

LEGAL OPINION

on the draft law amending the Constitution of the Republic of Moldova
(art. 116, 121, 122 of the Constitution)

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The Legal Resources Centre from Moldova (CRJM) and the Institute for European Policies and Reforms (IPRE) have repeatedly reviewed the [draft Law on the amendment of the Constitution of the Republic of Moldova \(art. 116, 121, 122 of the Constitution\)](#), submitted for consultations via an e-mail from 25 June 2020. The draft Law transposes a number of recommendations contained in the Venice Commission Opinions [no. 983/2020 from 20 March 2020 \(CDL-AD\(2020\)001\)](#) and [no. 983 from 19 June 2020 \(CDL-AD\(2020\)007\)](#).

CRJM and IPRE welcomes the drafting and publication of the draft law for public consultations. The draft Law is important to ensure the independence and accountability of the judiciary. CRJM previously presented three opinions to a similar draft Law [5 October 2015](#), [23 June 2017](#) and [25 November 2019](#). We support the essence of the proposed amendments.

At the same time, the bill could be improved as follows:

- clarification of the criteria for candidates for the position of SCM member from civil society;
- clarification of the conditions of revocation of the members of the Superior Council of Magistracy (SCM) and changing the place of this norm;
- exclusion of the provision related to the moment of entry into force of the law;
- clarification of the procedure related to the election of the new non-adjudicating members of the SCM.

Next, in the table below, we propose a series of specific changes.

Please feel free to contact us for any further clarifications.

	Existing text or the one proposed by the Ministry of Justice	Proposed changes by CRJM and IPRE (the wording in relation to the proposed deletion has been crossed out and the text proposed to be added is underlined)	Reasoning
1.	Article 122 para. (1) The Superior Council of Magistracy consists of 12 members, six judges elected by the General Assembly of Judges, representing all levels of the courts and six people who enjoy a high professional reputation and personal integrity, with experience in the field of law, who do not work in bodies of the legislature, executive or judiciary and are not politically affiliated.	We propose the amendment and completion, as follows: "1. The Superior Council of Magistracy shall consist of 12 members, six judges elected by the General Assembly of Judges, representing all levels of the courts and six persons enjoying a high professional reputation and personal integrity, with experience in the field of law <u>or in other relevant areas</u> , which do not operate within the bodies of the legislative, executive or judicial powers and are not politically affiliated. "	We were surprised that the condition of experience in the field of law was reintroduced in the draft law. The previous version of the draft law, consulted in March 2020, did not contain this condition. The Venice Commission, in its last opinion (para. 23), welcomed this. Unfortunately, the made change does not comply with this recommendation. We recommend supplementing the text with the phrase recommended by the Venice Commission. We also recommend clarifying in the draft information note the term "political affiliation". This will provide clarity on the scope of the term "political affiliation" and will exclude the risks of extended interpretation of this term at the stage of application of the Constitution.
2.	Article 122 para. (5) The members of the Superior Council of Magistracy are elected or appointed for a term of 6 years, without the possibility of holding two terms. The members of the Superior Council of Magistracy may be revoked, in accordance with the law.	We propose to complete this provision, as follows: "The members of the Superior Council of Magistracy are elected or appointed for a term of 6 years, without the possibility of holding two terms. The members of the Superior Council of Magistracy may be revoked <u>for committing serious violations</u> , in accordance with the law. "	We consider it necessary to include clear and express provisions on the conditions for revocation of SCM members - <u>for committing serious violations</u> . This is the meaning of the opinion of the Venice Commission. The draft text leaves this aspect to the discretion of the organic law. This does not exclude that the organic law will provide any grounds for revoking the members of the SCM, including the loss of trust, which has been widely criticized by the Commission. On the other hand, the last sentence in par. 5), in the proposed form, does not bring any value, because para. 2) already stipulates that the manner of termination of the SCM's mandate is provided by law. On the other hand, we consider that the text proposed by us would look more logical in para. (2) than in par. (5).
3.	Article II para. (1) (1) This law shall enter into force at the expiration of 6 months from the date of publication in the Official Gazette of the Republic of Moldova.	We propose to exclude this provision.	The information note does not justify in any way the need for the amendment of the Constitution to enter into force 6 months after its publication in the Official Gazette. The constitution was amended by seven constitutional laws. No law amending the Constitution provided

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			<p>for the postponement of its entry into force.</p> <p>On the other hand, the draft excludes the reconfirmation of judges, the appointment of SCJ judges by Parliament, introduces rules to strengthen the independence of the SCM. These changes are intended to increase the independence of judges. The postponement of the implementation of these and other amendments cannot be rationally explained and does not achieve the objectives imposed by the draft amendment to the Constitution itself.</p>
4.	(3) The members of the Superior Council of Magistracy from among the judges in office on the date of entry into force of this law shall exercise their mandate until the expiration of the term for which they were elected, except for law members and tenured professors whose term ends in force of this law.	(3) The members of the Superior Council of Magistracy from among the judges in office on the date of entry into force of this law shall exercise their mandate until the expiration of the term for which they were elected. The mandate of the members of the Superior Council of Magistracy from among the professors ceases by the effect of the present law, <u>exercising their mandate until the appointment of the new non-judging members of the Superior Council of Magistracy.</u>	<p>We suggest to exclude the phrase "members of law and" from this provision. The legal members do not have a mandate as a member of the SCM. They were not elected. They are members of the SCM by virtue of their position. With their exclusion from the SCM, they are no longer members. There is no need for a specific text in this regard. This phrase also looks inappropriate in this paragraph, because it refers to the term mandate!</p> <p>We also suggest to complete this rule. Otherwise, the SCM will remain without a quorum for at least a few months! Thus, the SCM member teachers will continue their activity until the appointment of their successors.</p>