Number of Contests

Table 24. Contests for promotion to the SCJ held during the reference period

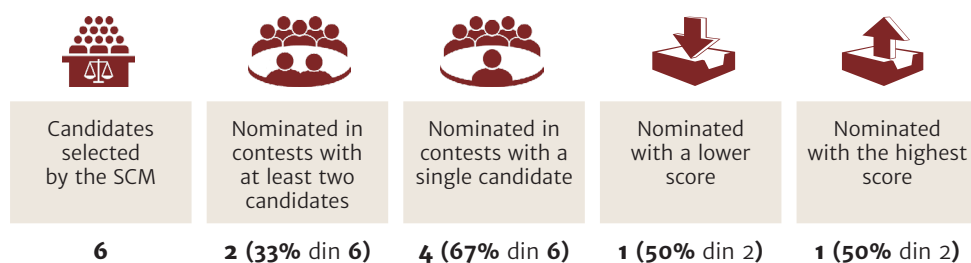


From 1 June 2017 through 31 December 2018, the SCM organized seven contests for judges' posts at the SCJ. One of them (14%) was invalidated due to insufficient votes from the SCM for the candidates. One contest for five vacancies was announced after the change in the selection and promotion procedure, but it did not take place during the reference period.

4.1. Competition Results and Main Findings:

Four (67%) out of six judges the SCM nominated for promotion to the SCJ were selected in contests with a single candidate. One (50%) out of the two candidates selected in contests with more than one candidate had a higher score than their competitor, and one (50%), the highest. Two (33%) out of six judges the SCM nominated for promotion to the SCJ were from district courts.

Table 25. Promotion to the SCJ—the number of candidates and their scores



The rate of contests with a single candidate that resulted in nomination sets a poor record for the highest court in the country. Compared to the previous period, the trend of nomination based on contests with one candidate has worsened. If from 1 January 2013 through 31 May 2017, only 8% of candidates were selected in contests by default, then during the reference period, this figure has increased to 67%. This worsening trend and the lack of reasoning in decisions raises concerns, considering the importance and prestige of the highest court of law.




⁸⁴ As of 31 December 2018.

During the reference period, two judges from district courts were promoted to the SCJ, which is 33% of the six promoted judges. Although, during the reference period (1 January 2013 – 31 May 2017), contests for promotion to the SCJ were considerably fewer in general, the decrease from 77%⁸⁵ to 33% in the percentage of judges promoted to the SCJ from district courts—that is without the experience of working at an appellate court—is a good sign.

4.1.1. SCM's Disregard of the Score from the Selection Board

Four (67%) out of six judges the SCM nominated for promotion to the SCJ were selected in contests with a single candidate. One (50%) out of the two candidates selected in contests with more than one candidate had a higher score than their competitor, and one (50%), lower. Only in one out of two contests for promotion to the SCJ that had several fellow candidates did the SCM nominate the highest scoring candidate. At the time of the competition and evaluation by the Selection Board, the nominated candidate was a member of the SCM. The candidate had a higher score from the Selection Board than their fellow candidates due to work seniority of 19 years and 11 months and personal motivation, for which the Selection Board offered the maximal number of points.⁸⁶ In its decision, the Selection Board did not refer to concrete elements from the candidate's personal motivation that determined it to score the candidate highest.

Table 26. Competition for promotion to the SCJ of 6 June 2017⁸⁷

 Candidates	 Score from the Selection Board	 Outcome
Victor MICU	98	admitted
Viorica PUICA	80	rejected
Mihail DIACONU	70	rejected




One (50%) out of the two candidates for promotion to the SCJ selected by the SCM in contests with more than one candidate had a lower score than their fellow candidates. In the 3 April 2018 competition for promotion to the SCJ that had three candidates, the SCM nominated the candidate with lowest score from the Selection Board. The SCM ignored the highest scoring competitor, Oxana ROBU, and nominated Victor BOICO, **whose score was 10 points lower**. The candidate had nine years of judicial experience more, and both candidates had a third-level qualification. The nomination decision, however, makes no reference to SCM's reasoning.

