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Transparency and Efficiency of the Superior Council of Magistracy of the Republic of Moldova

JANUARY 2015 – MARCH 2016

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LRCM

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Translation from Romanian



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List of abbreviations

BEPJ – the Board for Evaluating Performances of Judges

BSCJ – the Board for Selection and Career of Judges

SCJ – the Supreme Court of Justice of the Republic of Moldova

SCM / Council – the Superior Council of Magistracy of the Republic of Moldova

The analytical document about the organisation of meetings and transparency of the SCM from 2015 – Analytical document „Organizing meetings and transparency of the Superior Council of Magistracy – challenges and perspectives”, Legal Resources Centre from Moldova, June 2015 (available at <http://crjm.org/wp-content/uploads/2015/06/CRJM-DA-CSM-2015.pdf>)

Law no. 154 of 5 July 2012 – Law no. 154 of 5 July 2012 on the selection, evaluation or performances and career of judges

Law no. 544 of 20 July 1995 – Law no. 544 of 20 July 1995 on the status of judges

Law no. 947 of 19 July 1996 - Law no. 947 of 19 July 1996 on the Superior Council of Magistracy

ICMS - Integrated Case Management System

LRCM Report on Monitoring the SCM from 2013 – Monitoring Report „Transparency and efficiency of the Superior Council of Magistracy of the Republic of Moldova. 2010-2012”, Legal Resources Centre from Moldova, 2013 (available at http://crjm.org/wp-content/uploads/2014/04/Raport_Transparenta_si_eficienta_CCSM_2010_2012.pdf)

Regulation of the SCM activity – Regulation on the organisation and functioning of the Superior Council of Magistracy, approved by Decision of the Superior Council of Magistracy no. 668/26 of 15 September 2015, published in the Official Monitor of the Republic of Moldova no. 13-19 of 22 January 2016

SRS „Femida” – hearings audio recording system „SRS” Femida

JSRS – Justice Sector Reform Strategy 2011-2016, approved by Law no. 231 of 25 November 2011

Executive Summary

The Monitoring Report assesses the Superior Council of Magistracy (SCM) activity from two perspectives - administration of the judiciary (first chapter) and operation of the SCM (second chapter). Many aspects covered in this report address by comparison the recommendations and conclusions expressed in other documents previously drafted by the Legal Resources Centre from Moldova (LRCM). This report reviews the SCM activity for the period January 2015 to March 2016 and reflects the situation as of 1 April 2016, while reference to the activity of the investigative judges and any other relevant information that needed further analysis – as of 1 May 2016. This document was drafted based on monitoring the SCM sittings attended by the representatives of the LRCM, the documents published on the SCM website and other publicly available information.

The first chapter refers to the administration of the judiciary by the SCM.

Drafting the budget of courts is one of the most often-discussed subjects in the SCM sittings. Since 2012, when financial resources were allocated for the implementation of the JSRS until 2016, the amounts allocated for courts budget tripled. These expenses cover, in particular, increase of judges' salaries, increase in number of personnel who assist judges, capital investments etc. The SCM has not adopted a policy on capital investments and upgrading of the equipment necessary for the proper functioning of the courts and their information system, and does not have an annual investment plan. Additionally, the SCM does not have a written and publicly available policy on the criteria and procedure for granting bonuses for jubilees, professional holidays and non-working holidays in the judiciary. The SCM does not publish in advance the draft budgets of the courts, which substantially diminishes the transparency of the SCM's activity. Court budgets are to be discussed in public sittings, avoiding deliberations.

Career of judges is another key area in the activity of the SCM. In 2015 the SCM announced 18 contests for judicial vacancies, in 2014 the SCM announced 27 contests for vacancies, and in 2013 the SCM announced 13 contests for such vacancies. The SCM has not always managed to fill the vacancies, especially for courts with less than six judges. **The high number of contests** announced by the SCM causes always confusion when they are posted and limits predictability for potential candidates. In several cases, the SCM proposed to the President of the country or to the Parliament the appointment of candidates with **a lower score obtained in the BSCJ, without reasoning the respective decision, as required**

by law. Lengthy interims for the key positions in the system have raised many questions in the monitored period. Namely, the position of the deputy-president of the SCJ is vacant for more than a year and the position of the president of the Centru district Court, Chişinău municipality, for more than 16 months.

According to the legislation, **the President of the country may refuse the appointment, promotion, reconfirmation or transfer of a judge**, but he is obliged to reason his refusal. In such cases, the SCM may repeatedly propose the appointment of the same person, such decision requiring the two thirds of the votes of its members. During the monitored period, there were several cases of refusal by the President. Among the alleged reasons were: discrediting of justice, lack of objectivity, possession of unjustified wealth, integrity issues etc. In at least three cases, the SCM repeatedly proposed the same person, without giving reasons for its decision, particularly on the thoroughness of the grounds relied on in the refusal of the President. At the same time, the SCM does not indicate the number of votes in all decisions, leaving some question marks in terms of its compliance with the two thirds vote of its members requirement. If the SCM continues to ignore the information provided by the head of the state about the candidates, this could lead to the adoption of some disproportionate and dangerous measures.

During January 2015 - March 2016, **24 judges were dismissed.** Most of the resigned judges submitted requests for resignation in connection with their retirement. In several cases, the **SCM accepted the resignation of judges**, although there were requests on initiating disciplinary proceedings or criminal proceedings against them. Leaving the system without being disciplined or punished gives a judge the right to a single dismissal allowance provided for in art. 26 para. (3) and special pension under art. 32 of Law no. 544 of 20 July 1995. A judge dismissed under art. 25 para. (1) let. b), f), g) and i)¹ loses the right to dismissal allowance and special pension. In such circumstances, a judge could not be considered to be a person of an impeccable reputation and therefore will not be appointed in a number of positions where irreproachable reputation is a pre-requisite for appointment (e.g., defence attorney, prosecutor, judge at the Constitutional Court, Ombudsman etc.).

During the monitoring period, the SCM examined several requests **for transfer or temporary transfer of judges.** Most requests for transfer in these periods referred to courts in Chişinău municipality. In all cases of temporary transfer, the court presidents, who requested the transfer, indicated the concrete names of judges whom they wanted to transfer. Some transfers created a shortage in number of judges to examine cases in courts wherefrom they were transferred or constituted a disguised transfer for a permanent term.

¹ Article 25. Dismissal of the judge.

(1) Judge is released from his/her position by the body which appointed him/her in case of:

- b) establishing obvious lack of compliance with the position, as a result of performance evaluation;
- f) committing a disciplinary violation specified in Law no.178 of 25 July 2014 on the disciplinary liability of judges;
- g) issuing a definitive conviction sentence;
- i) violation of provisions of art.8 (a.n. - incompatibilities);

According to the SCM Regulation on the **procedure and conditions of appointment of investigative judges**, a judge to be appointed to exercise the powers of an investigative judge must have at least 3 years of experience as a judge. In 14 courts, the SCM appointed, without any justification, investigative judges who had less than 3 years of experience as a judge. According to pt. 8¹ of the SCM Regulation on the random assignment of cases for examination in courts, all investigative judges must also examine ordinary cases in the volume of 50%. This provision is not fair and proportional, given the very different workload among the investigative judges from Chişinău municipality and other districts.

In the period January 2015 to March 2016, the SCM published some information on **the random assignment of cases**. The SCM monitors the implementation of the Integrated Case Management System (ICMS), which ensures proper random assignment of cases. This topic is often discussed at the SCM sittings. Still, undertaking of such actions does not suffice. "The scandal" started because of the allegations brought to the former deputy-president of the SCJ by the President of the SCM, followed by brief information about a criminal case initiated against other persons, which came only to further fuel suspicions of personal pressures instead of identifying clear actions to counteract illegalities. Thus, the SCM must intensify the monitoring of the ICMS and SRS "Femida" application and publish this information on the SCM website.

The second chapter refers to the functioning of the SCM.

In 2015, the SCM adopted 994 decisions and during January-March 2016 - more than 200 decisions. Although the Law on the SCM prescribes that all decisions shall be published, more than 15 decisions were not published on the SCM website in 2015.

The **draft agenda of the sitting** is posted on the SCM website three days before the sitting and pressing or urgent issues are included on the supplementary agenda. The SCM does not usually place on its website the **supporting materials** to the agenda of the meetings for some issues to be discussed at the SCM meeting. These specifically relate to the allocation of additional funds for the courts, granting bonuses/awards to judges, examining the draft laws when the opinion of the SCM is requested, the notes of the Judicial Inspection etc.

Art. 24 para. (2) of the Law on the SCM provides that the voting procedure shall be carried out in the absence of the person whose case is being examined and in the absence of other persons who were invited. In practice, voting of decisions by the SCM members is, in almost all cases, performed in closed sitting, where only the SCM members participate, called „deliberations”. The SCM **adopts decisions by "deliberations"** even in matters that do not involve discussion of sensitive topics or personal data, such as expressing opinions on the draft laws.

Art. 24 para. (1) of the Law on the SCM stipulates that decisions shall be adopted with open vote of the majority of its present members, except as provided in Article 19 para. (4). In this sense, the SCM does not have a constant practice on **indicating the number of votes in the adopted decisions**, even in cases of repeated proposals to the President of the country for appointment or promotion of a judge, for which the law requires the vote of two thirds

of the SCM members. Failure to indicate the exact number of votes fuels suspicions about meeting the required number of votes in all decisions, especially in some sensitive ones.

Pt. 11.11 of the Regulation on the activity of the SCM provides that the **SCM decision must be lawful, justified and reasoned**. In most cases related to the career of judges, the SCM invoked in its reasoning that the vote for one candidate or another is an exclusive right of a SCM member without actually being obliged to reason the adopted solution. This happened even when the SCM proposed for promotion to the courts of appeal or SCJ candidates who did not accumulate the highest score in the BSCJ and/or had the shortest experience as a judge of all candidates.

In the period January 2015 to March 2016, the SCJ examined about 30 cases as a result of appeals lodged against the SCM decisions (in any field, including disciplinary cases). In all cases, the dispositions were published, still the fully reasoned decisions were not published in all cases. Failure to publish all reasoned decisions represents a significant deficiency of the SCJ.

Of the total number of appeals lodged against the SCM decisions, **the SCJ annulled only two decisions of the SCM, for procedural grounds**. The SCM did not return to the two decisions annulled by the SCJ, and respectively, did not eliminate the found shortcomings and left the decisions without examination. These related to the dismissal of a judge for incompatibility and lack of reasoning in a SCJ decision, which resulted in the release of an offender from criminal liability.

Administration of the Judiciary

1.1. Court Budgets

In 2015, the SCM took a number of actions to implement a system of financial management and control within the courts. By the SCM Decision [no. 217 of 24 March 2015](#) seven pilot courts were appointed to design and implement this system, and at the SCM sitting of [15 September 2015](#) the report for the implementation of the system of financial management and control in the courts was examined. From that date, the management system is binding for all courts. The document is not available on the SCM website.

By decisions [no. 606/20 of 15 July 2014](#) and [no. 773/25 of 23 September 2014](#) the SCM approved the draft budgets of courts for 2015 and estimates for the years 2016-2017 based on the Methodology of planning courts budgets². The total budget of the courts for 2015 was estimated at 393,435,000 MDL, for 2016 - 455,668,600 MDL (+ 16% compared to 2015) and for 2017 - 373,462,400 MDL (-5% compared to 2015).

The courts budget for 2015, as the one for 2016, were not adopted on time³. Thus, in 2015 and 2016, the provisions on limits of specified spending and investments⁴ adopted by the Ministry of Finance were applied, and the 2015 Law on budget was approved following the Government assumed responsibility for it on 12 April 2015. By 15 May 2016, the State budget for 2016 has not been yet approved by the Parliament.

For 2016, the courts proposed for approval allowances amounting to 438,418,600 MDL, with 92,815,100 MDL more (+26.9%) than in 2015. The draft state budget for the year 2016 prepared by the Ministry of Finance⁵ in April this year, provides a total budget of 439,398,000 MDL, of which 70,602,900 MDL are capital investments. Thus, in 2016, it is planned to extend the building of the Chişinău Court of Appeal, reconstruct Buiucani district Court building, Chişinău municipality, and construct or extend the buildings of Cahul, Edineţ, Făleşti, Soroca and Ungheni courts⁶.

² SCM Decision no. [109/3 of 28 January 2014](#).

³ Law on state budget for 2015 no. 72 of 12 April 2015.

⁴ See art. 47 para. (1) let. e) and art. 57 of the Law on public finances and budgetary-fiscal liability no. 181 of 25 July 2014.

⁵ Draft law on state budget for 2016, available at <http://particip.gov.md/proiectview.php?l=ro&cid=3136>.

⁶ See annex. 4 to the Draft law on state budget for 2016, available at http://particip.gov.md/public/documente/121/ro_3136_Proiect-2016.zip.

In the 2015 Law on budget, initially some 286,210,200 MDL were allocated for courts, i.e. only 73% of the amount approved by the SCM. For the same period, the allowances for investments and repairs, and expenses were included only for transitional objectives being under construction since 2014, which led to delay in the initiation of procurement procedures. Moreover, of the provisional budget allocations, courts also paid the debts amounting to 5,307,000 MDL, due to non-financing of payment documents submitted to the State Treasury. In February 2016, several presidents of courts notified the SCM about the debts, including for the payment of salaries⁷.

During 2015, several court presidents requested amendments to the budgets for 2015⁸ and 2016⁹. Based on the adopted decisions, the SCM proposed the Ministry of Finance to identify opportunities for the allocation of additional funds from sources budgeted for the justice sector reform. These requests were especially grounded on the need to complete the construction works and pay allowances for dismissal or other salary rights of judges¹⁰.

According to the 2015 State Budget Law no. 72 of 12 April 2015, 399,435,700 MDL were allocated to the courts budget¹¹. For the purpose of capital investments, the highest allowances were made for the following courts:

- Chişinău Court of Appeal – 33,263,400 MDL for the extension of the court’s premises,
- Buiucani district Court, Chişinău municipality – 5,781,000 MDL for capital renovation of the court’s premises¹²,
- Rîşcani district Court, Chişinău municipality – 3,231,000 MDL for the extension of the court’s premises,
- Ungheni district Court – 10,820,000 MDL for the construction of court’s premises¹³.

During 2015, at least four cases in which the SCM groundlessly or inconsistently approved or rejected requests of court presidents regarding the budget were ascertained. For example, in March 2015, the SCM refused allocation of additional funds requested by the president of Căuşeni court¹⁴, although previously the SCM ordered the transfer of the court’s

⁷ SCM Decision no. [186/8 of 22 March 2016](#).

⁸ See SCM Decision [no. 159/7 of 3 March 2015](#) (Rîşcani court, Chişinău municipality–3,230,000 MDL and 890,000 MDL); SCM Decision [no. 613/25 of 2 September 2015](#) (Chişinău Court of Appeal – 17,884,300 MDL); SCM Decision [no. 841/34 of 10 November 2015](#) (Nisporeni court – 17,055 MDL).

⁹ See SCM Decision [no. 709/28 of 6 October 2015](#) (Rîşcani court, Chişinău municipality– 1 mln. MDL); SCM Decision [no. 821/33 of 3 November 2015](#) (Centru court, Chişinău municipality – 13,199,000 MDL); SCM Decision [no. 915/37 of 1 December 2015](#) (Căuşeni court – 556,100 MDL); SCM Decision [no. 955/38 of 8 December 2015](#) (Floreşti court – 1,250,000 MDL).

