

### ADDITIONAL OPINION

To the draft Action Plan for the implementation of the Strategy ensuring the independence and integrity of the justice sector for the years 2021-2024

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This opinion is submitted in the context of the public consultations launched by the Ministry of Justice and submitted to the relevant institutions on 7 August 2020 on the draft Strategy ensuring the independence and integrity of the justice sector for the years 2021-2024 (hereinafter Strategy) and the Action Plan for its implementation (hereinafter "Action Plan").

Our conclusion is that the updated draft Action Plan has taken into account several of the recommendations we proposed earlier. However, we have some suggestions for improving the action plan.

#### Specific objectives and actions which require revision

1. At specific objective 1.1.3. letter d), we consider appropriate to complement the wording with the phrase “and the career of prosecutors”. Thus, we propose the following wording: “d) The clear delimitation of the competences of the Superior Council of Prosecutors, of representing the body of prosecutors and guarantor of their independence, including the career of prosecutors, from the competences of the General Prosecutor's Office (procedural, managerial, formulation and implementation of state criminal policies)”. The necessity of this provision results from the recent amendments operated by Law no. 145 of July 16, 2020 to the Law. In the [Opinion of the LRCM and IPRE sent to the Ministry of Justice on July 13, 2020](#), the changes made go beyond the initially declared scope and intervene on a number of new areas, which did not constitute the constitutional review of constitutionality and were set out in the Court Decision Constitutional no. 13/2020. The competencies related to the career of prosecutors, including aspects of transfer of prosecutors, must return to the area of responsibility of the Superior Council of Prosecutors.

2. At specific objective 1.1.5. letter b), we consider appropriate to clarify the action. We consider it appropriate to clarify the purpose of the changes to be made. This will facilitate the subsequent implementation of the Strategy. On this note, on November 20, 2017, the LRCM sent to the Ministry of Justice the [Opinion on the draft Law on the Constitutional Court \(draft no. 444, published by the Ministry of Justice for public consultation\)](#). The LRCM largely supported the draft law and made several amendments, in particular as regards: (a) the manner and conditions for the selection of judges of the Constitutional Court; (b) the principles of the Court's activity; (c) the mechanisms for disciplinary liability of judges of the Court; (d) guarantees for the removal from office of judges of the Court; and (e) social guarantees related to the exercise of the function of judge of the Constitutional Court.
3. At specific objective 1.2.2. letter a), we consider appropriate to complete and modify the action insofar as the property and interest of all members of the Superior Council of Magistracy and the Superior Council of Prosecutors are verified annually, not only among judges and prosecutors. Thus, we propose the following wording: a) Priority annual verification of the assets and interests of all members of the Superior Council of Magistracy and the Superior Council of Prosecutors”
4. At specific objective 1.2.3. letter b), we consider appropriate to complete and modify the action insofar as the prosecutors are included. Moreover, so far, the Judges' Ethics Commission has drawn up [four opinions](#), which could possibly be amended, whilst the Disciplinary and Ethics Board of Prosecutors has not published any opinions. Thus, we propose the following formulation: b) Development and amendment, as the case may be, of the opinions / recommendations / assessments on specific fields by the Ethics and Professional Conduct Commission of judges and the Board of Discipline and Ethics of Prosecutors”.
5. At specific objective 1.2.5. letter b), we consider appropriate to complete the action with the evaluation not only of the practices but also of the procedures for examining the facts that constitute a disciplinary breach. We consider appropriate to formulate more specifically the result indicator, because it may be necessary to modify not only the normative framework of the SCP, but also the broader modification of the normative framework. Thus, we propose the following wording of the action: "Independent evaluation of the practices of the Prosecutors' Inspection and the Board of Discipline and Ethics of Prosecutors and the procedure for examining the facts that constitute a disciplinary breach."
6. At specific objective 1.3.1. letter d), we consider the inclusion in the action of the provisions regarding the SCM and its Boards. At the moment, the SCM and its Boards publish mostly and in good time its decisions, whilst the practice of the SCP and its Boards is defective in this respect. Finally, we consider that once the outcome indicator is included, the action needs to be more specific in terms of the deadline for publishing the adopted decisions. Thus, we propose the following wording of the action: "Publication on time on the website of the Superior Council of Magistracy and the Superior Council of Prosecutors of all decisions adopted by their bodies." and the result indicator with the following wording "All decisions of the specialized Boards of the Superior Council of Magistracy and the Superior Council of Prosecutors published on time."
7. At specific objective 1.3.2. letter a), we consider that this action needs to be reviewed, as it is not justified and limits the organisation of surveys in the justice sector by development partners or other organisations interested in various fields. Between 2015 and 2020, the SCM accepted the efforts of several organizations ([LRCM](#), [Council of Europe Office](#), [United Nations Children's Fund](#) (UNICEF), [Transparent Justice Programme](#), ["Support for Effective Prevention and Fight against Corruption in the Justice Sector" Project](#) and the [World Bank](#)), as well as public opinion polls (eg. [Public Opinion Barometer](#)), for conducting multiple polls. All surveys focused on different areas and questions and respectively had different methodologies. Thus, we believe that this action must be inclusive. Moreover, on certain issues, for example the European Commission for the Efficiency of Justice (CEPEJ) has approved a [list of criteria for guiding courts in surveys on the level of user satisfaction of courts](#). Thus, we propose the following solutions: 1. Either the exclusion of this provision, because it is unclear and unjustified, or 2. The reformulation of the action as follows: "a) Development of a model methodology or guidelines for ~~the country of~~ periodic surveys of justice".