⁸⁵ The Legal Resources Centre from Moldova, *Policy Paper: Selection and Promotion of Judges in the Republic of Moldova—Challenges and Needs*, July 2017, p. 37, available at <https://crjm.org/wp-content/uploads/2017/07/CRJM-Selectia-si-cariera-jud-2017.pdf>.

⁸⁶ Selection Board, Decision No. 54/9 of 13 April 2017, <https://www.csm.md/files/Hotaririle%20CSelectie/2017/09/54-9.pdf>.




⁸⁷ SCM Decision No. 380/18 of 6 June 2017, <https://csm.md/files/Hotaririle/2017/18/380-18.pdf>.

Table 27. Competition for promotion to the SCJ of 3 April 2018⁸⁸

 Candidates	 Score from the Selection Board	 Outcome
Oxana ROBU	83	rejected
Liubovi BRÎNZĂ	77	rejected
Victor BOICO	73	admitted

The candidate Liubovi BRÎNZĂ applied to all three contests for promotion to the SCJ announced consecutively. In the first competition, the SCM rejected her candidacy, nominating the lowest scoring candidate. In its decision, the SCM did not explain the criteria for this choice. The following competition Liubovi BRÎNZĂ participated in was declared failed due to insufficient votes. In the third competition, Liubovi BRÎNZĂ and another candidate dropped out at some moment for unknown reasons. The competition took place with one candidate—Dorel MUSTEAȚĂ—who was nominated. At the time, Mr. Musteață was a member of the SCM. This gives the impression that both candidates withdrew to step out of the way of the remaining one.

Table 28. Contests for promotion to the SCJ of 17 March 2018, 25 April 2018, and 24 July 2018

 Candidates	 Score from the Selection Board	 Outcome
Competition of 18 March 2018⁸⁹		
Oxana ROBU	83	rejected
Liubovi BRÎNZĂ	77	rejected
Victor BOICO	73	admitted
Competition of 25 March 2018⁹⁰		
Oxana ROBU		invalidated
Liubovi BRÎNZĂ		invalidated
Anatolie MINCIUNĂ		invalidated
Competition of 24 July 2018⁹¹		
Dorel MUSTEAȚĂ	36	admitted
Liubovi BRÎNZĂ		Dropped out
Iurie COTRUȚĂ		Dropped out

⁸⁸ SCM Decision No. 165/9 of 3 April 2018, <https://www.csm.md/files/Hotaririle/2018/09/165-9.pdf>.

⁸⁹ SCM Decision No. 165/9 of 3 April 2018, <https://www.csm.md/files/Hotaririle/2018/09/165-9.pdf>.

⁹⁰ SCM Decision No. 213/11 of 25 April 2018, <https://www.csm.md/files/Hotaririle/2018/11/213-11.pdf>.

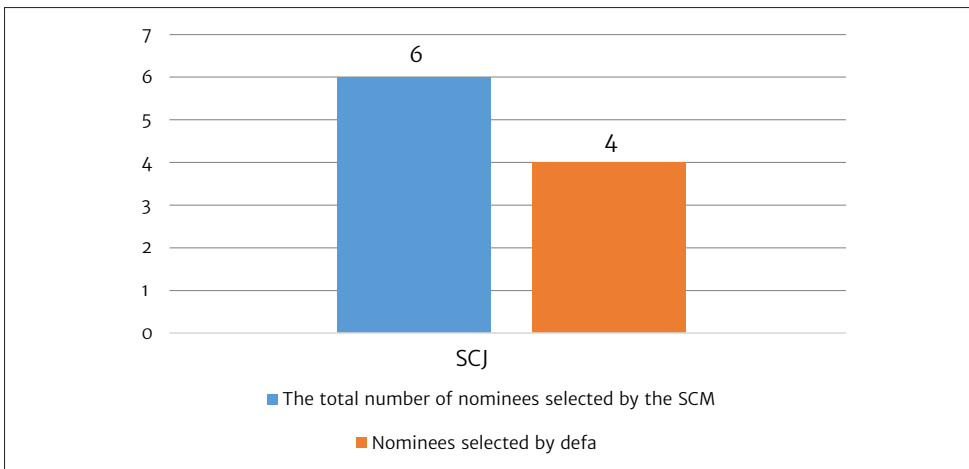
⁹¹ SCM Decision No. 344/18 of 24 July 2018, <https://www.csm.md/files/Hotaririle/2018/18/344-18.pdf>.