¹⁰ See SCM decisions [no. 42/2 of 27 January 2015](#), [no. 224/10 of 24 March 2015](#) and [no. 225/10 of 24 March 2015](#).

¹¹ The speech of the President of the SCM within the General Assembly of Judges of 11 March 2016, page 11, available at <http://csm.md/files/adunarea/2016/03/Discurs-MICU.pdf>.

¹² During 2009 – 2011, Buiucani district court, Chişinău municipality, did not manage to use the capital investment expenses of 19 mln. MDL allocated for the capital renovation of the premises. The unspent amount was distributed to other courts, and a part – returned to the state budget.

¹³ See annex no. 3 of the Law no. 72 of 21 April 2015 on the state budget for 2015.

¹⁴ SCM Decision [no. 226/10 of 24 March 2015](#) (Căuşeni district court – 2,444,257 MDL).

premises to the former building of the Bender Court of Appeal (which was liquidated). The SCM grounded its refusal on the fact that at the time of request, the annual state budget for 2015 had not been approved and the courts maintained a provisional budget, thus, the identification of financial sources being not possible at that moment.

Meanwhile, the SCM seems to have a more loyal attitude towards the Chişinău Court of Appeal and Rîşcani district Court, Chişinău municipality. Thus, by the SCM Decision no. [613/25 of 2 September 2015](#), it was decided upon additional allocation of about 18 million MDL for finalising the construction and equipping the Chişinău Court of Appeal¹⁵, while refusing the allocation of about 1 million MDL for the roof of Ungheni district court¹⁶. The President of Ungheni Court informed the SCM that the resources allocated in 2015 for the construction of a new building for Ungheni Court were blocked by the Government and requested the SCM's assistance in unlocking the amounts required for the construction of the building's roof, which would allow better conservation of the building. On 6 October 2015, the SCM upheld the request of the President of Rîşcani district Court, Chişinău municipality, on the allocation of 1 million MDL for designing an extension to the existing premises of the court.

As for additional allocations for the Chişinău Court of Appeal, its president declared in the SCM sitting that he had discussed the matter with the president of the country and political leaders, whom he asked for help in this regard. Finally, the SCM approved the request and proposed the Parliament and the Ministry of Finance to identify opportunities for allocation of additional financial resources for the Chişinău Court of Appeal. The SCM decision was adopted without debating the findings on the procurements for the construction of the Chişinău Court of Appeal made by the Court of Accounts during the audit for the year 2014¹⁷. Then, the Court of Accounts found deficiencies in the organization of the public procurement process, unqualified design of construction works that caused unexpected expenses etc. Between 2012 and 2015, the Court of Appeal benefited of financial allocations of 68,854,900 MDL for the reconstruction and extension of its premises. Granting to and use of funds by the Chişinău Court of Appeal also indicates to a dubious practice when initially a certain expense estimate is approved, which is subsequently considerably increased. Among the reasons might be either poor planning or deliberate indication of lower expenses from the

¹⁵ See „Reconstruction of Chişinău Court of Appeal, a deal between former party colleagues”, available at <http://www.zdg.md/editia-print/investigatii/reconstructia-curtii-de-apel-chisinau-o-afacere-intre-fosti-colegi-de-partid> (last visited on 1 May 2016).

¹⁶ SCM decided to build new premises for Ungheni district court in 2013. Thus, in the laws on state budget for years 2013 – 2015 were planned expenses for capital investments of Ungheni district court in the total amount of 30,193,300 MDL. The construction of Ungheni district court started in September 2014 and was to be put in operation in April 2016.

At the sitting of 2 September 2015, SCM rejected to request of the president of Ungheni district court for allocating 1 mln. MDL. The SCM did not reason the refusal neither in the text of the SCM Decision no. [614/25 of 2 September 2015](#), nor in the [synthesis of the SCM sitting no. 25 of 2 September 2015](#) (in item no. 4).

¹⁷ See Decision of the Court of Accounts no. 30 of 24 July 2015 on the approval of the Audit report on the compliance of administering public funds by Chişinău Court of Appeal in 2014, available at <http://lex.justice.md/index.php?action=view&view=doc&clang=1&cid=360777>.

start with their growth along the way. However, in such cases, it is not clear whether the public procurement procedures were observed throughout the process of extending the building.

Other categories of expenditures from courts budgets constitute salaries and other emoluments. During the sittings, the SCM examined several requests from the "heads of Secretariat of some courts, on solving organizational issues". They represented, in fact, requests for bonuses/awards from court presidents for jubilees, professional holidays and holidays¹⁸. In 2015, the SCM adopted 13 such decisions with reference to 30 court presidents¹⁹ and 5 decisions during January–March 2016 regarding presidents of 8 courts²⁰. In no decision of the 18 adopted by the SCM the amount approved for giving bonuses/awards to presidents or interim presidents of courts is indicated. Thus, we can conclude that the SCM has no practice/regulation in place on granting bonuses/awards and other material aid to the judges, and this process lacks transparency. The requests of court presidents on these issues are decided by the SCM from case to case. In the absence of clear and transparent rules, the practice of solving individual requests could lead to arbitrary decisions. Pt. 13 of the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia²¹ states the following:

„ On a long term basis, bonuses and privileges should be abolished and salaries raised to an adequate level which satisfy the needs of judges for an appropriate standard of living and adequately reflect the responsibility of their profession. As long as bonuses and privileges exist, they should be awarded on the basis of predetermined criteria and a transparent procedure. Court chairs shall not have a say on bonuses or privileges. ”

We recommend the SCM either to develop and publish the rules on allocation of bonuses/awards and other bonus payments to the courts presidents and judges, or to cease such practices.

In the SCM sitting of 22 March 2016, the SCM ruled by an opinion on the draft Law on the reorganization of the court system²². According to expert estimates, the court optimization map proposed by the MJ will cost about 1.18 billion MDL, but will also generate considerable savings. Annual savings will be about 45.3 mln MDL, the investment being recovered from operational savings in the next 17 years²³.

¹⁸ According to art. 45 para. (3), let. c) of the Law on judicial administration no. 514 of 6 July 1995 and to the SCM Decision [no. 821/35](#) of 12 November 2013, heads of courts' secretariats where the position of deputy president is lacking or is not filled in shall submit a request to the SCM for awarding the president of the court. The bonuses/awards for judges are allocated based on an act adopted by the president of the court.

¹⁹ See SCM decisions [no. 372/16](#); [no. 629/25](#); [no. 652/26](#); [no. 683/27](#); [no. 724/28](#); [no. 749/29](#); [no. 826/33](#); [no. 852/34](#); [no. 871/35](#); [no. 894/36](#); [no. 918/37](#); [no. 939/38](#); [no. 972/39](#).

²⁰ See SCM decisions [no. 38/2](#), [no. 65/3](#), [no. 119/5](#), [no. 129/6](#), [no. 148/7](#).

²¹ Kiev Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, OSCE, 2010, available at <http://www.osce.org/odihr/KyivRec?download=true>.

²² See SCM Decision no. [179/8 of 22 March 2016](#).

²³ Feasibility Study on the Optimisation of Judicial Map in the Republic of Moldova, USAID ROLISP, Institute for Management of Justice, Institute of Design, Legal Resources Centre

In conclusion, the activity of monitoring the implementation of the courts budgets shows that the SCM has not adopted a capital investments and expenditures policy for procurement of necessary equipment for the proper functioning of the judiciary and IT system. At least the case of approving the expenditures of 18 mln MDL, requested by the Chişinău Court of Appeal for finalizing and equipping the respective court, without taking into account the issues brought up by the Court of Account's audit on the activity of that court, raises questions about the effectiveness of monitoring the implementation of court budgets by the SCM. The reference of the president of the Chişinău Court of Appeal to the talks with "the head of the state and political leaders" on supporting the allocation of required resources indicates on the involvement of the executive and the legislature in the courts budgets management. It seems strange that the SCM overlooked such involvement. On the other hand, rejection of the approval of expenditures amounting to 1 mln MDL requested by the president of Ungheni district court for the preservation of the initiated renovation, raises questions about the SCM's coherence in approving budgets and efficiency of the previously approved investments. The SCM allocates awards and other bonuses to judges and staff in the system, without having a clear and transparent policy in this regard.

Art. 12 para. (3) of the Law on the reorganization of courts adopted by the Parliament on 21 April 2016 (not promulgated by the President until 1 May 2016)²⁴, states that the Government within two months [after the entry into force of the law] shall develop the Plan for construction of new and/ or renovated buildings, existing buildings necessary for the good functioning of the court system. The SCM shall work with the Ministry of Justice and approve any requests for investment for the period 2017-2020, the period of implementation of the reorganization of the judicial map, only in strict compliance with that law and the action plan for judicial reorganization map.

The SCM does not practice publishing in advance the draft budgets, which substantially diminishes the transparency of the SCM. Discussing courts budgets must take place in public session, avoiding deliberations.

1.2. Career of Judges

Organising Contests

In 2015, the SCM announced 18 contests for judicial vacancies, and during January-March 2016, other two contests. Following these competitions, the SCM proposed the President of the Republic of Moldova to appoint to the position of judge 49 candidates, 14 of whom were graduates of the National Institute of Justice, and 35 were among the candidates participating in the competition for getting the position of judge from legal

from Moldova, 2014, available at <http://crjm.org/wp-content/uploads/2015/08/Moldova-Court-optimiz.pdf>. The study has been presented to the Ministry of Justice, Superior Council of Magistracy and Department of Judicial Administration.

²⁴ Law no. 68 of 22 April 2016 on the reorganisation of the judiciary, available at <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3090/language/ro-RO/Default.aspx>.

professionals with a minimal five-year work experience²⁵. At the end of 2015, 41 positions of judge were vacant.

In 2014, the SCM announced 27 competitions to fill vacancies for judges and proposed the President of the Republic of Moldova appointment of 39 judges. In 2013, the SCM announced 13 competitions to fill judicial vacancies. Following these competitions, the SCM proposed the President of the Republic of Moldova to appoint 18 judges.

The high number of contests for vacancies announced each time when they occur is confusing and does not provide predictability for potential candidates. On the other hand, not all vacancies or soon to become vacancies are open to competition simultaneously. This creates the impression that certain vacancies in the contest are not deliberately announced. The SCM is to adopt a system of announcing competitions for all vacancies in the judiciary two to three times a year and not when each vacancy appears. In such circumstances, the BSCJ could plan the procedures for assessing candidates and allow potential candidates to plan their career properly. Also, candidates with the best evaluations are to be given priority in the choice of court where they want to work.

Another problematic aspect of competitions for appointment or promotion of judges is the lack of any clarity on the **duration of the competitions and interim of some key positions**, which denotes an at least incoherent approach.

Announcing competitions for filling vacancies for the positions of judges, president or deputy president of court is published in the Official Gazette of the Republic of Moldova (OG of the RM) within up to 30 days, from which the deadline for submission of documents is being calculated, which is also 30 days. Usually, the process from submission of applications by candidates for participation in the contest until their appointment to the position lasts approximately six months. In case of courts with less than six judges, the vacancy of the position lasts for several years (e.g., Vulcănești, Șoldănești, Râșcani, Basarabeasca courts etc.).

Filling in administrative positions in courts, also, takes about six months. However, in case of at least two contests, this period is longer than 1 year. These competitions refer to vacancies of the deputy-president of the SCJ and the president of Center district Court, Chișinău municipality.

The position of the deputy-president of the SCJ became vacant after the former deputy-president, Mrs. Svetlana FILINCOVA, resigned in the context of accusations of manipulation of the ICMS, submitted by the President of the SCM. The President of the SCM alleged the unfounded use of the option to block (ticking off) the program users role in 22 civil cases and asked the Director of National Anti-corruption Centre (NAC) to initiate a procedure for verifying the actions of the SCJ deputy-president and others involved in manipulating the process of random assignment of cases according to art. 327 of the Criminal Code (Abuse of power or abuse of office) and/or art. 328 of the Criminal Code (Excess of power or excess of official authority). By 1 May 2016, no information about any criminal case brought against Mrs. FILINCOVA following the allegations of the President of the SCM about ICMS manipulations was published.

²⁵ The speech of the President of the SCM within the General Assembly of Judges of 11 March 2016, page 3, available at <http://csm.md/files/adunarea/2016/03/Discurs-MICU.pdf> (last visited at 1 May 2016).

On 9 April 2015, the Parliament [accepted the SCM proposal](#) on the resignation of Mrs. Svetlana FILINCOVA from the position of deputy-president of the SCJ, approved by the SCM Decision [no. 252/12 of 7 April 2015](#). The Parliament relied on the resignation request of Mrs. Filincova, who cited personal reasons. The sudden resignation of Mrs. Filincova and its acceptance in record time by the Parliament (two days), as well as the lack of any allegations or denials following the allegations of the President of the SCM, rather reveal a pressure to resign than a desire to clarify the alleged manipulation of the cases assignment system.

Further developments on the vacancy, also, raise several questions. On 28 April 2015, the SCM announced the contest to fill the vacancy, and on 23 June 2015, the SCM announced a new contest because there was no candidate. On 11 August 2015, given the same reason, the SCM announced the third time the contest for the position of the deputy-president of the SCJ. This time, a single candidate applied, Mrs. Tatiana RĂDUCANU, currently a SCJ judge detached to the SCM. By the SCM Decision [no. 6/2 of 26 January 2016](#), with four votes "for" and six votes "against", Mrs. Răducanu was not appointed to the position of deputy-president of the SCJ, the President of the Civil, Commercial and Administrative Board. The decision does not mention why the only candidate to the contest announced for the third time was not appointed, but reference is made to art. 24 para. (1) and (2) of the Law on the SCM, invoking the adoption of the decision with open vote of the majority of its members and that "the vote for one candidate or another is an exclusive right of the SCM member." The only candidate participating in the competition has an impeccable and notorious reputation, works in the judiciary since 1988, has been evaluated by the BPEJ with 'excellent', served as a member of the European Committee for the Prevention of Torture and is an ad-hoc judge from the Republic of Moldovan to the ECtHR.

As to the *position of President of the Centru district Court, Chişinău municipality*, the SCM announced a contest to fill the vacancy since November 2014, the mandate of the former president expired on 26 January 2015. By the SCM Decision [no. 173/8 of 10 March 2015](#) the candidacy of Mr. Ion ȚURCAN was submitted to be appointed by the President of the country. On 22 April 2015, President Timofti rejected the candidate. The Head of the State grounded his refusal on some information that implied indications or elements of the risk factors specified in art. 4 let. a) of the Law on verification of holders of and candidates for public office. On 23 April 2015, Ion ȚURCAN asked SCM to be repeatedly proposed for appointment as the president of the court. However, the SCM has neither repeatedly proposed the candidacy of Mr. Țurcan to the President of the state, nor announced a new contest. It is possible that the SCM expected the outcome of the disciplinary case against the candidate, initiated on 4 June 2015, based on the notification of the Security and Intelligence Service (SIS) of 5 February 2015. Finally, by Decision [12/6 of 18 March 2016](#), the Disciplinary Board ceased the disciplinary case because no disciplinary violation was committed. This creates the impression that the position of the president of the Centru district Court, Chişinău municipality, was reserved for a particular candidate. The SCM could have decided on the organization of a new contest after the President of the State's refusal in March 2015, avoiding the interim of the position for more than 16 months.

