

**Public Appeal:
Civil Society Organizations are Concerned About the Manner of
Appointment and Promotion of Some Judges**

8 February 2016

The signatories hereto consider that the decisions of the Superior Council of Magistracy (SCM) on the appointment and promotion of some judges, adopted at the meeting as of 26 January 2016, raise issues about observance of the principles of meritocracy and integrity. The Law on the Status of Judge stipulates that the process of selection of candidates for the function of judge shall be carried out based on merit, having regard to qualifications, integrity, ability and efficiency of the candidates.

At the meeting as of [26 January 2016, the SCM](#) examined several contests related to the appointment and promotion of judges. The signatories hereto express their bewilderment on the way SCM carried out three contests, with details of these contests explained below, and their concern that the SCM does not propose the best candidates for appointment and promotion to the Parliament and, respectively, to the President of the Republic of Moldova.

1. On 28 April 2015, the SCM announced a **contest for the vacant position of the Vice-president of the SCJ, President of the Civil, Economic and Administrative Board**. Later, on 23 June 2015, the SCM announced a new contest because no candidate applied for the previous one. On 11 August 2015, for the same reason, the SCM announced the same contest for the third time. A single candidate, Mrs. Tatiana RADUCANU, (the judge at the Supreme Court of Justice (SCJ) detached to the SCM) applied for this position. During the meeting as of 26 January 2016, the SCM considered that the announced contest failed as Mrs. Raducanu did not accumulate the necessary number of votes (4 votes „pro“ and 6 votes „against“). Thus, a new contest for this administrative position was announced.

The solution adopted by the SCM in this case is not clear, given that Mrs. Raducanu has been the only candidate in the contest that was announced for three times, and her professional experience is vast and notorious. Moreover, in this case the number of votes necessary to reject a candidate (seven) was not met and two members of the SCM did not participate in voting for objective reasons. Accordingly, the contest had to be postponed for another meeting of the SCM, rather than rejecting the candidate and announcing a new contest. Thus, it seems that artificial conditions for rejecting an eligible candidate for the position of the Vice-president of the SCJ were created.

2. Six candidates participated in the contest for **the vacant position of the judge at the SCJ**. The SCM has decided to propose Mrs. Mariana PITIC (judge at Centru District Court (mun. Chisinau)) to the Parliament of the Republic of Moldova for the appointment as a judge at the SCJ. Mrs. Pitic was rated by the Board for Selection and Career of Judges by 82 points. The following candidates also participated in this contest: Domnica MANOLE, judge at the Court of Appeals, Chisinau, with 25 years of experience as a judge and rated by 100 points; Grigore SISCANU, judge at Nisporeni District Court with 36 years of experience as a judge and rated by 86 points; Zinaida TALPALARU, judge at the District Commercial Court with 18 years of experience as a judge and rated by 80 points; Viorica PUICA, judge at Botanica District Court (mun. Chisinau), with experience of 13 years as a judge and rated by 80 points; and Mihail DIACONU, judge at Buiucani District Court (mun. Chisinau), with experience of 11 years as a judge and rated by 70 points. During the interview of the candidates conducted during the SCM meeting, it was confirmed that Mrs. Pitic has 4 years of professional experience as a judge and over 3 years of work experience at the National Institute of Justice (NIJ). During the SCM meeting it was also established that Mrs. Pitic has previously breached the Code of Ethics for judges, although she did not recognize it during the interview, and, for unknown reasons, did not examine case files at the Centru District Court mun. Chisinau within the period September 2015 (end of the term of office at the NIJ) - January 2016 (interview for the position of judge at the SCJ).

In this case, given that the SCM has selected and proposed for promotion to the SCJ a judge who was not rated with the highest score by the Board for Selection and Career of Judges, who has the smallest experience as a judge out of all candidates, the SCM has to explain why it proposed this particular candidate for the promotion to the highest court of the country. Earlier, in at least four cases, the SCM proposed to the Parliament to appoint as judges at the SCJ some candidates with a lower score or even with the smallest one, providing no reasoning for such proposals (Oleg STERNIOALA - [SCM Decision no. 81/3 as of 28 January 2014](#), Ion GUZUN - [SCM Decision](#)

[no. 124/4 as of 4 February 2014](#), Petru MORARU and Nadejda TOMA - [SCM Decision no. 550/19 as of 1 July 2014](#)). In 2015 no judges were promoted to the SCJ.