4.1.2. Contests that Had a Single Candidate

In contests for promotion to the SCJ, four out of six candidates were selected by the SCM based on contests with one candidate. During the previous period,⁹² the rate of contests for promotion to the SCJ with a single candidate was 8% (one competition), and, during the reference period, it was 67% (four contests).

This a worrying trend from the previous period,⁹³ when the rate of contests for the SCJ with a single candidate was 8%. The tendency to promote judges to the SCJ based on contests with one candidate gives the impression that judges are increasingly unwilling to compete for promotion to the SCJ.

Graph 5. Candidates selected by the SCM for the SCJ by default



4.1.3. Invalidated Contests

In its decisions on the rejection of candidates for promotion to the SCJ, the SCM does not explain why it rejects and invalidates the contests, other than that “the number of votes from the SCM Plenum was insufficient.” For example, in the competition of 25 April 2018,⁹⁴ the SCM rejected all three candidates for judge at the SCJ because of the insufficient number of votes, without explaining the reasons of its decision, even though previously it had admitted candidates with similar scores. In the same decision, the SCM announced a new competition for the same vacancy.

92 Data for the period from 1 January 2013 through 31 March 2017.

93 Data for the period from 1 January 2013 through 31 March 2017.

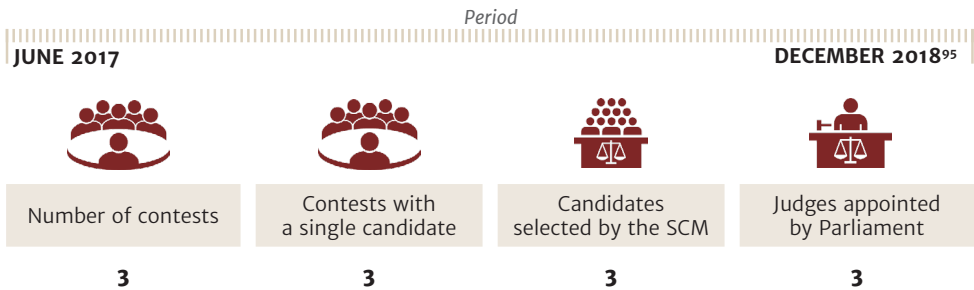
94 SCM Decision No. 213/11 of 25 April 2018, <https://www.csm.md/files/Hotaririle/2018/11/213-11.pdf>.

5. Promotion to Administrative Positions at Courts of appeal and the Supreme Court of Justice

5.1. The Organization and Number of Contests

a. Selection to administrative positions at courts of appeal

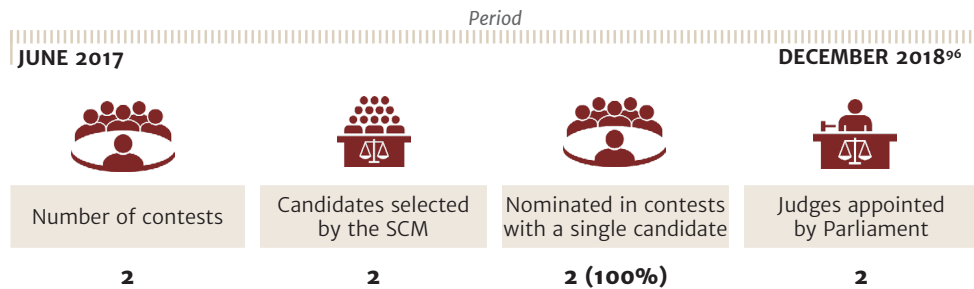
Table 29. Contests held at courts of appeal during the reference period