Appointment and Promotion of Judges

On 31 December 2015, there were 421 active judges²⁶ in the judiciary system out of 504 judges. The total number of personnel approved by the SCM for the SCJ, courts of appeal and district courts for 2015 was 2,595 units, including 473 judges²⁷. By the SCM Decision [no. 70/2 of 27 January 2015](#) (with subsequent amendments), the number of positions of judges at the level of district courts and courts of appeal was amended. The number of judges in district courts and Chişinău and Bălţi Courts of Appeal was increased.

In the period January 2015 - March 2016, the President of the Republic of Moldova appointed 61 judges, 9 judges were transferred to a court of the same level. In the period January 2015 - March 2016, the President of the country dismissed 24 judges. Most judges appointed during this period compared to the number of positions of judges in courts, were appointed in the following courts:

- Buiucani district Court, Chişinău municipality - 12 judges appointed in 2014 and 2015. In April 2016, there were 28 judges in Buiucani district Court Chişinău municipality²⁸.
- Centru district Court, Chişinău municipality - 3 judges were appointed in 2016 and 16 judges appointed in 2015 and 2014. In April 2016, there were 30 judges in Centru district court²⁹.
- Rîşcani district Court, Chişinău municipality - 13 judges appointed in 2015 and 2014. In April 2016, there were 26 judges in Rîşcani district Court, Chişinău municipality³⁰.
- Hînceşti district Court - 4 judges appointed in 2015. In April 2016, there were 9 judges in Hînceşti court³¹.

We believe that the SCM should avoid the appointment of a large number of inexperienced judges in a court where the workload is high and the cases are of greater complexity. Previously, the SCM used to transfer judges with experience from other localities in Chişinău, a practice that is no longer continued. We consider that the SCM should return to this practice.

²⁶ Information on the courts' workload for 12 months of 2015, Superior Council of Magistracy, 2016, available at http://www.csm.md/files/Statistica/2015/12_luni/Incarcatura_12_luni2015.pdf (last visited on 1 May 2016).

²⁷ See SCM decisions [no. 70/2 of 27 January 2015](#), [no. 331/15 of 5 May 2015](#) and [no. 378/16 of 19 May 2015](#) by which the maximum number of units of courts for 2015 has been approved. Subsequently, in Vulcăneşti, Căuşeni, as well as Rîşcani and Centru district courts in Chişinău municipality the number of staff was increased. For more details, see SCM decisions no. [226/10](#), [411/17](#), [708/28](#), [865/35](#) and [962/39](#). SCM adopted several decision through which it redistributed the number of judges and personnel of courts.

²⁸ Data about judges in Buiucani district court, Chişinău municipality, available at http://csm.md/files/Lista_judecatorilor/CA_Chisinau/Judecatoria_Buiucani.pdf (last visit on 1 May 2016).

²⁹ Data about judges in Centru district court, Chişinău municipality, available at http://csm.md/files/Lista_judecatorilor/CA_Chisinau/Judecatoria_Centru.pdf (last visit on 1 May 2016).

³⁰ Data about judges in Rîşcani district court, Chişinău municipality, available at http://csm.md/files/Lista_judecatorilor/CA_Chisinau/Judecatoria_Riscani.pdf (last visit on 1 May 2016).

³¹ Data about judges in Hînceşti district court, available at http://csm.md/files/Lista_judecatorilor/CA_Chisinau/Judecatoria_Hincesti.pdf (last visit on 1 May 2016).

Ignoring the BSCJ scores in appointments and promotions

In 2012, new legislation on the selection and promotion of judges was adopted. The judges to be promoted are evaluated by the BSCJ. Subsequently, based on the same criteria and an interview, the SCM proposes the President or the Parliament the promotion of a judge to the Court of Appeal or Supreme Court. Although the legislation provides for a mechanism and clear criteria for promotion, in practice, the SCM does not apply them. The SCM decisions are public and, as of January 2016, the sittings are broadcasted online.

In the period January 2015 - March 2016, as well as during 2013-2014, the SCM frequently organized contests by taking "in bulk" decisions. Meaning that, in a sitting the decision was taken on the nomination of candidates for several vacant positions of judges. **Not in all cases, the candidates with the highest score obtained in the BSCJ were proposed for appointment.** It is unclear whether the candidates with the highest scores obtained in the BSCJ are given any priority when choosing in which court to work.

Thus, during January 2015 - March 2016, the BSCJ adopted 23 decisions on admission to contests for promotion of judges to the position of judges to the courts of appeal or the SCJ. When taking the decision on the proposal of a particular judge, the score given by the BSCJ is not decisive for the SCM. In at least two cases in 2015 and in at least two cases in 2016, the candidates with a lower score were proposed by the SCM and appointed by the President of the Republic of Moldova or the Parliament to the position of judges in the superior courts³². The same situation was found for the period 2013 - 2014, when the BSCJ issued 49 decisions on admission to contest for promotion to the position of judge to courts of appeal or the SCJ. In at least six cases, candidates with lower scores were proposed by the SCM and appointed by the President of the Republic or the Parliament to the position of judges in higher courts³³.

Contests for the position of judge to the SCJ

By the SCM Decision no. [600/24 of 11 August 2015](#), a contest was announced to fill the vacant position of judge at the SCJ, to which six applicants applied. By Decision no. [7/2 of 26 January 2016](#)³⁴, the SCM proposed the Parliament of the Republic of Moldova to appoint Mrs. Mariana PITIC (a judge in Centru district Court, Chişinău municipality) to the position of judge to the SCJ. In this case, the SCM selected and proposed for promotion to the SCJ a judge who did not accumulate the highest score in the BSCJ and who had the shortest experience as judge of all candidates. The SCM written decision and the judge's personal file were sent to the Parliament immediately after the SCM sitting, although these could have been appealed to the SCJ.

³² See SCM decisions no. [172/8 of 10 March 2015](#), no. [495/20 of 30 June 2015](#), no. [7/2 of 26 January 2016](#), no. [15/2 of 26 January 2016](#).

³³ Policy document „Selection and carrier of judges – doubling responsibilities or additional guarantees?” Legal Resources Centre from Moldova, January 2016, page 28-29, available at <http://crjm.org/wp-content/uploads/2015/01/CRJM-DPP-Selectie-si-cariera.pdf>.

³⁴ To the SCM decision no. 7/2 of 26 January 2016, a [separate opinion](#) has been formulated.

One of the candidates in the contest challenged in the SCJ the SCM Decision no. 7/2 of 26 January 2016, citing several violations in the adoption of the decision. By the SCJ decision of [26 February 2016 \(case 3-3/16\)](#), the appeal was dismissed as unfounded. The SCJ reasoned decision is not published on its webpage. On 1 April 2016, the Legal Committee for Appointments and Immunities of the Parliament of the Republic of Moldova examined the SCM proposal for appointing Mrs. Pitic to the SCJ. The examination of this issue by the Legal Commission was not announced in advance and was missing from the agenda of the sitting³⁵. Moreover, it is not explained the haste with which the SCM and the Parliament appointed Mrs. Pitic to the position, while the mass-media had published several materials about her property which she not declared, and later, the National Integrity Commission initiated an investigation in this regard³⁶. The respective haste in promoting this particular judge raises suspicions also from the perspective that there were cases when the SCM proposal to appoint judges to the Supreme Court of Justice was not examined by the Parliament for more than a year, as, for example, the case of judges Nicolae CRAIU and Anatolie ȚURCAN. The respective two judges were proposed by the SCM for appointment as judges to the SCJ on 23 June 2015, and the Parliament appointed them only on 27 April 2016³⁷. ***Corroborating these cases, one may conclude that there is a selective approach on promoting judges to the highest court, both on behalf of the SCM and of the Parliament.***

Refusals of the President to Appoint, Promote or Transfer the Judge

Under current law, if the President of the country refuses the appointment or promotion of a judge, the SCM may propose the same candidate by a vote of two thirds of its members and the President is obliged to promote the respective candidate³⁸. The civil society representatives reported several cases in which the President refused the appointment or promotion of a candidate for the position of judge, relying on information from the SIS reports, where the actions and circumstances of incompatibility of the candidate/judge were indicated and the SCM repeatedly proposed the same person without reasoning its decision and, thus, ignoring the information presented by the President³⁹. Moreover, although the law is very clear on the request of a quorum of two-thirds for a repeated proposal of the same candidate, due to the lack of information on the quorum in the SCM decisions, in

³⁵ The agenda of the sitting of the Legal Commission for Appointments and Immunities of the Parliament of the Republic of Moldova of 1 April 2016, available at <http://parlament.md/LinkClick.aspx?fileticket=vRcNli7ybUI%3d&tabid=84&mid=486&language=ro-RO> (last visit on 1 May 2016).

³⁶ Press release. NIC initiated controls on judge Pitic, minister Chirinciuc and MP Gorila, available at <http://cni.md/?p=2965>.

³⁷ Judges Nicolae CRAIU and Anatolie ȚURCAN were proposed to the Parliament for appointment to the position of SCJ judge at the SCM sitting of 23 June 2015, by decisions no. [453/19](#) and [492/19](#). The Legal Committee for Appointments and Immunities examined the draft decision for appointing these two candidates to the position of SCJ judge and drafted a report in this respect in the sitting of [16 September 2015](#). The Parliament appointed to the position of SCJ by decisions no. 80 and no. 81, respectively, only on 27 April 2016.

³⁸ Art. 11 para. (3) – (5) Law on the status of judge and art. 19 para. (4) Law on the SCM.

³⁹ See, for example, the appeals of civil society organisations of [29 February 2016](#), [8 February 2016](#), [29 September 2014](#).

some decisions it is not clear whether the judges were repeatedly appointed by a vote of two thirds of the members of the SCM or just a majority vote⁴⁰.

A journalistic investigation⁴¹ reported about refusals of the Presidents of the Republic of Moldova to promote, appoint or transfer nearly 80 judges proposed by the SCM during 2005 - 2015. Among the invoked reasons are discrediting justice, lack of objectivity, possession of unjustified wealth, integrity issues etc. Despite the arguments brought in the refusals of the President, the SCM left in office or even promoted no less than 55 judges. Such a situation denotes either a biased practice of unjustified refusals by the President or unjustifiable disregard by the SCM of the information provided by the President to the SCM.

During the monitoring period, several cases of repeated proposals from the SCM, without justifying the reasons for ignoring the refusal of the President, were observed. For example, on 10 March 2015, the SCM proposed the President of the country the appointment of Mrs. Natalia BERBEC to the position of judge in Hîncești district court⁴², although previously the President of the country refused it. Moreover, in a previous decision of the SCM, Natalia BERBEC was rejected for the appointment to the same court⁴³. In both decisions of the SCM no grounds on which it was rejected by the President of the Republic of Moldova in 2014 were indicated.

On 26 January 2016, the SCM adopted a decision proposing the President of the Republic of Moldova the appointment to the position of judge, in Centru district Court, Chișinău municipality, Mrs Lucia BAGRIN. With a brief statement of reasons, the SCM approved the proposed candidate, appointing Mrs. Bagrin to the position of judge in one of the most wanted courts in the Republic of Moldova for a period of five years, although in October 2014 the President refused to appoint Mrs. Bagrin, invoking the following reasons: the existence of reasonable suspicion related to the integrity and reputation of the candidate, in particular the existence of information regarding undeclared wealth, conflicts of interest, relations with controversial persons etc.

In another case, on 26 January 2016, the SCM proposed the President of the R. Moldova the appointment of Mr. Sergei GUBENCO to the position of the President of the Comrat Court of Appeal for a term of four years⁴⁴. Earlier, the President refused to promote Mr. Gubenco to the position of a judge at the Comrat Court of Appeal, invoking the existence of elements of the risk factors and noncompliance with certain mandatory criteria for accession to the position of a judge⁴⁵.

⁴⁰ For ex., by SCM Decision no. [14/2 of 26 January 2016](#), the SCM proposed the appointment to the position of judge Mrs. Lucia BAGRIN, although in 2014 the President of the Republic of Moldova refused to appoint her to the position. There is no indication in the decision on the number of votes by which the repeated promotion of the candidate was decided.

⁴¹ „The judges with nine lives”, available at <http://anticoruptie.md/en/investigations/justice/the-judges-with-nine-lives> (last visited on 1 May 2016).

⁴² SCM decision no. [182/8 of 10 March 2016](#).

⁴³ SCM decision no. [74/3 of 3 February 2016](#).

⁴⁴ SCM decision no. [8/2 of 26 January 2016](#).

⁴⁵ „The judges with nine lives”, available at <http://anticoruptie.md/en/investigations/justice/the-judges-with-nine-lives> (last visited on 1 May 2016).

In case of judge Anatolie GALBEN from Rîșcani district Court, Chișinău municipality, the President of the country refused to reappoint him to the position of an investigative judge and asked the SCM to assess the actions of judge Anatolie GALBEN in terms of compatibility with the interests of public service. On 2 June 2015, the SCM repeatedly proposed for reconfirmation judge Galben, after almost six months from the President's refusal. The SCM made reference to the SCM decision no. 809/38 of 18 December 2012, by which judge Anatolie GALBEN was considered compatible with the interests of civil service, although the President's refusal in case of Mr. Galben was dated December 2014 and contained allegations of lack of integrity.

The SCM members claim that the refusals of the President contain general information and the information on which the President refuses to appoint candidates/judges nominated by the SCM are not presented to the SCM members because they are classified as a state secret. However, according to Law no. 245 of 27 November 2008 on state secret⁴⁶, state secret is defined as information protected by state in the field of national defence, economy, science and technology, foreign relations, state security, ensuring the rule of law and activities of public authorities, whose unauthorized disclosure or loss is likely to harm the interests and/or security of the Republic of Moldova. Thus, the career of candidates to the position of judge or of judges is not subject to Law no. 245 of 27 November 2008. It is therefore not clear why the SCM does not have access to all arguments raised by the President. Meanwhile, even if the refusal of the President contains general information, the SCM should justify why it ignores them. ***Lack of reasoning by the SCM of the repeated proposals rather indicates on an obvious disregard of the problems indicated by the President. In conditions of low trust in the judiciary, appointment and promotion of judges in respect of which there are suspicions related to the integrity only worsens the situation in the judiciary.***

Moreover, if the SCM continues ignoring the information provided by the head of state about the candidates, disproportionate and even dangerous measures could be adopted. For example, in a draft law drafted by SIS in April 2016⁴⁷, the verification of candidates before the appointment was proposed, including the tapping of telephone conversations of the person subject to verification, storage for a period of five or 15 years of the material documents obtained following the verification etc. In the explanatory note to the draft law, the institution substantiates the need to adopt several amendments to legislation, invoking the following circumstances:

- increased frequency of reconfirmation and promotion in position of persons with an unjustifiable material situation;
- information and materials confirming the existence of risk factors in the activity of the verified holders;

⁴⁶ Law no. 245 of 27 November 2008 on the state secret.

⁴⁷ Informative note to the draft Law on amending and completing some legislative acts, drafted in April 2016, available at http://sis.md/sites/default/files/transparenta/nota_informativa_-_legea_nr._271-2008.docx. The text of the draft law prepared by SIS is available at http://sis.md/sites/default/files/transparenta/lege_pentru_modificarea_si_completarea_unor_acte_legislative-legea_nr._271_-2008.docx.