8. At the objective 1.4. Strengthening the capacities of the legal professions related to justice we propose the introduction of a new specific objective 1.4.6. "Strengthening civil liability for damages committed by representatives of the professions related to justice", including the following actions:
- a) Revision and completion, as the case may be, of the national framework related to the compulsory civil liability insurance of the professions related to justice for the damages committed in the exercise of the profession.
  - Implementation deadline - year 2021 - 2024
  - Draft amendment of the normative framework adopted
  - New mechanism for compulsory civil liability insurance of actors in the legal professions related to justice implemented
  - Responsible institutions: Ministry of Justice, Union of Lawyers of Moldova, Notary Chamber, National Union of Bailiffs, Mediation Council, Ministry of Economy and Infrastructure, Union of Insurers of Moldova.
9. At specific objective 2.1.1. letter f), we consider that this action should be reviewed because it concerns only a part of the victims (victims of domestic violence) and excludes other victims of violent crimes (eg. victims of torture, inhuman or degrading treatment) or sexual crimes (crimes provided by art. 171 - 1751 of the Criminal Code). According to art. 58 para. (5<sup>1</sup>) of the Code of Criminal Procedure (CPC), the victim of acts of torture, inhuman or degrading treatment is subject to judicial expertise on mental or physical condition, and according to art. 58 para. (4) of the CPC does not have the right to perform free of charge extrajudicial and judicial expertise. For these reasons, we propose the action with the following wording: "f) Examine the possibility of conducting free extrajudicial and judicial expertise at the request of victims of domestic violence, torture and inhuman or degrading treatment, as well as those resulting from sexual offenses".
10. Inclusion of a new specific objective in Objective 2.1. referring to the reform of the institution of investigative judges or alternatively the introduction of a new action to Specific Objective 2.1.2 (amended accordingly, as proposed below). We consider that the activity of investigative judges is problematic, confirmed by the high rate of unreasoned arrests, illegal interceptions and the degree of tolerance of illegalities of prosecutors at the stage of criminal prosecution). Thus, we propose the following formulations of the new specific objective:
- Specific objective 2.1.2. Ensuring effective respect for human rights in criminal justice
- Actions:
- a) Amending the legislation in order to ensure the impartiality in practice of the investigating judges and not to admit the respective judges to continue their current positions
    - Draft amendment of the normative framework adopted;
    - New investigative judges selected in a transparent manner.
    - Implementation period: 2021
    - Responsible institutions: Ministry of Justice, Superior Council of Magistracy
  - b) Periodic evaluation of the practice of criminal prosecution bodies and courts regarding detention and pre-trial detention:
    - Periodic evaluation of judicial practice,
    - Detected systemic problems removed;
    - Modified regulatory framework, as appropriate.
    - Implementation period: 2021 - 2024
    - Responsible institutions: Ministry of Justice, Supreme Court of Justice, General Prosecutor's Office.
  - c) Periodic evaluation of the practice of criminal investigation bodies and courts regarding special investigative measures:
    - Periodic evaluation of judicial practice,
    - Detected systemic problems removed;
    - Modified regulatory framework, as appropriate.
    - Implementation period: 2021 - 2024
    - Responsible institutions: Ministry of Justice, Superior Council of Magistracy, Supreme Court of Justice, General Prosecutor's Office.