During the reference period, the SCM announced one competition for promotion to chief judge or deputy chief judge of an appellate court. All told, three contests took place, two of which were announced before 1 June 2017. All three contests (100%) had a single candidate each. The contests resulted in the nomination of three judges (100%) by default.

b. Selection to Administrative positions at the SCJ

Table 30. Contests for the SCJ and the number of candidates during the reference period



From 1 June 2017 through 31 December 2018, the SCM announced three contests for promotion to chief judge and deputy chief judge at the SCJ and its departments for criminal and civil cases. Applications were received for all three contests. However, only two contests took place, and the third one was put off due to lack of quorum at the Selection Board during the evaluation of the candidates. The two contests that took place had one candidate each, which is 100% of all held contests.

⁹⁵ As of 31 December 2018.

⁹⁶ As of 31 December 2018.

The extended competition was for deputy chief justice of the SCJ and chief judge of the SCJ's Department for Criminal Cases.⁹⁷ The candidates of that competition, Petru MORARU and Nadejda TOMA, requested that the SCM suspend the application deadline until the Selection Board—which had five members out of the statutory seven—could make up a quorum. On 6 March 2018, the SCM ordered the suspension of the deadline, and on 17 April 2018, the SCM Plenum appointed a new civil society member to the Selection Board, and thus a quorum was made up. On 8 May 2018, the SCM resumed⁹⁸ and extended the competition to 13 December 2019,⁹⁹ which had not taken place yet as of the publication of this report.

The conducting of contests for administrative positions at the highest national court with only one candidate should raise concerns. Contests with only one candidate rule out a genuinely competitive selection of the best candidate.

5.2. Competition Results and Main Findings:

In this section, we will present SCM decisions on the promotion of judges to administrative positions at courts of appeal and the SCJ, SCM's consideration of the score from the Selection Board when it selects candidates, and the reasoning from its nomination decisions.

5.2.1. SCM's Consideration of the Score from the Selection Board

All contests (100%) that took place during the reference period and resulted in candidates proposed for promotion to administrative positions at courts of appeal and the SCJ had only one candidate each. Therefore, it is impossible to appraise whether the SCM took the score offered by the Selection Board into consideration or not.

5.2.2. Contests that Had a Single Candidate

During the reference period, absolutely all contests for administrative positions at courts of appeal and the SCJ had only one candidate each: 100% of the judges nominated by the SCM for administrative positions at courts of appeal (three candidates out of three candidates) and 100% of the judges nominated for promotion to administrative positions at the SCJ (two candidates out of two candidates). One competition for deputy chief justice of the SCJ had two candidates, but it was put off and did not take place until the end of the reference period. The competition results raise even more concerns than the situation during the previous period.¹⁰⁰ For six years (2013 – 2018), the SCM has maintained the same practice of conducting all contests for administrative positions at the SCJ with only one candidate. The same rate of 100% held during the reference period for contests for administrative positions at courts of appeal with one candidate, in comparison with the previous period, when it was 83%. This tendency of promoting judges based on contests with only one candidate gives the impression that either judges are increasingly unwilling to compete for promotion to courts of appeal and the SCJ or that deals are closed on the backstage. One cause could be the lack of reasoning in SCM's decisions concerning the admission or rejection of candidates, which raises uncertainty among

⁹⁷ SCM Decision No. 113/6 of 20 February 2018, <https://www.csm.md/files/Hotaririle/2018/06/113-6.pdf>.