- assumption of existence of protectionism from the leaders of the authorities initiating verifications on the verified persons;
- information on candidates / holders of public office relations with members of the criminal world etc.

LRCM reiterates that the SCM should either refuse the appointment, promotion or transfer to the position of a judge where there is information indicating towards the incompatibility of the candidate to the position of a judge, especially when the President of the country presents the SCM a reasoned refusal, or the SCM should reason in its decision why it ignores the respective information and repeatedly proposes a candidate. If the information provided by the SIS and the President of the country is not sufficiently convincing and detailed, the SCM could make use of its powers set out in art. 4 para. (3) let. e) and f) of the Law on the SCM - requesting the competent bodies information regarding declarations of income and property of judges and requesting fiscal bodies to check the accuracy of the income statements of judges family members. The SCM has never adopted any decision based on those rules.

Resignation of Judges

According to art. 25 para. (1) of Law no. 544 of 20 July 1995 on the status of judge, the judge's resignation may take place on the following grounds:

- a) filing the request for resignation;
- b) finding an obvious unsuitability to the position held as a result of performance evaluation;
- d) transfer to another position in the Law;
- f) committing a disciplinary offense specified in Law no. 178 of 25 July 2014 on disciplinary liability of judges;
- g) delivery of the final judgment of his/her conviction;
- h) loss of Moldovan citizenship;
- i) infringement of art. 8 [judges' service restrictions];
- j) finding of incapacity to work, as evidenced by a medical certificate;
- k) expiration powers due to non-appointment of judge until age-limit, as well as for the reason of his/her attaining the age-limit;
- l) finding, by final court decision, the restricted capacity to act or incapacity to act.

The judge is considered resigned from the moment of issuing the Presidential decree (in case of district courts and courts of appeal) or the adoption of the decision of the Parliament (in case of the SCJ judges). Exact indication of the grounds in the resignation act is important in light of consequences for the judge and the legal system in general. The dismissal of the judge from office under art. 25 para. (1) let. b), f), g) and i) leads to deprivation of the right to dismissal allowance provided for in art. 26 para. (3), and establishing special pension under art. 32 of Law no. 544 of 20 July 1995. Judges who fall under art. 25 para. 1) will be entitled to a pension for age limit under the general conditions established by Law no. 156 of 14 October 1998 on state social insurance pensions. Furthermore, although not expressly provided, the judge resigned under art. 25 para. (1) let. f), g) and i) may be considered as a

person without an impeccable reputation and therefore will not be entitled to be appointed to a number of functions that require an impeccable reputation (e.g., defence attorney, prosecutor, judge to the Constitutional Court, ombudsman etc.).

According to art. 26 of Law no. 544 of 20 July 1995, honourable resignation is considered if, being in office and out of duty, he/she did not commit any acts discrediting or undermining the justice or compromising the honour and dignity of judge. The judge in honourable resignation is paid a dismissal allowance equal to 50% of his average monthly salary multiplied by the number of full years worked as a judge. **Namely because of consequences for different reasons of resignation, it is important to ensure a fair and predictable approach by the SCM towards judges' resignations.**

In the period January 2015 - March 2016, the President of the country dismissed 24 judges, of which four judges on the basis of conviction judgments, two - in connection with disciplinary sanctions and the rest – based on resignation requests. In 2014, 46 judges resigned and 19 judges resigned in 2013. Most of the judges resigned due to retirement.

In some cases, the SCM accepted judges' resignations requests, although the initiation of disciplinary proceedings against these judges was disposed or the consent for criminal prosecution was given. In some cases, the SCM members publicly declared that they could not infringe the judge's right to work and there were no legal provisions to reject the resignation request. However, pt. 9.8 of the SCM Regulation establishes that, where the consent for criminal prosecution was given, the Council may, *ex officio*, suspend the judge from office.

On 5 December 2014, judge Ivan BUSUIOC (Centru district Court, Chişinău municipality) filed a resignation request, and on [9 December 2014](#), the SCM accepted his resignation. A member of the SCM issued a [separate opinion](#) in which he/she indicated that he/she disagreed with the judge resignation acceptance given that he was convicted⁴⁸ and the criminal case at that time was pending before the Chişinău Court of Appeal. On 11 March 2015, the conviction sentence came into force. On 18 March 2015, the President of the R. Moldova sent a letter by which he informed the SCM about the rejection of the dismissal proposal, because Ivan BUSUIOC was convicted by Chişinău Court of Appeal and the SCM repeatedly proposed Mr. Busuioc⁴⁹ dismissal. Finally, on 22 January 2016, the Presidential Decree by which Ivan BUSUIOC was dismissed under art. 25 para. 1 let. g), namely after the final judgment on conviction was issued. This decree of the President

⁴⁸ On 26 June 2014, judge Ivan BUSUIOC (Centru district court, Chişinău municipality) was convicted by Criuleni court based on art. 264, para. 3 let. b) Criminal Code (Violating trafficking security rules or exploiting transportation means by the person driving the transportation means), and by SCM Decision no. [496/16 of 27 May 2014](#), at the request of the General Prosecutor, the judge was suspended.

⁴⁹ SCM has repeatedly sent the President the decision by which it proposed to dismiss Mr. BUSUIOC based on the application of resignation on the grounds that on 5 December 2014 he was not finally sentenced. This time, two SCM members dissented and indicated about the conviction. Subsequently, on 3 December 2015, the President asked the SCM to reconsider its decision of 5 December 2014 and to dismiss Ivan BUSUIOC from his position in connection with the final conviction judgement. On [8 December 2015](#), the SCM rejected again the request of the President to revise the SCM Decision of 5 December 2014.

was challenged in the Constitutional Court. The Members of the Parliament [requested the Constitutional Court](#) to verify the constitutionality of the Presidential Decree [no. 1906 of 12 January 2016](#).

Adoption of this Presidential Decree based upon such communication with the SCM is unique for the Republic of Moldova. One cannot explain the reason for the SCM's insistence to dismiss a judge neglecting his criminal conviction. **It seems that the SCM insisted for this judge leaves the system honourably, while keeping all the benefits for the resignation from a position of magistrate.**

Besides resignation following criminal conviction, another problematic aspect relates to the resignation based on the results of disciplinary proceedings and dismissal under one's own request. In the SCM monitoring report of 2013⁵⁰, the LRCM found that in case of several ex-judges (Igor VORNICESCU, Grigore ZUBATI, Petru GRUMEZA, Valeriu GÎSCĂ, Ion TIMOFEI etc.), the SCM invalidated the decisions of the Disciplinary Board on the ground that at that time the judges were dismissed based on their requests. By such practices, the SCM compromised any effort of the Disciplinary Board to apply disciplinary sanctions against these judges and created conditions for the respective judges to receive considerable amounts from the state in the form of allowances. We do not contest the right of judges to request resignation. However, when disciplinary proceedings or criminal proceedings are initiated against a judge who requests resignation, following the spirit of the law, the request for resignation needs to be examined only after the disciplinary or criminal proceedings are finalized and the judge is suspended from office depending on the gravity of the charge brought against him. Such a provision is contained in art. 52 of Law no. 317 of 1 July 2004 on the Superior Council of Magistracy of Romania⁵¹, which states the following:

„During the disciplinary proceedings, the appropriate division of the Superior Council of Magistracy, ex officio or at the proposal of the judicial inspector may order the suspension of the magistrate from the position, pending final examination of the disciplinary action, whether further exercising of the position could influence the impartiality of the disciplinary proceedings or whether the disciplinary proceedings could bring a serious threat to the prestige of justice.”

On 3 November 2015, the SCM proposed to dismiss the judge Mr. Victor ORÂNDAŞ⁵² on the grounds of incompatibility with his position and proposed the President of the country his dismissal. Actually, the reason of incompatibility was the issuing under questionable circumstances (in a few hours from notification, superficial compliance with the requirement for confirmation of the legality of evidence by apostille, payment of state fee post-factum) of

⁵⁰ The SCM monitoring report of 2013, Legal Resources Centre from Moldova, 2013, pag. 61-63, available at <http://crjm.org/wp-content/uploads/2014/04/Transparency-and-efficiency-of-SCM.pdf>

⁵¹ Art. 52 of Law no. 317 of 1 July 2004 on the Superior Council of Magistracy of Romania, available at http://www.csm1909.ro/csm/linkuri/29_01_2016_78628_ro.pdf.

⁵² SCM Decision no. [835/33 of 3.11.2015](#).

court rulings, which legalised international financial transactions worth billions of dollars. In its separate opinion⁵³, a SCM member indicated that the SCM Decision of 3 November 2015 was issued with procedural violations. Although the SCM qualified Mr. Orândaş's incompatibility as disciplinary misconduct, the disciplinary procedure itself was not observed (according to disciplinary proceedings, the SCM by itself cannot apply sanctions, it is the competence of the Disciplinary Board of Judges). It is also not clear why only Mr. Orândaş was declared incompatible, while similar rulings were issued by several judges. After issuing the rulings, some of them were even promoted.

On 5 November 2015, Mr. Orândaş publicly declared⁵⁴ that he was pressured by the President of Centru district court to issue rulings in several cases, including in the case on the liquidation of the Falun Dafa and Falun Gong associations. According to statements made by Mr. Orândaş in a TV show⁵⁵, in the last case he was pressured to quickly issue a decision on liquidation of the organizations. In February 2015, the judge reported these influences to the SIS officers. According to Mr. Orândaş, after that, the president of Centru district court sought revenge. On 15 February 2016, the SCJ quashed the SCM Decision of 3 November 2015⁵⁶.

In conclusion, we note that the SCM accepted the resignation of several judges, including in cases where disciplinary proceedings or convictions were pending. The SCM has to refrain from accepting requests for resignations when they are filed to avoid dismissal for committing disciplinary offenses or criminal offenses.

1.3. Transfer of Judges

According to art. 20¹ of Law no. 544 of 30 July 1995 on the status of judge, **transfer for a limited term (temporary transfer)** of judges from other courts may take place in the following circumstances:

- if the courts cannot normally operate due to the reasons of health inability of judges to exercise the duties for six months,
- due to the existence of vacancies,
- due to high workload of the court.

Transfer of judges for a limited period of time may be done for a period of maximum 6 months, which may be extended by additional 6 months. According to art. 20 para. (3) of Law no. 544, judges may request the transfer to a court of the same level only after the expiry of five years from appointment.

⁵³ Separate opinion to the SCM Dec. no. 833/33 of 3 November 2015 available at <http://csm.md/files/Hotaririle/2015/33/835-33-opinia.PDF>.

⁵⁴ „A judge's confession: I was dismissed because I have not obeyed the president's orders...”, available at <http://www.zdg.md/stiri/stiri-justitie/spovedania-unui-judecator-am-fost-dat-afara-pentru-canu-am-ascultat-ordinele-presedintelui> (last visit on 1 May 2016).

⁵⁵ „Victor ORÂNDAŞ, Moldovan judge refugee in Bucureşti, accuses pressures in Justices, SIS implication [video]”, available at <http://epochtimes.ro/news/victor-orindas-judecator-moldovean-refugiat-la-bucuresti-acuza-presiuni-in-justitie-implicarea-sis-video---240435> (last visit at 1 May 2016).

⁵⁶ See SCJ decision available at http://jurisprudenta.csj.md/search_cont_csm.php?id=107.

In 2015, the SCM accepted 16 requests for temporary transfer, of which in two cases it refused the temporary transfer. During January-March 2016, the SCM examined six requests of court presidents regarding the temporary transfer, accepting four of them. Between 2013 - 2014, 26 contests were announced for filling, by transfer, 28 judge positions, and finally, only seven cases finalised in the appointment by transfer. Most requests for transfer in these periods targeted the courts of Chişinău municipality.

The SCM refused the temporary transfer related to the SCM proposal to dismiss two of the judges⁵⁷, and in another case related to the high workload in court wherefrom he was detached⁵⁸. In the latter case, by the SCM Decision [no. 670/26 of 15 September 2015](#), the temporary transfer of the judge Aureliu POSTICĂ was rejected and in two weeks, by Decision [no. 707/28 of 6 October 2015](#) the SCM accepted the temporary transfer of the same judge from Orhei district court to Rîşcani district Court, Chişinău municipality. The judge Aureliu POSTICĂ was temporarily transferred several times from Orhei district court to Rîşcani district Court, Chişinău municipality.⁵⁹, although the president of the court where he was transferred from had not consented or was against such a transfer on the grounds that there was a high workload in that court. However, the SCM did not respond in any way to those concerns.

In another case, the SCM admitted the transfer of a judge from Bălţi district court to Rîşcani district Court, Chişinău municipality⁶⁰, so that in two months, the president of Bălţi district Court requested the temporary transfer of a judge from another court to Bălţi district Court. The president of Bălţi district Court reasoned the need for temporary transfer by an increase of the number of cases per judge⁶¹ and the existence of six judicial vacancies. *These transfers actually denote intentional requests to ensure the transfer of some particular judges to Chişinău.*

In all cases, the court presidents who requested the SCM temporary transfer of judges indicated the names of the judges whom they wanted to be transferred. Thus, every time the SCM accepted the transfer of the proposed judges without any notice addressed to judges in district courts in Chişinău municipality or the courts with a smaller volume of work that would want to be temporarily transferred to another court. *Thus, the institution of the temporary transfer applied by the SCM does not achieve its purpose – it does not exhaust the systemic problem in some courts because there is no tendency for a temporary transfer of judges from courts with small workload. On the contrary, some transfers create a shortage of number of judges to examine cases in courts from where the targeted judges are transferred.*

Moreover, there is a clear trend of certain temporary transfers of judges, which are kept in the temporarily transferred position for many years, with small periods of interruption in

⁵⁷ SCM Decision no. [113/5 of 17 February 2015](#).

⁵⁸ SCM Decision no. [670/26 of 15 September 2015](#).

⁵⁹ Report „Reform of the Institution of the Investigative Judge in the Republic of Moldova”, Legal Resources Centre from Moldova, January 2015, available at <http://crjm.org/wp-content/uploads/2015/01/CRJM-Raport-JI-28-01-2015.pdf>.

⁶⁰ SCM Decision no. [43/2 of 27 January 2015](#).

⁶¹ SCM Decision no. [262/12 of 7 April 2015](#).

the court where they were originally appointed. This seems to be rather a disguised transfer, avoiding contests of filling vacancies in particular in courts from Chişinău municipality. *The SCM is to increase the number of judges in some courts so as the temporary transfers to become a more seldom-used procedure.* By decision of the SCM no. [282/13 of 27 April 2016](#), the SCM asked the Ministry of Justice to prepare a draft law to amend art. 21 of Law no. 514 of 6 July 1995 on judicial organization, in the part referring to the 15 positions of judge from the reserve fund, namely transferring the reserve positions to positions of judge for all courts.

According to art. 20 of Law no. 544 of 30 July 1995, judges may request the transfer to a court of the same level after the expiry of five years from appointment (permanent transfer). In 2015, the SCM accepted the **permanent transfer** of three judges and rejected the request for two judges⁶². In one case, the SCM reasoned the refusal for permanent transfer because the judge had two disciplinary sanctions, and in another case, because in the respect of that judge the period of five years from the appointment in accordance with art. 20 para. (3) of Law no. 544 of 20 July 1995 on the status of judges had not expired. Concerns regarding the application of permanent transfer institution were not detected.

