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Chişinău, 30 September 2021

**RE: Alternative report on the progress in implementing the pending recommendations
(fourth evaluation round) regarding:**

REPUBLIC OF MOLDOVA

In its latest evaluation report on the Republic of Moldova from September 2020, GRECO concluded¹ a low level of compliance with its previous recommendations and a “globally unsatisfactory” status in the meaning of Rule 31 (para. 8.3) of the GRECO Rules of Procedure. Pursuant to Rule 32, GRECO asked the Head of delegation of the Republic of Moldova to provide a report on the progress in implementing the pending recommendations by 30 September 2021 the latest.

Envisaging the upcoming national report scheduled to be received by the GRECO, the Legal Resources Centre from Moldova (LRCM)² hereby presents an alternative progress report. The report covers the developments and progress status asked by GRECO for the follow-up on the recommendations no. i-iv, vi-x, xiii, xv, xvii and xviii. The report is based on extensive research, data collection and monitoring of state institutions activity. The information from this report covers the progress registered by 29 September 2021.

Recommendation i. 6. GRECO recommended ensuring (i) that draft legislation, all amendments, and all supporting documents as required by law are published in a timely manner and (ii) that adequate timeframes are followed to allow for meaningful public consultation and parliamentary debate, including by ensuring that the emergency procedure is applied only in exceptional and duly justified circumstances.

¹ GRECO, second compliance report, Republic of Moldova (2020): <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809fec2b>.

² The Legal Resources Centre from Moldova (LRCM) (www.crjm.org) is a non-profit organization that contributes through research and advocacy to strengthening democracy and the rule of law in the Republic of Moldova, with focus on justice, fight against corruption, human rights and civil society. We are independent and non-partisan.

GRECO Recommendation is partly implemented in respect of part (i) and not implemented in respect of part (ii)

According to its latest annual report³, in 2020 the Parliament of Moldova approved more than 260 legislative acts (laws and decisions). While publication of the initial versions of the draft legislation is ensured in the timely manner (several days after registration in the Parliament), in practice, the amendments proposed by the MPs and adjusted versions of the drafts become known only after a bill becomes final. Moreover, at this stage, often draft laws substantively modified. The so called “last-minute” initiatives amendments are often used to promote sensitive issues or unconsented legislation. For instance, during the parliamentary plenary sessions from 3 and 16 December 2020, civil society organisations decried gross infringing of the legislative procedures.⁴ The vote for several draft laws of significant importance, including of the 2021 state budget, was cast through infringing all requirements related to transparency and consultations in the decision-making process of the relevant authorities. Most of those laws⁵ were later declared unconstitutional by Constitutional Court relying on the infringement of the procedure and of the constitutional right of the MPs to propose amendments.

In a recent decision from 10 June 2021⁶, the Constitutional Court decided that any draft law, voted in violation of the mandatory steps of legislation (e.g. the need for existence

³ Parliament of Moldova, Annual report on transparency in the decision making (2020), available online at: <http://www.parlament.md/LinkClick.aspx?fileticket=nz%2bFRTv9Yvg%3d&tabid=109&language=ro-RO>.

⁴ Eastern Partnership civil society forum – Declaration from 21 December 2020: <https://www.eap-csf.md/en/ro-declaratia-publica-a-platformeii-nationale-privind-degradarea-procesului-legislativ-si-actului-de-guvernare-in-republica-moldova/>.

⁵ 1) The law on the functioning of languages spoken on the territory of Moldova declared unconstitutional because adoption of a law with a budgetary impact in the absence of the Government's advisory opinion leads to a violation of the Constitution, to see: <https://www.constcourt.md/libview.php?l=en&id=2067&idc=7&t=/Media/News/The-Court-examined-the-constitutionality-of-the-Law-on-the-Usage-of-Languages-Spoken-on-the-Territory-of-the-Republic-of-Moldova/>

2) A law on the transfer of the Intelligence and Security Service from the subordination of the President to the subordination of the Parliament. The law was annulled on the grounds of non-compliance with the parliamentary procedure.