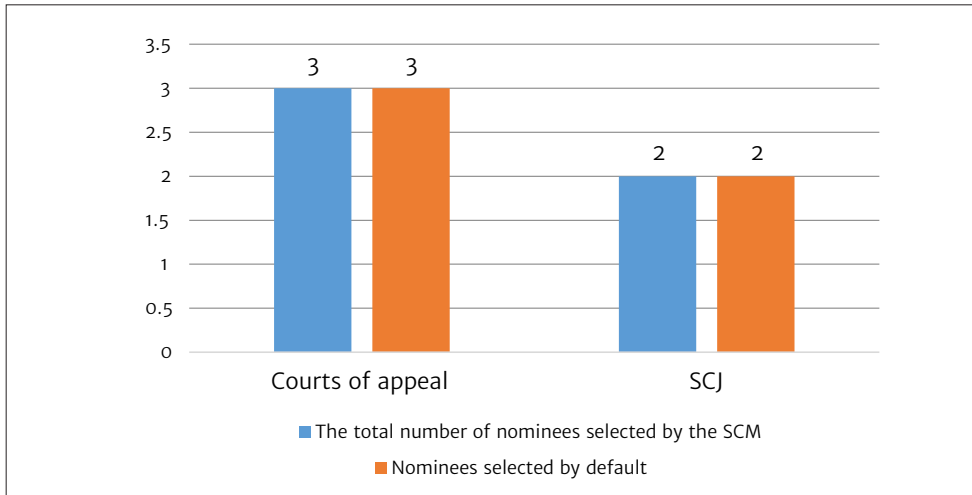
⁹⁸ SCM Decision No. 249/12 of 8 May 2018, <https://www.csm.md/files/Hotaririle/2018/12/249-12.pdf>.

⁹⁹ SCM Decision No. 436/32 of 13 December 2019, <https://www.csm.md/files/Hotaririle/2019/32/436-32.pdf>.

¹⁰⁰ 1 January 2013 – 31 March 2017.

judges and does not stimulate them to compete. On the other hand, it is possible that judges do not have enough time to develop managerial and communication skills, which discourages them from competing for these positions.

Graph 6. Candidates selected by the SCM for administrative positions at courts of appeal and the SCJ by default



5.2.3. Invalidated Contests

On 20 February 2018,¹⁰¹ the SCM announced a competition for deputy chief justice of the SCJ. Two candidates applied: Petru MORARU and Nadejda TOMA. Due to lack of quorum, the Selection Board could not examine their applications. The candidates requested that the application deadline be suspended. When a quorum was made up, the SCM decided to suspend the competition and extended the application deadline. Until the end of the reference period, the SCM did not conduct other contests for this vacancy. **Thus, even though there were candidates, the SCM extended the application deadline of the competition for promotion to a managerial position at the SCJ due to lack of quorum at the Selection Board. Until the end of the reference period,¹⁰² the SCM did not conduct other contests for deputy chief justice of the SCJ.**

6. The Promotion of SCM Members during Office

In its 2017 Analysis, the LRCM warned of the practice of promoting SCM members to higher courts or administrative positions or transferring them to other courts. The LRCM identified three such cases¹⁰³ during the previous period. This practice continued during the reference period. Thus, from June 2017 through December 2018, the following members of the SCM were promoted:

¹⁰¹ SCM Decision No. 113/6 of 20 February 2018, <https://www.csm.md/files/Hotaririle/2018/06/113-6.pdf>.

¹⁰² As of 31 December 2018.

¹⁰³ Nichifor COROCHII, ex-chairperson of the SCM, nominated for promotion to the Chisinau Court of Appeals on 21 January 2014, approximately four months after the termination of his tenure at the SCM; Anatolie ȚURCAN, SCM member, nominated for promotion to the SCJ on 23 June 2015; Dorel MUSTEATA, SCM member, transferred without a competition from the Anenii Noi Court to Centru Court on 29 September 2016, after the reorganization of the courts' map.