In conclusion, the SCM repeatedly admits temporary transfers of only some judges, especially in some courts in Chişinău municipality. The SCM is to establish a practice that accepts the temporary transfer of judges to the courts with a higher workload, if the judges come from a court with lower workload and whether this request was sent to all court presidents in the country. It should also be excluded the practice of accepting temporary transfers of the same judges regularly and repeatedly, which in fact turns into permanent transfers. The SCM practice to accept or reject requests from court presidents for temporary transfer of judges to another court of the same level is unclear, lacking any reasoning in the text of the decision. The SCM is to adopt clear criteria and apply them uniformly to all judges seeking temporary or permanent transfer. The SCM must avoid transfer of investigative judges from courts with a heavy workload to other courts to exercise the same powers, at the request of court presidents indicating the concrete person. The SCM is to apply the institution of transfer by announcing competitions for transfer of judges from courts with lower workload to the courts with higher workload, so as not to destabilize the work of the court from where the judge is transferred.

1.4. Appointment of Investigative Judges

In 2012, the Parliament passed Law no. 153, which introduced the reform of the institution of the investigative judge. According to this law, reform would take place in two stages: the integration of investigative judges in the general body of judges, followed by the appointment of new judges from among judges of common law. Thus, the desire was to transform investigative judges from a separate category of judges with specific criteria for appointment, with a specific and unlimited mandate into a specialization of the activity

⁶² See SCM decisions no. [357/16](#), no. [358/16](#) and no. [359/16](#)

of common law judges. The SCM developed the SCM Regulation on the procedure and conditions of appointment of investigative judges, approved by Decision no. [145/6 of 12 February 2013](#), which provided for all stages of reform of this institution.

The first stage of the reform provided the request from the investigative judges to be reappointed to their position, and then they had to attend training courses at the National Institute of Justice, after which would have followed performance evaluation and adoption of the SCM decision for proposal to the President of the country to be reappointed to the position. This step should have taken place for three years from the adoption of Law no. 153, i.e. between 31 August 2012 and 31 August 2015. Of the 40 investigative in office at the date of entry into force of Law no. 153, 31 were reappointed, two were transferred to the position of judge without going through the reappointment procedure and the remaining judges were not reappointed for various reasons (dismissal, resignation, lack of request for reappointment etc.). After 31 August 2015, the SCM has not adjusted the Regulation on the procedure and conditions of appointment of investigative judges, which includes the transitional stage of reappointment.

The second stage of the reform was a new procedure for the appointment by the SCM of common law judges from the general body of judges, who would carry out duties of investigative judges for a specified period.

In January 2015, LRCM released the report "Reform of the Institution of Investigative Judge in the Republic of Moldova"⁶³ which examined the manner in which both phases of the reform of the institution of investigative judge were conducted between 2012 and 2014. The conclusions and recommendations in that report are valid also for the appointment by the SCM of judges, who exercised powers of investigative judges in 2015 and during four months of 2016. We shall further examine some concerns related to the appointment of new investigative judges, which refer to the profile of investigative judges, compliance by the SCM with the conditions of appointment, the procedure followed by the SCM in appointing investigative judges and substitutes, term of office and the workload of investigative judges.

Who Are the New Investigative Judges?

On 31 December 2014, of the 30 judges reappointed as common law judges at that time, 25 (83%) continued to carry out powers of investigative judges. The latest data, as of 30 April 2016, show that of the 31 investigative judges reappointed by 31 August 2015, 18 (58%) continue to perform the powers of investigative judges. Although this number has decreased over the last year, it is still impressive. This means that, in fact, in 58% of cases, the same judges who acted as investigative judges before the reform currently exercise these powers. This situation contradicts the purpose of the reform of the investigative judge initiated by the Parliament, does not contribute to the professional integration of such judges and increase of their professionalism. If in smaller courts, with 2-3 judges, perpetuating the same

⁶³ Report „Reform of the Institution of the Investigative Judge in the Republic of Moldova”, Legal Resources Centre from Moldova, January 2015, available at <http://crjm.org/wp-content/uploads/2015/01/CRJM-Raport-JI-28-01-2015.pdf>.

judges as investigative judges would be justified because of the small number of judges, is not clear why in the bigger courts, which do not face this problem, it is done the same, as, for example, in Botanica, Buiucani and Ciocana district Courts, Chişinău municipality or Bălţi district Court.

Conditions for Appointing Investigative Judges

According to pt. 2 of the SCM Regulation on the procedure and conditions for the appointment of investigative judges, judges to be appointed to exercise powers of investigative judge must have experience as a judge for **at least three years** and have expressed consent to be appointed to this position.

In the period 2012-2014, the SCM appointed, without any justification, investigative judges who had experience as a judge for less than three years in 14 courts. Between 1 January 2015 and 30 April 2016, the SCM refused in five cases the proposals of court presidents to appoint investigative judges for the reason that they did not meet minimum three years of experience as a judge. This practice is positive and represents an improvement of the SCM's work compared to its previous activity. However, in case of a judge, the SCM twice rejected the proposal of the president of the court to appoint him as investigative judge because of the lack of minimum three years' experience, but he was shortly appointed after the repeated request of the president of Hînceşti district court⁶⁴, although there are nine judges working in this court.

As to the consent of a judge to carry out the duties of an investigative judge, the SCM Regulation on the procedure and conditions for the appointment of investigative judges leaves to the discretion of the president of the court the election of the candidacy if no judge gives its consent to exercise the duties of investigative judge. At the same time, the refusal to exercise the duties of investigative judge shall be regarded as misbehaviour and serve basis for applying disciplinary sanction⁶⁵, although the Law on disciplinary liability of judges does not provide for such a violation.

Between 1 January 2015 and 30 April 2016, in two SCM decisions, it was cited lack of consent of the judge appointed by the court president to fulfill the duties of investigative judge. In the first case, the president of Anenii Noi district court proposed appointing an investigative judge without his consent, explaining that no judge in the court wanted to take over these duties⁶⁶. In the second case, the president of Orhei district court proposed to appoint a new investigative judge to examine a particular case, because of the recusals of the investigative

⁶⁴ SCM adopted Decision no. [404/17 of 2 June 2015](#), by which it rejected the candidacy of judge Ion DADU from Hînceşti district court, on the grounds that he does not meet the requirement of three years' experience in the position of judge. He has been appointed to the position of judge on 7 May 2015. However, by Decision no. [450/18 of 9 June 2015](#), SCM admitted the candidacy of the respective judge to be appointed as investigative judge by 31 December 2015. Later, on 22 December 2015, the SCM rejected the request of the president of Hînceşti district court to appoint the same judge for a term of 1 year (SCM decision [no. 986/40](#)), which has been admitted after a month after the request of the president of the court.

⁶⁵ Pt. 8 of the SCM Regulation on the procedure and conditions on appointment of investigative judges.

⁶⁶ SCM decision no. [891/36 of 24 November 2015](#).

judges in office, without the agreement of the appointed judge⁶⁷. This procedure may cause unwanted tension in the court. Neither Law no. 153, nor the SCM Regulation on the procedure and conditions of appointment of investigative judges offer solutions to such situations. In case of lack of consent of all judges, a solution would be drawing of lots, which would reduce tension that could be generated by the unilateral decision of the president of the court.

Procedure of Appointing Investigative Judges

According to pt.2 of the Regulation on the procedure and conditions for the appointment of investigative judges, the SCM appoints a judge who shall exercise the duties of investigative judge, at the proposal of the president of the court. In January 2015, the SCM began to publish an updated list of investigative judges throughout the country⁶⁸, which is a positive practice. We find that the SCM dedicates much of its work to the appointment of investigative judges. During 2015, the SCM examined the issue of appointing investigative judges in 27 sittings out of 40 (67% of sittings), with the adoption of 45 decisions to this end. During four months of 2016, the SCM appointed investigative judges in nine sittings out of 14 (64% of sittings), and adopted 11 decisions to this end. Both in 2015 and during four months of 2016, in some sittings, the SCM adopted several decisions for appointing investigative judges, though in others it examined the appointments of all investigative judges in a single decision. This high workload could be reduced by the appointment of all investigative judges and substitutes, for a fixed term and equal for all courts in the country, in one SCM sitting.

The large number of the SCM sittings where the appointments of investigative judges are examined can be explained by poor management of the presidents of the courts. In some cases, the SCM appoints investigative judges and substitutes for several times during a year. For example, in case of Florești district court, the SCM adopted three decisions throughout 2015 - one for the appointment of the main investigative judge and two - for the appointment of substitute investigative judges, although all could have been appointed in one sitting.

In other cases, the large number of sittings is a result of the fact that the SCM appoints investigative judges on a very short term and upon the expiration of the mandate has to examine the same issue again. For example, the SCM appointed the investigative judge in Cantemir district court in January 2016 for only one month, and at the end of this term, on 9 February 2016, it appointed him for a term of 11 months, i.e. appointing the same investigative judge twice a year, although it could have done it once.

There are situations when, in the same sitting, the SCM adopts separate decisions on the appointment of the main investigative judge and the substitute, although the SCM could have addressed the two appointments in a single decision⁶⁹. In some cases, the presidents of

⁶⁷ SCM decision no. [473/19 of 23 June 2015](#).

⁶⁸ List of investigative judges, available at http://csm.md/files/Lista_judecatorilor/Lista_de_instructie.pdf (last visit on 1 May 2016).

⁶⁹ In case of Drochia district court, SCM decisions no. [489/19](#) and [474/19 of 23 June 2015](#).

the courts require the appointment of the substitute investigative judge after a month from the appointment of the main investigative judge, although it could have been done in the same session. For example, by the SCM Decision no. [41/2 of 27 January 2016](#), the substitute investigative judge from Hîncești district court was appointed, although the main judge was appointed a month before by Decision [no. 1040/1034 of 23 December 2014](#). For all the situations described above, a viable solution would be to appoint all investigative judges in the country in one SCM sitting for a single tenure.

In one case, the substitute investigative judge was later suspended from office and the SCM admitted the request of the court president to amend the original decision by replacing the name of a judge with another judge. Thus, by the SCM Decision no. [41/2 of 27 January 2015](#) Mr. Veaceslav PANFILII was appointed substitute investigative judge in Anenii Noi district court. By the SCM Decision no. [403/17 of 2 June 2015](#), the Decision of 27 January 2015 was amended, by replacing the judge Veaceslav PANFILII with Igor BRAI on the grounds that on 28 April 2015, Mr. Panfilii was suspended from office. It is unclear from the SCM decision whether in the period before the suspension that judge examined cases as substitute investigative judge. If so, by changing the name of the investigative judge in the initial decision of the SCM, there is a risk that all sentences were taken by an investigative judge without authority.

Tenure

According to pt. 3 of the SCM Regulation on the procedure and conditions for appointment of investigative judges, the tenure of investigative judges is up to three years. In practice, the SCM appoints investigative judges on different terms, ranging from one month to three years, but in most cases is one year. However, the SCM still does not justify in its decisions the tenure of investigative judges. Three-year term was applied only in seven cases between 1 January 2015 and 30 April 2016, when specifically asked by the presidents of courts.

Since 2015, the SCM does not practice the appointment of the main investigative judges without indicating the tenure, which is a positive development. The president of Basarabasca district court requested the appointment of the main investigative judge and substitute investigative judges for tenure of three years, but in the SCM decision no. [427/17 of 2 June 2015](#) there is no indication about the tenure. However, in the list of investigative judges indicated on the SCM webpage⁷⁰ it is indicated the three years tenure.

Often, the SCM does not indicate the tenure for appointment of substitute investigative judges, noting that they are appointed only for the period of exercising the duties of in office investigative judges. We believe that the tenure should be indicated, including the one of substitute investigative judges, to ensure uniformity and clarity especially for individuals.

Between 1 January 2015 and 30 April 2016, the SCM appointed 11 times, at the request of the presidents of courts, investigative judges with a mandate to examine specific causes. In three such cases, the SCM failed to explain why it appointed investigative judges to examine

⁷⁰ List of investigative judges, available at http://csm.md/files/Lista_judecatorilor/Lista_de_instructie.pdf (last visit on 1 May 2016).

those concrete cases, as it did in other eight cases, being about abstaining and/or recusal of the main investigative judges or substitutes. Although the appointment in those three cases could have been due to the same reason, no justification in the reasoning part of the SCM decision could be interpreted differently.

The appointment of investigative judges for short tenures leads to a vacuum between the mandates of investigative judges and delay in the examination of cases and materials by investigative judges, respectively. Thus, by Decision no. [25/1 of 13 January 2015](#) at the request of the presidents of the courts, the SCM upheld the powers of investigative judges appointed in 2013-2014 until the completion of cases. It is obvious that there is a need for the appointment of these judges on for longer tenures, providing sufficient stability and predictability in exercising their tenure.

The appointment of investigative judges for different dates and terms sometimes leads to gaps between mandates of investigative judges. Some presidents of courts request the appointment of investigative judges some time before the expiration of the term of office, while others - not. To these terms, it is added the time needed to introduce the topics on the agenda of the SCM and examination of requests for appointment (see, including, *the procedure for appointment by the SCM*). These problems would be solved if all investigative judges were appointed at the same time throughout the country on a fixed and equal tenure for all courts in the country.

Workload

In January 2015, there was an uneven distribution of workload between investigative judges, about 50% of the total workload – for those in Chişinău⁷¹. According to pt. 8¹ of the SCM Regulation on the random assignment of cases to be examined by courts⁷², all investigative judges must receive for examination also common law cases in volume of 50%. This provision is not fair, given the very different workload of investigative judges throughout the country. We believe that the volume of common law cases distributed to investigative judges is to be left to the discretion of the presidents of the courts. Also, the real workload of every investigative judge is to be determined⁷³.

In case of Cahul and Hînceşti district courts where the workload of the investigative judge is for one person⁷⁴, in 2015 and 2016, the court presidents submitted some requests to the SCM on the workload of investigative judges. Thus, on 27 October 2015, the president of Cahul court requested the appointment of one more investigative judge because the very high workload, and

⁷¹ Report „Reform of the Institution of the Investigative Judge in the Republic of Moldova”, Legal Resources Centre from Moldova, January 2015, Chişinău, pag. 47-49, available at <http://crjm.org/wp-content/uploads/2015/01/CRJM-Raport-JI-28-01-2015.pdf>.

⁷² Regulation on the random assignment of cases to be examined by courts, approved by SCM Decision no. [110/5 of 5 February 2013](#).

⁷³ Report „Reform of the Institution of the Investigative Judge in the Republic of Moldova”, Legal Resources Centre from Moldova, January 2015, Chişinău, pag. 47-49, available at <http://crjm.org/wp-content/uploads/2015/01/CRJM-Raport-JI-28-01-2015.pdf>.

⁷⁴ *Idem*, pag. 50.

the SCM accepted the request⁷⁵. A second request came from the president of Hîncești district court on 26 January 2016 who asked for the reduction of the workload of the investigative judge as to common law cases from 50% to 25% and the SCM refused without giving reasons for its decision⁷⁶. We believe that the SCM should consider such requests, particularly in courts where there is data about the fact that the workload of the investigative judge is high enough.