d) Periodic evaluation of the practice of criminal prosecution bodies and courts regarding the investigation and sanctioning of torture, inhuman and degrading treatment:

- Regular evaluation of judicial practice,
- Detected systemic problems removed;
- Modified regulatory framework.
- Implementation period: 2021 - 2024
- Responsible institutions: Ministry of Justice, Supreme Court of Justice, General Prosecutor's Office.

e) Periodic evaluation of the practice regarding the application of the compensatory mechanism for detention in unsatisfactory conditions:

- Periodic evaluation of judicial practice,
- Detected systemic problems removed;
- Modified regulatory framework, as appropriate.
- Implementation period: 2021 - 2024
- Responsible institutions: Ministry of Justice, Supreme Court of Justice, General Prosecutor's Office, National Administration of Penitentiaries

f) Periodic evaluation of the practice regarding the application of the compensatory mechanism for violating the reasonable term of examination of the case or of execution of the court decision:

- Periodic evaluation of judicial practice,
- Detected systemic problems removed;
- Modified regulatory framework, as appropriate.
- Implementation period: 2021 - 2024
- Responsible institutions: Ministry of Justice, Supreme Court of Justice.

11. At specific objective 2.2.1, the inclusion of an activity to evaluate the process of anonymisation of court decisions. In January 2020, LRCM published the Analytical Document [“Transparency of justice versus personal data” - An analysis of how judgments are published in the Republic of Moldova](#). One of the conclusions of the document is that courts of all levels partially comply with the provisions of the SCM Regulation on the publication of judgments on the national portal of courts and on the website of the Supreme Court of Justice, no. 2016/679 of October 10, 2017. Thus, we propose a new permanent activity, which will have the following formulations:

- "lit. e) Assessing the manner in which judgments are published on the Internet and compliance with the rules on the anonymisation of judgments,
- Result indicators:
  - Annual evaluation of judicial practice performed,
  - Detected systemic problems removed;
  - Modified regulatory framework, as appropriate.
- Implementation deadline - 2021 - 2024.
- Responsible institutions:
  - Superior Council of Magistracy
  - Court Administration Agency

12. At specific objective 2.1.3, we propose to complete with the following an action related to the opportunity to establish a judicial vacation. In Romania ([see Chapter V of the Rules of Procedure of the courts of 17 December 2015 and the amendment of 2020](#)), it is expressly provided that the judicial leave is two months in each calendar year (1 July-31 August); The annual leave for all court staff is usually carried out during the judicial holiday, and during the judicial holiday the registry and archive will be open for at least one hour at least two days a week. The establishment of the judicial vacation will facilitate a better planning of court hearings, will reduce the number of adjourned court hearings during the summer holidays and will exclude the practice of distributing cases in the courts during the summer between judges except those who are on vacation. The specific objective is to be formulated as follows:

- Title: Analysis of the appropriateness of introducing judicial leave in the courts at all levels
- Implementation deadline - 2021

- Result indicators:

1. Analysis performed with the formulation of recommendations
2. Working group established for the modification of the Instruction regarding the activity of evidence and procedural documentation in the courts and courts of appeal, approved by the SCM Decision no. 142/4 of February 4, 2014
3. Amendments to the SCM Regulation, approved

- Responsible institutions:

- Superior Council of Magistracy
- Courts of all levels
- Court Administration Agency
- General Prosecutor's Office
- Lawyers' Union

13. The specific objective 2.3.4. should be reviewed. Law no. 152 on the National Institute of Justice of June 8, 2006 was republished in the Official Gazette no. 387 of November 8, 2019, and in the period 2018 - 2020 was amended by six laws. Thus, we consider it appropriate that, if this action remains in the final version of the Strategy, it should be more specific and included in Objective 3.2 Strengthening administrative and managerial capacity in the justice sector. At the moment, the action is not specific as to which changes related to incentives for judges and prosecutors it refers.