1. Victor MICU, chairperson of the SCM, was nominated for promotion to the SCJ on 6 June 2017.¹⁰⁴ On 6 September 2016, Mr. Micu was also appointed member of the Integrity Council.¹⁰⁵
2. The SCM member Dorel MUSTEAȚĂ, previously transferred without a competition from the Anenii Noi Court to the Chișinău Court, was proposed for promotion to the SCJ on 24 July 2018 (Parliament failed voting for his candidacy).¹⁰⁶ In 2019, Mr. Musteață was elected to the NIJ's Board of Directors.¹⁰⁷
3. The SCM member Anatolie GALBEN, was nominated for promotion to the Chișinău Court of Appeals on 24 July 2018.¹⁰⁸

We consider that such a practice is undesirable for several reasons. First, the promotion or transfer of a member of the SCM to a more prestigious court obviously raises suspicions of favors from colleagues at the SCM. These suspicions also appear when a member of the SCM is promoted immediately after the termination of their office. Although, in theory, these suspicions could prove unfounded, they still erode confidence in the judiciary, weak as it already is. SCM members should manifest utter diligence and offer an example for all judges and the entire society to prove that they are fair and that their primary interests are the protection and promotion of judicial independence and the quality of justice rather than personal pursuits.

It seems that this situation changed after the enactment of amendments to the judicial selection and promotion procedure in October 2018.¹⁰⁹ Thus, SCM members from the judiciary and judges posted to the NIJ and the SCM's Secretariat are not allowed to compete for promotion to a higher court or transfer to a court of the same level during their office and six months after the termination of their member tenure or the term of their post of duty. These rules have already been in place in the prosecution system since 2016. The Superior Council of Prosecutors included a similar restriction in their regulations, according to which “the members of the Council cannot participate in contests for selection or promotion to prosecutor, including prosecutor general, during their tenure and six months after its termination.”¹¹⁰

¹⁰⁴ SCM Decision No. 380/18 of 6 June 2017, <http://csm.md/files/Hotaririle/2017/18/380-18.pdf>.

¹⁰⁵ SCM Decision No. 559/23 of 6 September 2016, <http://ani.md/sites/default/files/documente/Actul%20confirmativ%20al%20CSM.pdf>.

¹⁰⁶ SCM Decision No. 344/18 of 24 July 2018, <https://www.csm.md/files/Hotaririle/2018/18/344-18.pdf>.

¹⁰⁷ See <https://www.inj.md/ro/componenta>.

¹⁰⁸ SCM Decision No. 345/18 of 24 July 2018, <https://www.csm.md/files/Hotaririle/2018/18/345-18.pdf>.

¹⁰⁹ Law No. 137 of 27 September 2018 for amending certain legislative acts, effective since 19 October 2018, with some exceptions.

¹¹⁰ SCP, Regulation of the Superior Council of Prosecutors approved by Decision No. 12-225/16 of 14 September 2016, para. 2.20, http://www.procuratura.md/file/2017-06-24_Regulamentul%20CSP%20final.pdf.

Main Conclusions and Recommendations

In 2012, the Parliament enacted several legislative amendments introduced as part of the implementation of the Justice Sector Reform Strategy for 2011 – 2016, which formed the basis for a transparent and merit-based selection and promotion system.

Apparently, the application of these amendments did not yield the expected results. Both previous analyses and the analysis of the practice applied from June 2017 through December 2018 reveal lack of progress in comparison with previous findings. The entities involved in the selection process, namely the SCM and the Selection Board, still have duplicated responsibilities. The SCM still does not provide reasoning in its decisions concerning judicial career, especially when they are at odds with the score offered by the Selection Board. This perpetuates the perception that SCM members' personal beliefs outweigh the score offered by the SCM Special Boards empowered to select candidates. The insufficient reasoning of decisions fuels suspicions that selection in the judicial system is guided by other criteria than the ones stated in SCM's regulations. This negatively impacts confidence in the judiciary, discourages aspiring judges, and, in the long run, can weaken the judicial selection and promotion system.