In conclusion, it is needed to revise the SCM Regulation on the procedure and conditions of appointment of investigative judges by cancelling the transitional provisions on reconfirmation of investigative judges as common law judges. The fact that the SCM declined in some cases the appointment of investigative judges on the grounds that they did not meet minimum three years of experience as a judge is welcomed, still the standard should be applied in all cases or should be reasoned in the SCM decision when it is not possible to appoint another judge. The SCM dedicates to the appointment of investigative judges a large part of its activity, examining the issue of appointing investigative judges in about 65% of all sittings held in 2015 and the first four months of 2016. This is due to several factors, including poor management of the court presidents, but also the short mandate for which the SCM appoints investigative judges, which is very varied, between one month and three years, but in most cases is one year. Also, sometimes the SCM adopts several decisions for appointment in the same sitting, although it could adopt them by one decision. This high workload could be reduced by the appointment of all main and substitute investigative judges in one SCM sitting, for a fixed and equal term for all courts in the country, once in three years. This procedure would lead to stability and predictability for the mandate of investigative judges throughout the country, but also reduce the SCM burden to appoint these judges. Also, investigative judges from the courts with heavy workload are unable to examine an additional 50% of other types of cases, as required by pt. 8¹ of the SCM Regulation on the random assignment of cases to be examined in courts. It is necessary to revise this provision and leave this task to the president of the court to determine such additional task depending on actual workload of the investigative judge of that court. Alternatively, the matter may be decided by the SCM by increasing the number of investigative judges per court according to the actual workload.

1.5. Monitoring the Random Assignment of Cases

According to art. 4 para. (4) of Law no. 947, the SCM approves the Regulation on the random assignment of cases for examination in courts, which ensures transparency, objectivity and impartiality of this process.

In 2015, the SCM adopted six decisions on the random assignment of case⁷⁷, while in 2016; this subject was addressed in three decisions⁷⁸. These refer to requests of the court presidents to rule out several shortcomings of the ICMS, requests for amending the

⁷⁵ SCM Decision no. [808/31 of 27 October 2015](#).

⁷⁶ SCM Decision no. [19/2 of 26 January 2016](#).

⁷⁷ SCM Decisions no. [977/39 of 15.12.2015](#), no. [888/36 of 24.11.2015](#), no. [443/18 of 9.06.2015](#), no. [240/11 of 31.03.2015](#), no. [229/10 of 24.03.2015](#), no. [98/4 of 10.02.2015](#),

⁷⁸ SCM Decisions no. [177/8 of 22.03.2016](#), no. [109/5 of 23.02.2016](#), no. [61/3 of 9.02.2016](#).

percentage of cases examination (workload), blockage in the system of judges to examine certain categories of cases etc. Periodically, on the SCM website the notes of Judicial Inspection⁷⁹ and information on several events organized at the initiative of the SCM with the court presidents, regarding the effective implementation of ICMS are published.

In 2015, non-compliance with the provisions on random assignment of cases, irregularity referred to in art. 22 para. (1) f) of Law no. 544 was invoked in a disposition for instituting disciplinary proceedings⁸⁰. In 2014, non-compliance with the provision on random assignment was cited in two cases⁸¹.

The SCM should continue the practice of publishing information related to the distribution of cases, ensuring public transparency, objectivity and impartiality of the process. This information is to be presented to the extent that data and conclusions are credible and objective.

Establishing a Differentiated Workload for Administrative Positions or Judges Members of Affiliated Institutions to the SCM

By the SCM Decision no. [98/4 of 10 February 2015](#), some judges (with administrative positions or members of some the SCM boards) were set the following workload:

1. For the presidents and the vice-presidents of rayon district courts the following percentage is set:
 - court president - 75% of the total number of cases;
 - vice-president - 90% of the total number of cases.
2. For the presidents and the vice-presidents of district courts in Chişinău and Bălţi municipalities the following percentage is set:
 - court president - 50% of the total number of cases;
 - vice-president - 75% of the total number of cases.
3. For the presidents and the vice-presidents of Chişinău and Bălţi Courts of Appeal the following percentage is set:
 - president of the Chişinău and Bălţi Courts of Appeal - 25% of the total number of cases;
 - vice-president of the Chişinău and Bălţi Courts of Appeal - 50% of the total number of cases.
4. For the presidents and the vice-presidents of Cahul and Comrat Courts of Appeal the following percentage is set:
 - president of the Cahul and Comrat Courts of Appeal - 75% of the total number of cases;
 - vice-president of the Cahul and Comrat Courts of Appeal - 90% of the total number of cases.

⁷⁹ These documents are available on the webpage of the SCM allocated to adopted decisions (<http://csm.md/hotariri-csm.html>) or controls of the Judicial Inspection, available at <http://csm.md/controlale.html>.

⁸⁰ Activity report of the Disciplinary Board, February 2015, pag. 12, available at http://csm.md/files/RAPOARTE/2015/RaportColegiuluiDisciplinar_2015.pdf.

⁸¹ Activity report of the Disciplinary Board, February 2014, pag. 24, available at http://csm.md/files/Ordinea_disciplinar/2014/2014_NOTA_INFORMATIVA_CD.pdf.

5. For the Chairperson of the Supreme Court of Justice and the vice-presidents of the Boards of the Supreme Court of Justice the following percentage is set:
 - president of the Court - 10% of the total number of cases;
 - vice-president of the court - 50% of the total number of cases;
 - vice-president of the Boards - 70% of the total number of cases.
6. For members of the Board for Evaluating Performances of Judges and the Board for Selection and Career of Judges the percentage of 70% of the total number of cases is set.

The SCM decision does not explain the need to establish a reduced number of cases for the court presidents and the vice-presidents given that in 2012 a position of court administrator was introduced in every court. They took over the courts administration tasks from the presidents and the vice-presidents. Meanwhile, it seems that the SCM Decision no. [98/4 of 10 February 2015](#) was not enforced regarding the judges-members of the SCM Boards, who are still distributed cases without observing the percentage indicated above. Thus, on 15 December 2015 the SCM considered the request of Mr. Victor BOICO⁸², a member of the Disciplinary Board, requesting compliance with the SCM Decision no. [98/4 of 10 February 2015](#). Subsequently, by the SCM Decision no. [240/11 of 12 April 2016](#), the judge resigned as a member of the Disciplinary Board, particularly because of heavy workload.

Manipulations in the Random Assignment of Cases System

On 11 December 2014, the NAC and the Anticorruption Prosecutor's Office detained and heard eight employees of the Rîșcani district court, Chișinău municipality. The court officials are suspected that, between 2012 and 2014 intervened in the ICMS so that certain cases reached a particular judge. Also in December 2014, in the media appeared some information on defrauding the random assignment of cases in the SCJ⁸³. Thus, the president of the SCM alleged unfounded use of the option to block (tick off) the role of program users in 22 civil cases and requested the NAC to initiate a procedure for verifying the actions of the vice-president of the SCJ and other persons involved in the process of handling random assignment of cases under the Criminal Code. Following news in the media on this issue, in the SCM sitting of 30 December 2014, a member of the SCM proposed to include on the agenda discussions related to that incident. Following a majority vote, the proposal was rejected. The SCM member drafted a separate opinion⁸⁴, claiming his right to propose any matter to be considered by the SCM. It is unclear why the majority of the SCM members refused to discuss such an important matter.

⁸² SCM Decision no. [977/39 of 15 November 2015](#).

⁸³ EXCLUSIVELY // The business of „guided” case files from SCJ, CLAIMED at NAC, available at <http://deschide.md/ro/news/social/9254/EXCLUSIV-AFACEREA-DOSARELOR-%E2%80%9Dghidate%E2%80%9D-de-la-CSJ-RECLAMAT%C4%82-la-CNA.htm?ls-art25=75> (last visit on 1 May 2016).

⁸⁴ Separate opinion from rejecting the proposal for including on the agenda of 30 December 2014 of an issue, available at http://csm.md/files/Hotaririle/2014/35/Opinie_sedinta_35.pdf.

In the SCM sitting of 27 January 2015, the SCM left without examination the information of the S.E. "Center for Special Telecommunications"⁸⁵ on "random assignment of cases within the SCJ until the completion of the criminal investigation on that case and the adoption of a solution by the prosecuting authority"⁸⁶.

In the absence of any information on the alleged acts of defrauding the ICMS, on [2 February 2015](#) several civil society organizations asked the SCM to investigate the distribution of cases in the judicial system and to:

- carry out detailed emergency checks on the distribution of cases in all courts of the country;
- identify vulnerabilities of the cases distribution system and their subsequent removal;
- examine the reasons and causes why certain cases were distributed by manipulating the random assignment system as well as the solutions issued in those cases;
- strictly penalize all persons involved in manipulating of the cases distribution system or who did not report about the manipulation;
- to place in the shortest time the results of the checks on the SCM website⁸⁷.

Only on the basis of a public call of civil society organizations, the SCM adopted Decision no. [99/410 of 10 February 2015](#) requesting the S.E. "Center for Special Telecommunications" to present information about the manipulations admitted in the cases distribution via the ICMS by courts in Chişinău municipality, including the Court of Appeal and SCJ, for the year 2014. However, the SCM Decision of 10 February 2015 was sent to the S.E. "Center for Special Telecommunications" only on 20 March 2015.

On [28 May 2015](#), several civil society organizations reiterated the requirements of the public appeal of February 2015 addressed to the SCM, requesting the investigation of the random assignment of cases in courts. Only on [12 June 2015](#), the SCM President replied by a letter communicating that information about random assignment of cases was sent for analysis to the Judicial Inspection.

At the SCM sitting of 24 November 2015, the Judicial Inspection note about the activity of the courts in the process of using SRS ICSM and "Femida"⁸⁸ was discussed. The document indicated that all cases, which were distributed to district courts from the first instance courts in Chişinău in the last two years, were distributed without deviating from the law and there was no information on the influence of cases to be distributed to certain judges. In the assessment of the Judicial Inspection it was indicated that there were found no deliberate actions with the purpose of manipulating the data in the program

⁸⁵ By SCM Decision [no. 259/12 of 17 September 2009](#), S.E., Centre for Special Telecommunications" was appointed for maintaining ICMS.

⁸⁶ SCM Decision n. [47/2 of 27 January 2015](#). An SCM member formulated [a separate opinion](#).

⁸⁷ Public calls of 2 February 2015 (available at <http://crjm.org/en/ong-uri-cer-csm-investigarea-distribuirii-dosarelor-in-sistemul-judecatoresc/>) and 28 May 2015 (available at <http://crjm.org/ong-urile-cer-repetat-csm-investigarea-distribuirii-aleatorii-a-dosarelor-in-instantele-judecatoresti/>).

⁸⁸ Note of the Judicial Inspection on the activity of courts in using ICMS and SRS „Femida”, available at http://csm.md/files/Controale/2015/2015Activitatea_instan%C8%9Belor_utilizare_PIGD_Femida.pdf (last visit on 1 May 2016).

or to influence the random assignment of cases to concrete judges, except influencing the random assignment of cases program at the SCJ and Rîșcani district Court, Chișinău municipality. According to media information, both cases are being investigated by the criminal investigation bodies.

The analysis of the Judicial Inspection in November 2015 refers to the district courts in Chișinău municipality, but does not contain any analysis on the typology and solutions adopted in the distribution of cases through the ICMS system and vulnerabilities of the cases distribution system in order to remove them. Moreover, the Judicial Inspection does not explain the distribution of 600 cases (about 30% of all cases) in December 2014 to only one or two judges, having blocked other 24-26 judges from Rîșcani district Court, Chișinău municipality etc. The Judicial Inspection concluded that the random assignment of cases in this court is due to the fact that the Rîșcani district Court, Chișinău municipality was appointed as a pilot court⁸⁹ for specialisation of judges in:

- civil, commercial and administrative cases, including specialized board in administrative cases and judges for secret cases;
- criminal, investigative and contraventional, including specialized board for criminal cases involving minors.

In February 2016, the National Anti-Corruption Centre published an Analytical study on the weaknesses in the system of random assignment of cases "Integrated Case Management System (ICMS)"⁹⁰. The study determined that in the allocation of some cases, several judges – up to 17 - are declared incompatible, which creates the risk that a particular file is intentionally directed toward a particular judge. The study also reveals that the system allows changing data by court employees. For example, a judge may be excluded from the process of distribution of cases if next to his/her name is deleted the position he/she holds. According to the analysis, the largest number of modifications during the assessed period of nine months was made at the SCJ.

The study indicates the following vulnerabilities:

1. Presence of technical possibilities of unjustified blocking of several judges in the ICMS, for a short period;
2. Technical possibilities of setting incompatible judges without visualizing the reason/ rationale;
3. Lack of technical settings on random assignment of cases, mandatory from a certain limit number of active judges;
4. Technical possibilities for frequent adjustment for short periods of time, of the roles of courts employees in the ICMS (including judges);
5. Repeated distribution of cases, which creates the risk of abusing this function;
6. Multiple recording of cases with the same name;

⁸⁹ SCM Decision no. [235/10 of 24 March 2015](#).

⁹⁰ Analytic study on the deficiencies registered within the random assignment of cases system „Integrated Case Management System (ICMS)”, National Anti-corruption Centre, 2016, available at http://cna.md/sites/default/files/studiu_pigd.pdf.

7. Ability to provide distribution of cases in the courts with a relatively small number of judges, between 2-5, because it is possible to estimate the distribution of cases depending on previous distribution⁹¹;
8. Technical possibility of direct assignment of a new cases registered to a particular judge, by ticking off "Revised case file".

Following the publication of the study prepared by the NAC on 12 February 2016, the Ministry of Justice came up with a response⁹² indicating that "... between 2014 and the first nine months of 2015, the courts had applied version 4.0 ICMS, which was the subject of the NAC study, but which was later improved by eliminating some of the risks identified by the study of the said authors".

The press release from [February 2016](#), also, revealed that in 2016 the Ministry of Justice aimed to completing and improving the ICMS by introducing electronic registers, authenticated digital signature of the employees of the courts, introduction of the option of filing an online request, introduction of the possibility to request online copies of the documents, as well as enabling the parties to examine the cases in electronic format etc.

By the SCM Decision no. [89/4 of 16 February 2016](#), the SCM found several deficiencies in the SRS system "Femida". Among these are indicated lack of modern equipment in courts to face the necessary software for proper functioning of the random assignment of cases and data recording.

In conclusion, although the SCM monitors the implementation of the ICMS, this is a topic discussed often enough in the SCM sittings and although it took measures for ensuring proper random assignment of cases, they are not sufficient. The initiated "scandal" about the allegations against the former vice-president of the SCJ by the President of the SCM, followed by brief information on a criminal case brought on other persons, comes only to further fuel suspicions of personal pressures and not clear the actions to counteracting illegalities. Thus, the SCM must intensify the monitoring of application of the ICMS and the SRS "Femida" and publish this information on its website.

The workload and differentiated distribution of the cases examining percentage seems to be unjustified, and for some courts, there is no reasoning to that effect. The SCM is to re-examine the workload for the presidents and the vice-presidents of courts, and establish a workload for each court separately, based on the number of judges working in the court, the workload per judge and criteria on the complexity of the cases.

⁹¹ This deficiency shall disappear after the implementation of the Law on the reorganisation of the court system and ensuring a minimum number of judges per court.

⁹² NAC Study on the Random assignment of cases system in courts (ICMS) and the position of the Ministry of Justice, available at <http://justice.gov.md/libview.php?l=ro&cid=4&id=2915> (last visit on 1 May 2016).

Functioning of the SCM

In 2015, the SCM worked in full composition, except for periods when the Minister of Justice was not in office. The absence of the Minister of Justice with a full mandate did not affect the SCM's activity, since quorum was not affected by the absence of a member. During the period February - April 2016, the position of the SCJ president was vacant, and since 1 March 2016, the position of the General Prosecutor is vacant following the resignation of the General Prosecutor. The absence of these two members has not affected the functionality of the SCM, the quorum is ensured by the presence of the rest of the members⁹³.