3. At the same meeting as of 26 January 2016, the SCM has proposed to the President of the Republic of Moldova to appoint Mrs. Lucia BAGRIN *as a judge at Centru District Court (mun. Chisinau)* and to appoint Mr. Sergei GUBENCO *as the President of the Court of Appeal Comrat* for a 4 years mandate. Earlier, the President of the Republic of Moldova refused the appointment of Mrs. BAGRIN as a judge and the promotion of Mr. GUBENCO as a judge at the Court of Appeal Comrat. In both cases some elements of the risk factors and failure to comply with mandatory criteria for accession to the position of judge were invoked.¹

Under these circumstances the SCM has to explain in its decisions if the reasons previously given by the President of the Republic of Moldova with regard to these two candidates disappeared or proved to be untrue and give explanations on any repeated appointments of candidates that were previously rejected by the President on the ground of lack of integrity. Otherwise, it appears that the SCM tends to appoint to the positions of judges and promote persons marred by various suspicions of the lack of integrity. This alters the authority and ability of the SCM to promote a body of independent and incorrupt judges.²

The signatories of the present appeal request to:

- **The Superior Council of Magistracy:**
 - a. to review the issue related to holding of the position of the Vice-president at the SCJ and adopt a reasoned decision by open vote of its members;
 - b. to indicate the criteria according to which it was decided to promote Mrs. Mariana PITIC as a judge at the SCJ and provide reasoning for the adopted decision;
 - c. to indicate whether Mrs. Lucia BAGRIN accumulated the required number of votes (eight votes) for her repeated proposal to the President of the Republic of Moldova to be appointed as a judge, under Art. 19 para. (4) of the Law on the Superior Council of Magistracy;
 - d. to indicate, if there were revealed changes as regards the circumstances previously invoked by the President of the Republic of Moldova in relation to Mrs. Lucia BAGRIN and Mr. Serghei GUBENCO.
- **The Parliament of the Republic of Moldova and Members of the Parliament:** to verify, if the candidate proposed by the SCM for the appointment as a judge at the SCJ meets the criteria of integrity and if s/he is the best candidate according to the evaluation criteria as concerns performance, selection and career of judges.
- **The President of the Republic of Moldova:**
 - a. to verify information about the candidates for the position of judge or administrative positions within the framework of court instances and to appoint only those with irreproachable reputation;
 - b. to provide reasoning for the refusals regarding the appointment as a judge or promotion, and to abandon the practice of not providing reasoning for the refusals on the grounds that the information that led to the refusal constitutes a state secret.

Signatory organizations:

1. Legal Resource Centre from Moldova (LRCM)
2. Centre for Investigative Journalism (CIJ)
3. „Promo-LEX” Association
4. Transparency International Moldova (TI-Moldova)
5. Association for Participatory Democracy (ADEPT)
6. Association for Efficient and Responsible Governance (AGER)
7. Association of Independent Press (API)
8. Institute for Public Policy (IPP)
9. Institute for European Policy and Reforms (IEPR)

¹ As back as 29 September 2014 the civil society [has expressed concern](#) regarding the appointment as a judge of Mrs. Bagrin and four other candidates on the grounds of information provided by mass media based on documents by SIS, which cast doubt on their integrity. Out of those five candidates, a candidate, Mrs. Maria COZMA, was appointed the President of Ciocana District Court. Another candidate, Mrs. Natalia BERBEC, has been repeatedly proposed by the SCM for the position of judge at Hîncești Court without rejecting the arguments invoked by the President in his first refusal. Mr. Petru HARMANIUC and Mr. Corneliu CRETU mentioned in the appeal as of 29 September 2014 are still candidates for the position of judges.

² It is important to note that, according to the [survey „Perception of judges, prosecutors and lawyers on justice sector reform and fight with corruption”](#), carried out within October-December 2015 by the Legal Resources Centre from Moldova and CBS-Axa, 43% of judges disagree with the statement that the way of promotion of judges is fair and based on merit.