The Organization of Contests. The analysis of the SCM's practice of organizing contests for selection and promotion revealed that the SCM continues announcing a contest for each vacancy, without preplanning them all. These results in the perpetual presence of numerous contests on the agenda of the SCM and its boards. During the reference period, the SCM organized an average of 2.6 contests for vacancies in a month, 0.8 contests for promotion to courts of appeal in a month, and approximately one competition for promotion to the SCM in three months. Such practice is inefficient, as shown by so many contests declared failed and the absence of candidates in numerous contests. The strategic planning of contests, their biannual organization, and their announcement sufficiently in advance could ensure certainty for candidates and for the system and enough candidates and would enable the nomination of the best candidate.

Numerous contests have only one candidate. From June 2017 through December 2018, 18% of candidates proposed were based on contests with one candidate. Four (33%) out of 12 candidates for promotion to courts of appeal were selected based on contests with one

candidate. Four (67%) out of the six candidates for promotion to the SCJ were selected based on contests with one candidate. 100% of candidates for promotion to administrative positions at courts of all levels were selected based on contests with one candidate. The rate of contests with a single candidate increased from the previous period.¹¹¹ That so many contests had a single candidate raises the question whether this was due to lack of a critical number of judges willing to participate or to their reluctance to participate for various reasons. Contests with only one candidate rule out a genuinely competitive selection of the best candidate.

The SCM declares many contests failed without explaining the reasons and only saying that candidates did not receive the required number of votes. From June 2017 through December 2018, in 13 contests (25%) for selection at district courts, 2 contests for promotion to courts of appeal, and one contest for promotion to the SCJ, the candidates failed to gain the required number of votes from the SCM. That so many contests failed due to lack of the required number of votes from SCM members raises the question why votes are withheld. The SCM should either explain what determined the lack of votes or change the contest rules to exclude the possibility of contests invalidated due to lack of votes. The lack of votes could mean a mere lack of quorum, and SCM decisions do not clarify this explicitly enough. In comparison with the previous period,¹¹² fewer contests announced by the SCM for promotion to courts of appeal were cancelled due to lack of candidates or their withdrawal before voting and the SCM's announcement of repeated contests. All contests for administrative positions at courts of appeal and the SCJ had candidates.

The Reasoning of SCM's decisions. The insufficient reasoning of SCM's decisions and the invalidation of many contests are among the causes that could account for judges' unwillingness to participate in contests. The lack of candidates for administrative positions at courts is indicative of a systemic problem that needs appropriate response from the SCM.

In autumn 2018, the Parliament enacted a series of important legislative amendments on the selection and promotion of judges, which became effective in October 2018 and were first applied by the SCM in January 2019.¹¹³ Many of the novelties from those amendments were recommended in the LRCM's 2017 Analysis and represent a much awaited positive change. As a result, in late 2018, the SCM decided to reset the selection and promotion system so that all candidates for judge, administrative position, transfer, or promotion to higher courts who passed the selection process and were in the Register of candidates would have to pass a repeated evaluation by the Selection Board.¹¹⁴ We hope that this step will represent a new phase for the judiciary, where meritocracy and transparency will be put at the forefront of an independent, accountable, and professional judicial system.

¹¹¹ 1 January 2013 – 31 March 2017.


¹¹² 1 January 2013 – 31 March 2017.

¹¹³ Law No. 137 of 27 September 2018 for amending certain legislative acts, effective since 19 October 2018, with some exceptions.

¹¹⁴ SCM Decision No. 614/29 of 20 December 2018, <https://www.csm.md/files/Hotaririle/2018/28/614-29.pdf>.

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