According to previous practice, the persons withholding interim positions of the SCM members do not have the right to vote. In the context of failing to appoint a successor for exercising the powers of the SCJ president, the Plenum of the Supreme Court asked the Constitutional Court to interpret art. 166 para. (2), (4) and art. 136 para. (1) of the Constitution⁹⁴.

2.1. SCM Sitzings

Sittings and Adopted Decisions. Publishing the SCM Decision

Art. 8¹ of the Law on the SCM provides that the SCM's activity must be transparent and all sittings recorded through the use of video and audio system, and recorded in the official minutes, which are posted on the SCM website. From January 2016, all SCM's sittings can be watched online on the SCM website. But, according to current practice, sittings can be watched only live without a procedure for storage and later viewing of the sittings

During 2015, the SCM met in 40 ordinary and extraordinary sittings, examining more than 1,100 issues and adopting 994 decisions. The Activity report of the SCM Secretariat reveals

⁹³ In this context, on 12 April 2016, the Government asked the opinion of the Constitutional Court to the draft law amending and supplementing some articles of the Constitution which also refers to the composition of the SCM. The draft law provides for the exclusion of the SCJ president and the General Prosecutor from the SCM. Thus, by opinion no. 6 of 19 April 2016, the Constitutional Court found that the constitutional draft law on amending and supplementing the Constitution of the Republic of Moldova does not go beyond the review required under Article 142 para. (2) of the Constitution and it can be submitted to the Parliament. The text of the opinion is available at <http://constcourt.md/ccdocview.php?l=ro&tip=avize&doid=51>.

⁹⁴ See the notification of the Plenum of the Supreme Court of Justice no.15b of 12 March 2016 on the interpretation of art.116 para. (2), (4) and art.136 para. (1) of the Constitution available at <http://constcourt.md/ccdocview.php?tip=sesizari&doid=399&cl=ro>.

that in 2015, 979 decisions were published on its website and 15 decisions were not published on the grounds that contained personal data and referred to issuing the consent on initiating criminal investigation and criminal liability of judges or former judges and examination of advisory opinions on the verification of judges or candidates for judicial office⁹⁵. This statement is based on the provisions of pt. 11.15 of the Regulation on the activity of the SCM which determines that on the SCM website are not published decisions following the examination of advisory opinions of the SIS regarding judges and candidates for judicial office, who were declared incompatible with public office or in respect of whom verification was disposed; decisions on notifying the General Prosecutor related to issuing consent to initiate criminal investigation against judges, being published only the decision of the decision.

At the same time, art. 8¹ para. (7) of the Law on the Superior Council of Magistracy provides that the adopted decisions are published on the SCM website. The text of the law does not impose any restriction as to not publishing the decisions. The SCM must publish all taken decisions, including on the issue of consent to initiate criminal investigation and criminal liability in respect to judges or former judges and to examine advisory opinions on the verification of judges or candidates for judicial office. To protect the privacy of judges and other persons included in the decision, in justified cases, the SCM could publish depersonalized decisions.

Publishing the Agenda and Materials of the Sittings

The draft agenda of the sitting is posted on the SCM website three days in advance. Pt. 6.5 of the Regulation on the SCM activity provides that in order to ensure the carrying out of the sitting of the SCM Plenum and informing the members on the materials that are proposed to be examined in the sitting, they shall be included in the agenda only if they had been recorded in the Secretariat at least five working days before the sitting, except for emergencies. At the same time, pt. 6.8 of the Regulation on the SCM activity reveals that by the beginning of the SCM sitting, the issues that cannot be postponed and are to be examined urgently are included in the supplementary agenda, which is made known to the members. These issues, also, are published on the SCM website.

In 2015, of the 40 sittings of the SCM, only in one sitting the examination of an additional agenda was not included, and in 2016, of the 11 sittings held until 15 April 2016 only in one sitting the examination of an additional agenda was not included. Basically, the SCM admits the inclusion of additional agenda at each sitting and enables further inclusion in the additional agenda not only of "certain issues that cannot be postponed and are urgent", as required by the Regulation of the SCM. Therefore, the SCM continues the practice of including in the SCM sittings the issues that are recorded a few days in advance and are not necessarily urgent. Such issues relate to requests by the court presidents for allocation of financial resources for courts, delegation of judges in trainings, suspension from office etc. ***This practice damages the transparency of the SCM, leads to increase of the***

⁹⁵ Activity report of the Secretariat of the Superior Council of Magistracy, SCM, pag. 5, available at http://csm.md/files/Raport_anual/RAPORT-SecretariatCSM-2016.pdf.

SCM Secretariat's efforts to ensure the proper conduct of the sittings and creates preconditions for superficial discussion of issues because it is impossible to analyse in detail and in advance the materials to be examined.

The SCM is to explain the courts' presidents the reasons to avoid requests to include in the agenda of matters that can be postponed to the next sitting, and the SCM President is to refrain from issuing dispositions when it is not the case.

The analytical document on the organization of sittings and transparency of the SCM from 2015 emphasized the use of less informative titles for issues included in the SCM agenda. For instance, the request of the Heads of the Secretariat to a court to resolve organizational issues are, in fact, requests of the court presidents concerning bonuses/awards to be granted from the courts' savings. In 2015, 17 decisions of this kind were adopted by the SCM⁹⁶. No SCM decision indicated the amount that the president of the court was awarded.

The SCM does not post the support information publicly available for some issues to be discussed at the SCM sitting. Issues related to the allocation of additional funds for courts, granting bonuses/awards to judges, draft laws on which the SCM opinion is requested, notes of the Judicial Inspection etc. are not available in the SCM agenda for sittings published on its website. ***The SCM is to publish the agenda and relevant materials, and the topics on the agenda are to be clearly articulated to allow an external observer to understand the issues under discussion.***

Debating the Topics on the Agenda

The manner and duration of discussions in the SCM sittings differ depending on the issue being discussed and the interest or specialization of the SCM members on specific topics. In some cases, debates are so formal that a third person involved or listening online the SCM sitting could not understand the essence of the discussion and the information that was made available to the members of the SCM. Sometimes, it seems that the discussions are held only among the members of the SCM, and the issues debated do not refer to the self-administration of the judiciary. The SCM has never explained the interested persons the solution adopted, especially in cases where issues that relate to the career judges are discussed.

Exaggerated Workload of the Plenum. Delegating Powers to the President of the SCM

In the period January 2015 - March 2016, the SCM approved by its decision 18 dispositions issued by the SCM president. These relate primarily to the appointment of judges to exercise powers of investigative judge for a fixed period, granting leave for court president, delegation of judges to participate in conferences or other events, awarding honorary diplomas of the SCM etc. The text of these decisions substantiates the need for approving the dispositions issued by the SCM president, since the requests were to be examined in short terms, and it was not possible to convene the SCM sitting.

⁹⁶ See SCM decisions no. [972/39](#), [939/38](#), [918/37](#), [894/36](#), [871/35](#), [852/34](#), [826/33](#), [749/29](#), [724/28](#), [683/27](#), [652/26](#), [659/25](#), [372/16](#), [343/15](#), [148/7](#), [38/2](#).

In previous assessments of the SCM activity⁹⁷, LRCM recommended to relieve the agenda of the SCM Plenum by excluding minor issues, which do not require debates. We note that the SCM started such a practice. However, this is not enough; the agendas of the SCM sittings continue to be loaded with minor issues such as approving leave or secondment of judges for some training. Meanwhile, the appointment of investigative judges cannot be described as a minor matter or that may be approved on a case by case basis (see details in section 1.4 regarding the appointment of investigative judges). The SCM is to relieve the agenda for the SCM sittings by delegating minor issues to the SCM president, without the required approval by the SCM members in the plenary of the next sitting, but to exclude arbitrary delegations, the SCM Plenum should approve the type of tasks to be delegated to the SCM president.

Since 2015, summaries of each SCM sitting have been published on the website⁹⁸, and since 2016, eight minutes of 13 sittings which took place before 1 May 2016 have been published⁹⁹. *The publication of the minutes of the SCM sittings and summaries of sittings is a good practice, which allows the third parties to better understand the activity and decisions adopted by the SCM. The SCM's good practice of publishing synthesis of sittings and minutes of the SCM sittings is to be continued.*

2.2. Adoption of the SCM Decisions

Art. 24 para. (2) of the Law on SCM provides that the voting procedure shall be performed in the absence of the person whose case is being examined and in the absence of other persons who were invited. Art. 24 para. 2 of the Law on SCM provides the deliberation procedure for the adoption of decisions by the SCM. As a result, voting of decisions by the SCM members, takes place in almost all cases in closed sessions, where no one except for the SCM members participates, meaning in "deliberation", similar to the adoption of court decisions.

In announcing the deliberations, other persons, including members of the SCM Secretariat, are asked to leave the room. The SCM uses to adopt decisions by "deliberations" even in matters that do not involve discussions of sensitive topics or personal data, such as exposure of opinions on draft laws.

In the LRCM Report on monitoring the SCM from 2013 and Analytical document about the organization of sittings and transparency of the SCM from 2015, the LRCM recommended giving up the practice of adopting SCM decisions by deliberation on the grounds that it would seriously affect the transparency of the SCM. Moreover the reasoning why the legislature included the deliberation procedure for the SCM is not clear. The SCM is the only collegial public institution where decisions are taken behind closed doors. Neither the Parliament, nor the Government have such procedures, having adversarial discussions

⁹⁷ Analytic document „Organizing Sittings and Transparency of the Superior Council of Magistracy – challenges and perspectives”, Legal Resources Centre from Moldova, June 2015, available at <http://crjm.org/wp-content/uploads/2015/06/CRJM-DA-CSM-2015.pdf>.

⁹⁸ See <http://csm.md/sedinte/8-content/2076-ordinea-de-zi-a-sedintei-anul-2015.html>.

⁹⁹ See <http://csm.md/sedinte.html>.

and taking decisions in public. The Superior Council of Prosecutors (SCP) also does not take decisions in deliberation (and the president of the SCM, the Minister of Justice and the General Prosecutor are members of the SCP). Moreover, given that the SCM decisions are drafted by the members of its Secretariat and the Secretariat staff does not participate in the deliberation, it is very hard to imagine how a person who has not attended the adoption of a decision can argue it.

The law on the SCM is to be amended by excluding the deliberation procedure. Even before the amendment of the law, the SCM is to abandon the practice of adopting decisions through secret vote, which is actually a procedure of deliberation, which is not suitable for a public collegial body. This practice seriously affects the SCM transparency and is not appropriate for a collegial institution for self-administration of the judiciary. The SCM is to issue decisions in deliberation only when the circumstances of the case justify this procedure or when the SCM appears as a quasi-judicial body in the disciplinary proceedings. Circumstances, which would justify the deliberation procedure, are to be justified in each case.

Failure to Indicate the Number of Votes in the Decisions of the SCM

Art. 24 para. (1) of the Law on the SCM provides that decisions shall be adopted with the open vote of the majority of its members, except as provided in Article 19 para. (4), which requires the vote of 2/3 of the members (when the President of the country, or where appropriate, the Parliament rejects the candidacy proposed by the SCM). In terms of reflecting the number of votes in the SCM decisions, neither the Law on the SCM, nor the SCM Regulation include any relevant provisions. Possibly, this led to an incoherent practice of the SCM on indicating the number of votes in the decisions taken. Only in rare cases, the SCM indicates the number of votes for or against a solution. They usually refer to the proposal for appointment, promotion or appointment to an administrative position of a judge. Otherwise, the text of the decision indicates that the decision was adopted by a majority vote of the present members, without specifying the exact number and whether there were votes against.

Failure to indicate the number of votes in the text of the decision repeatedly raised uncertainty whether a particular decision was adopted with the number of votes required by law. For instance, by the SCM Decision no. [14/2 of 26 January 2016](#) the SCM proposed the President of the Republic of Moldova to repeatedly appoint Mrs. Lucia BAGRIN to the position of judge in Centru district Court of Chişinău municipality. It results from the SCM judgment that Mrs. Bagrin was proposed by a majority vote although the law expressly provides that repeated proposal is made with the 2/3 vote of the SCM¹⁰⁰ members (more details in Chapter 1.2, section on refusals of the President).

¹⁰⁰In this regard, the LRCM has sent the President of the Republic of Moldova an appeal requesting verification of the candidature of Mrs. Lucia BAGRIN, but also to check the procedure for adopting the SCM decision, expressing in this way, also the concern about the lack of transparency in the SCM activity and lack of systemic reasoning of decisions on career of judges, available at http://crjm.org/aplel_hotarari-csm_bagrini/. By 1 May 2016, LRCM has not received any reaction from the President, and the judge has been appointed by the President's decree [no. 1976 of 17 March 2016](#).

If a proposed solution has not accumulated the required number of votes, the SCM, in all cases, adopts a negative decision. At the same time, pt. 11.6 of the SCM Regulation on activity provides that the Council members may return to earlier stages of examination and discussion of the matter, if it is necessary to specify certain circumstances important for the proper settlement of the issue. This has been applied by the SCM in a few cases.

Neither the Law on SCM, nor the Regulation on the activity of the SCM do not provide for situations, which follow in case of the failure to accumulate the required quorum for adoption of a decision. In case of failure to accumulate the number of votes, it cannot be said that an SCM decision was adopted. We believe that the SCM should resume the discussions on the issue that has not accumulated the quorum and should put the question to vote again.

The practice of only indicating in the text of the decisions that the decision was adopted by a majority vote of the present members must be changed. The LRCM recommended above and reiterates its recommendation that the SCM shall indicate in each decision the number of votes for each solution put to vote and in case of competitions for vacant positions shall indicate the number of votes ("pro" or "against") for each of the candidates. By indicating the number of votes in its decisions, the SCM will ensure that a decision was adopted with the minimum number to be valid and would rule out the suspicion that it was adopted by fewer votes than indicated in the law.

2.3. Reasoning the Decisions of the SCM

According to pt. 11.11 of the Regulation of the SCM activity, the SCM decision must be lawful, justified and reasoned. Art. 19 para. (2) and art. 20 para. (3¹) of the Law on the SCM provides that the SCM decision on selecting candidates for the position of judge, president or vice-president of court, transferring a judge to a court of the same level or a lower court, promoting a judge to a higher court and the dismissal from the position must be reasoned and adopted by an open vote of the Council members. According to art. 24 para. (4) of the same law, if a member of the Superior Council of Magistracy has a dissenting opinion, it will be reasoned and attached to the decision without reading it.

In the period January 2015 - March 2016, the SCM members have issued 14 dissenting opinions on the decisions taken by the SCM. They refer to the contests to fill vacancies of the position of judges at the Supreme Court, advisory opinion on the verification of a judge by SIS, the distribution of positions of judge's vacancies in courts, issuing opinion on a draft law, the solution provided by the SCM to the appeal against the Disciplinary Board etc.

In several cases, the SCM used a standard text in the adopted decision:

According to art. 24 para. (1) and (2) of Law no. 947-XIII of 19 July 1996 on the Superior Council of Magistracy, the SCM adopts decisions with the vote of the majority of its members, the voting is carried out in the absence of the person whose case is being examined and in the absence of other invited persons. However, it should be noted that the vote for one candidate or another, is an exclusive right of

the SCM member, but one should take into account that the SCM member has an obligation to cast his/her vote for or against the resolution of the issues examined in the SCM sitting.

Invoking the SCM member's exclusive right to vote in adopting the SCM decisions as reasons for substantiating the SCM decisions is not a reason for the issue under examination. A SCM member cannot simply vote to reason his/her choice. By this approach, the legal requirement on the reasoning of the SCM decision is constantly violated.

In the section that relates to the career of judges, we examined in detail the practice of appointing and promoting judges and highlighted the problem of failure to reason or poor reasoning by the SCM in appointing some candidates who accumulated a lower score than their colleagues in the contest. Pt. 19 of the Regulation on the organization and conduct of the contest for the position of judge, approved by the SCM Decision no. [741/31 of 15 October 2013](#) states:

"...in the debates on the appointment of a particular candidate to the announced position, the SCM will issue a reasoned decision which cannot be contradictory to the conclusion on the scoring given by the Selection Board. The decision by which the candidate with the highest score will be rejected for being appointed to a position following a specific competition shall be reasoned also in terms of opportunity and reasons why priority was given to another applicant. Thus, priority will be given to the candidate who has the seniority to another candidate, or the candidate who presumably has a better work organization, better motivation or highest level of integrity and impeccable reputation."

Ignoring the legal provisions, during January 2015 - April 2016, the SCM adopted several decisions for appointing or promoting judges who obtained a lower score on the assessment by the BSCJ, without reasoning its decision¹⁰¹.

Similarly, if the SCM insists on the reappointment of a particular candidate, it should reason why the refusal invoked by the President of the country is not grounded. As mentioned above, at least in case of the appointment of the candidates Natalia BERBEC and Lucia BAGRIN and in repeated proposal for appointment (and later promotion as President of the Comrat Court of Appeal) of judge Sergiu GUBENCO, the SCM did not argue why it considered unjustified the refusal of the President.

The SCM is the self-administration body of the judiciary. The legal requirement on the reasoning of the SCM decisions is not an abstract requirement, which can be ignored. The quality of the reasoning of the judicial decisions is the main indicator on the quality of a judicial system. The SCM should give a clear and complete example to the court of reasoning its decisions. In particular, the SCM is to reason every decision about the career of the judge

¹⁰¹For ex., the proposal for appointing Mrs. Mariana PITIC to the SCJ, SCM Decision no. [7/2 of 26 January 2016](#).

previously evaluated by the BSCJ or the BEPJ. Invoking only the number of votes expressed by the SCM members and indicating their discretion to vote "for" or "against" is not a reasoning of that decision. By reasoning decisions trust shall be built, including among judges, that the SCM decisions are legal, reasoned and justified, and not arbitrary or selective.

Appealing the Decisions of the SCM

According to art. 25 para. 1 of Law no. 947 of 19 July 1996 on the Superior Council of Magistracy, the SCM decisions can be appealed to the SCJ by any interested person within 15 days from the date of communication, only in the part referring to the procedure of issuing/adopting them. According to art. 40 para. (2) of Law no. 178 on disciplinary liability of judges, the SCM decisions taken after examination of complaints to the Disciplinary Board may be appealed to the SCJ. Law no. 178 is subsequent to the law by which art. 25 of the Law on the SCM was amended, which reduced the object of challenging the SCM decision to the SCJ only in part on the procedure for issuing/adopting it, and is special law compared to the Law on SCM. *Accordingly, the SCM decisions in disciplinary matters should be challenged and reviewed by the SCJ on both procedural and substantive matters.* Unfortunately, the Supreme Court does not have an uniform practice in this respect, in some decisions reducing itself to the mere examination of procedural aspects in case of the appeals in disciplinary matters.

In the period January 2015 - March 2016, the SCJ adopted around 30 decisions based on decisions adopted by the SCM. The dispositive of the decisions is always published and the reasoned decisions are not published in all cases¹⁰². Of all appeals against the SCM decisions, the SCJ annulled only two:

- [case no. 3-1/16](#) to the action of Victor ORÂANDAŞ against the SCM on the annulment of the SCM decisions no. 663/26 of 15 September 2015 and no. 835/33 of 3 November 2015. On 1 May 2016, the reasoned decision was not published on the SCJ website. The SCM decisions referred to the SIS information about the judge's incompatibility with his position and commitment of some disciplinary offenses;
- [case no. 3d-3/15](#) to the action Iurie DIACONU, Ion GUZUN and Liliana CATAN regarding the annulment of the SCM decision, the application was accepted by the SCJ panel and the SCM Decision no. 137/7 of 3 March 2015 on contesting the judgment of the Disciplinary Board no. 10/1 of 30 January 2015 was annulled. The case referred to lack of reasoning of a SCJ decision, which led to the release of a person from the underworld.

If the Supreme Court annuls the SCM decisions on procedural grounds, the SCM must return to the annulled decision and remove the shortcomings found. Although the SCM could return to the two judgments annulled by the SCJ, by 1 May 2016, the SCM did not include on the agenda and did not decide to recommence discussion to review these matters.

¹⁰²For ex., case file [no. 3-13/15](#), [no. 3d-2/15](#), [no. 3-12/15](#), [no. 3-11/15](#), [no. 3-17/15](#), [no. 3-24/15](#), [no. 3d-5/15](#), [no. 3-1/16](#).

2.4. Reactions to Issues of Public Interest

The SCM Plenum adopted the Strategy for communication and public relations of the SCM and the judiciary for the years 2015–2016 and the Annual plan of communication activities and public relations of the SCM and the judiciary in 2015. According to the SCM activity report, in 2015, public relations focused on the following activities: promotion and implementation of communication and public relations programs; strengthening relations with civil society and media; providing, at the request of media representatives and citizens, public information on the SCM activity, monitoring the information disseminated by media regarding the SCM and the judiciary etc.

The SCM has the power to react when a serious interference is brought to the professional reputation of a judge or the image of justice is seriously affected. This competence is very important both for judges on which media representatives admitted certain breaches of the code of conduct for journalists, but also for the public, who needs to know if the limits of freedom of expression were exceeded.

In 2015, two judges asked for their professional reputation to be defended, and in 2016, a judge (SCM member) asked the SCM for his/her professional reputation to be defended. The judge Sofia ARAMĂ argued that a defence attorney expressed her opinion on the judge's competence on a social network. The judge considered that it seeks intimidation, defamation of honour, dignity and professional reputation. The SCM noted the judge's request and notified the Committee for Ethics and Discipline of the Bar Union¹⁰³. Mrs. Liliana CATAN, a SCJ judge, requested to have her professional reputation defended against the allegations made against her in an article published in "Ziarul de Garda" and taken over by "Jurnal TV" post. The SCM issued a press release and notified the Press Council¹⁰⁴. Mrs. Tatiana RĂDUCANU, a member of the SCM [requested to have her professional reputation defended](#) in relation to a publication of false information in the press. Later, the SCM [issued a press release](#). In all three cases, both in the SCM decisions and press releases, it is not clear what precisely did the journalists violate and what they should abstain from in future.

In another vein, on 17 December 2015, the SCM criticized [through a press release](#) Mr. Arcadie BARBĂROȘIE's comment. According to the SCM, the qualifier "schizophrenic" denigrates and seriously harms the image of the judiciary and by this comment, the acceptable limits of freedom of expression were exceeded and serious interference brought to judicial independence. Also, the SCM notified the Press Council on checking the compliance of the said article with the Code of Ethics. Through a public statement of 29 December 2009¹⁰⁵, some civil society organizations considered the SCM's reaction regrettable, mentioning that the assessment given by Mr. Barbăroșie results from the inconsistency of the courts' actions and that in such circumstances it cannot be said that Mr. Barbăroșie acted in bad faith.

¹⁰³ SCM Decision no. [606/24 of 11 August 2015](#).

¹⁰⁴ SCM Decision no. [712/28 of 6 October 2015](#).

¹⁰⁵ Declaration on freedom of expression, available at <http://crjm.org/wp-content/uploads/2015/12/2015-12-29-Declaratie-dl-Barbarosie.pdf>.

Unfortunately, the SCM does not notify the public about the implementation of anti-corruption measures in the judiciary. On 23 December 2013, the Parliament prohibited *ex parte* communication, i.e. communication between judge and parties outside the hearings. Judges were obliged to report to the SCM any attempt of that kind. The SCM has not informed the society if any disciplinary procedure for judges' failure to inform in situations where there are suspicions¹⁰⁶ has been initiated or there is information that they admitted the *ex parte* communication. Also, the SCM has not informed the society about how many candidates to the position of judge were polygraph tested. This is an anti-corruption measure adopted on 23 December 2013 which was to be implemented no later than 1 January 2015¹⁰⁷.

During the SCM activity monitoring period, from January 2015 to April 2016, the media conducted several investigations and published media materials indicating to unjustified wealth, adoption of decisions that damage the state budget or even affected state security. However, the SCM did not react to these materials, although they seriously affected the image of the judiciary. The SCM or the Judicial Inspection did not publish or present their own investigations. When the image of the judiciary or professional reputation of the judge is prejudiced unfounded, the SCM should react *ex officio*, without any prior request from the judge. This is also the case of the journalist investigations carried out to demonstrate lack of integrity.

¹⁰⁶In a situation when a lawyer was filmed climbing on the third floor of the Chişinău Court of Appeal, where the judges' offices are located with a bag that he did not have when he came out, an SCM member said in a show that this is not serious and that the lawyer was not filmed entering any office of judges, <http://www.jurnaltv.md/ro/news/2014/9/8/berlinski-cu-punga-la-judecatori-10057080/>, <http://www.jurnal.md/ro/news/cazul-berlinski-la-cac-e-posibila-o-intorsatura-in-dosarul-norma-1176683/>.

¹⁰⁷Art. VII of Law no. 326 of 23 December 2013 for amending and completing some legislative acts.

Main Recommendations

Recommendations for the Superior Council of Magistracy

Administration of the judiciary

- Adopting a uniform policy/practice for approving the budgets of courts.
- Developing a regulation for granting bonuses/awards in the judiciary, indicating the rationale and the criteria for granting them, in order to exclude any abusive and non-transparent practices.
- Adopting a policy of capital investments and upgrading of the necessary equipment for the proper functioning of the courts that will be applicable and predictable in the reorganization of the court system.
- Developing and adopting a regulation on the organization of contests for all vacancies in the judiciary, which would provide for regular organization of contests (e.g., two to three times per year), and not for each vacant function separately. Applicants with the best evaluations should be entitled to choose the court where they want to activate with priority. This approach would also avoid artificial delays in conducting announced competitions, as well as avoiding long interim periods.
- Refusal of appointment, promotion or transfer to the position by exclusion from the competition and from the register the candidates or, where appropriate, dismissal, if there is information that indicates towards the incompatibility of the candidate to the position of judge.
- Reasoning of all SCM decisions, including decisions on proposals for appointment, promotion and transfer of judges, including the repeated proposals of the candidates refused for the first time by the President of the country.
- Taking measures to ensure that the SCM decisions are not ignored by the executive and legislative. The term of appointment of judges to the SCJ by the Parliament shall not exceed the term of appointment established by the President of the Republic of Moldova.
- Instituting an uniform practice for suspending the examination of the resignation requests during the examination of disciplinary proceedings or criminal investigation.

- Excluding permanent transfers, disguised as temporary transfers. If a court needs a bigger number of judges, the SCM shall change the number of judges per court and announce a contest in this regard. To cover up the temporary vacations, which cannot be postponed, judicial reserve institution shall be used.
- Optimizing the procedure for appointing the main and substitute investigative judges by appointing them in all courts in the country simultaneously and appointing all investigative judges for a fixed term of three years without the possibility of extension.
- At least three months before the commencement of office of investigative judge, these judges must follow training courses at the NIJ and the workload as ordinary judge shall be gradually reduced.
- Reasoning by the SCM in all decisions when appointing an investigative judge to examine a single case.
- Revising pt. 8¹ of the SCM Regulation on random assignment of cases for examination in courts referring to a fixed quota of other categories of cases distributed to investigative judges.
- Continuing the good practice of publishing information related to the distribution of cases, ensuring public transparency, objectivity and impartiality of this process.
- Observance in practice of the percentage of distribution of cases through the ICMS to courts and to members of the Disciplinary Board, the Board for Evaluating Performances of Judges and the Board for Selection and Career of Judges, to meet the real needs. In particular, the workload of judges - members of the Boards with high workload should be reduced. Meanwhile, the workload of the presidents and the vice-presidents of small courts should be increased.

Functioning of the SCM

- Publishing all decisions, including those aimed at the release of the consent to initiate criminal investigation and criminal liability of judges or former judges and to examine advisory opinions on the verification of judges or candidates for judicial office, with depersonalization thereof where justified.
- Adopting a more rigid approach to the inclusion of additional subjects on the additional agenda, which may be postponed to the next sitting.
- Continuing positive practice of publishing the synthesis and minutes of sittings.
- Ensuring the possibility of archiving and accessing the SCM sittings that are broadcasted online.
- Giving up the practice of adopting decisions behind closed doors. The SCM shall adopt decisions in deliberation only when the circumstances of the case justify examining

the entire matter behind closed doors or when the SCM examines the complaint in a disciplinary case (in the latter case appearing as a quasi-judicial body).

- Indicating in each decision the number of votes for each solution put to vote and in case of competitions for vacancies, indicating the number of votes ("pro" or "against") for each of the candidates. If the required number of votes is not reached for adopting a decision, the voting procedure of the top two candidates shall be repeated.
- SCM shall adequately reason each of its decision, giving an example of clear and complete reasoning of decisions for the entire judicial system. In particular, the SCM is to abandon the practice of invoking only the number of votes expressed by the members of the SCM instead of actual reasoning of the decision.
- Reviewing the SCM decisions that are cancelled by the SCJ on procedural grounds by removing the found shortcomings and adopting a new decision.
- SCM shall react ex officio to ensure the good reputation of judges when justice's image or the professional reputation of a judge is unjustifiably prejudiced through attacks. The SCM should clearly indicate what journalists violate and from what allegations they should refrain in the future.
- Periodically inform the public about the implementation of anti-corruption measures in the judiciary.

Recommendations for the Parliament

Administration of the judiciary

- Amending the legislation so that the SCM organizes periodic competitions in the predetermined periods to fill all vacancies in the judiciary (e.g., two to three times per year), and the candidates with the best evaluations to have the right to choose the court where they want to work.
- Amending the existing legislation, so that the SCM is able to postpone the examination of the request for resignation of the judge during the examination of disciplinary proceedings or criminal investigation.
- Optimizing the procedure for appointing main and substitute investigative judges by appointing them in all courts in the country simultaneously and appointing all investigative judges for a fixed term of three years without the possibility of extension.

Functioning of the SCM

- Amending art. 24 para. (2) of the Law on the SCM by excluding provisions regarding the adoption of decisions "in absence of the person whose case is being examined and in

the absence of other invited persons." The SCM is to issue decisions in deliberation only when the circumstances of the case justify examining the whole matter behind closed doors or when the SCM examines the complaint in a disciplinary case (in the latter case appearing as a quasi-judicial body).

- Enforcement of the SCM decisions in time, so that the term of appointment of judges to the SCJ by the Parliament does not exceed the term of appointment established by the President of the Republic of Moldova.

The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chişinău, Republic of Moldova. LRCM strives to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner.

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