<https://www.constcourt.md/libview.php?l=ro&idc=7&id=2168&t=/Media/Noutati/Curtea-a-examinat-constitutionalitatea-unei-Legi-care-a-exclus-unele-atributii-ale-Preedintelui-Republicii-referitoare-la-Serviciul-de-Informatii-i-Securitate>

3) Repeal of the law on the recovery of the billion. It refers to the annulment of a law that transforms the two loans granted by the NBM into state debts, paid in instalments over 25 years. It was declared unconstitutional on the merits and procedure of the case. To see:

<https://constcourt.md/ccdocview.php?tip=hotariri&docid=765&l=ro#top>

4) Law on mobile pharmacies. It provided for the existence of so-called "mobile pharmacies". It was declared unconstitutional on lack of approvals from the Government, to see:

<https://www.constcourt.md/libview.php?l=ro&idc=7&id=2110&t=/Media/Noutati/Curtea-a-examinat-sesizarile-referitoare-la-activitatea-farmaceutica>

5) Amendments to the Law on the National Integrity Authority. These provisions diminished the role of ANI and its functional capacities in ascertaining the illegally acquired property. It was declared unconstitutional, including the fact that the project was voted in two readings on the same day, at an interval of one minute., To see: <https://www.constcourt.md/libview.php?l=ro&idc=7&id=2286&t=/Media/Noutati/Curtea-a-declarat-neconstitucionala-Legea-nr-244-din-16-decembrie-2020-pentru-modificarea-unor-acte-normative-competentele-Autoritatii-Nationale-de-Integritate>

⁶ Constitutional Court of Moldova, Decision no 17 from 12 June 2020:

<https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=773&l=ro>

of parliamentary debates, the right of MPs to propose amendments, the right to ask questions, the right to speak, the need for the Government's opinion, etc.) and public consultation risks being declared unconstitutional, thus setting a strong precedent for the future legislative process and meaningful public consultation and parliamentary debate.

Another deterring practice is the failure to ensure the online streaming of the Parliament standing committees meetings, and access to the summary of recommendations of the draft laws after the consultation process. While it was a standing practice of the Moldovan Parliament to ensure the online streaming the sittings of the committees, in 2021 most of the sittings of the Legal committee were not streamed. In the same pursuit, without publication in advance of the amendments, the streaming is not sufficient for meaningful public consultation. Moreover, the publishing of the summary of recommendations and objections in no-user friendly format (Xerox scanned PDFs) does not allow searching by keywords and substantially reduces the chances for public scrutiny of the legislative initiatives. Therefore, we consider this part of the recommendations only partly implemented.

In respect of part (ii) of the recommendation, the current Rules of Procedure of the Parliament do not provide criteria and the procedure for the adoption of draft regulatory acts as a matter of urgency. This procedure is left to the full discretion of the Standing Bureau of the Parliament, which does not publish a written and reasoned decision on the use of the emergency procedure. It appears that the use of the emergency procedure is entirely at the discretion of the leadership of the Parliament. This procedure raises serious concerns about the lack of transparency in decision making and authentic public consultations. This procedure should be properly regulated in the law and its use should be truly exceptional. No further progress in this respect was recorded. The recommendation in this part remains not implemented.

Recommendation ii. 17. GRECO recommended (i) adopting a code of conduct for members of Parliament and ensuring that the future code is made easily accessible to the public; (ii) establishing a suitable mechanism within Parliament, both to promote the code and raise awareness among its members on the standards expected of them, but also to enforce such standards where necessary.

GRECO Recommendation remains not implemented.

The draft Law on Code of Ethics and Conduct of Parliamentarians (no. 135), registered by a group of 14 MPs in April 2016, is still pending before Parliament.⁷ Also the intention reported by the national authorities in 2020 of possibly merging the draft Code of Ethics and Conduct of Parliamentarians with the draft Code of Parliamentary Rules and Procedures was not put into practice. No other progress was made since the last GRECO evaluation.

⁷ Draft law no. 135 on the Code of Ethics of the MPs in the Parliament:
<http://parlament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/LegislativId/3158/language/ro-RO/Default.aspx>.

Early parliamentary elections that took place on 11 July 2021 marks the beginning of the activity of a new Legislature. While civil society organisations recommended⁸ to the newly elected Parliament and future Government, to improve Parliament's transparency in the decision-making process, by supplementing Parliament's Rules of Procedure with comprehensive provisions or by revising and adopting the Parliamentary Procedures Code, drafting and approving a Rules of Procedure, new regulations of the emergency procedure, implementation of the electronic voting system, publication in due time and in an accessible format of all information on the activity of the Parliament and revitalization of the Platform for collaboration with civil society. Recommendation remains not implemented.

Recommendation iii GRECO recommended introducing rules for parliamentarians on how to interact with third parties seeking to influence the legislative process.

GRECO Recommendation remains not implemented.

Code of Parliamentary Rules and Procedures no. 374/2018 was not adopted in final reading, and there are not yet concrete provisions on regulation on how to interact with third parties seeking to influence the legislative process.⁹

Recommendation iv. 28. GRECO recommended ensuring a significantly more independent and effective control, by the National Integrity Commission, of compliance by members of Parliament, judges and prosecutors with the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property.

GRECO Recommendation remains not implemented.

According to latest National Integrity Authority's (NIA) Activity Report¹⁰, during 2020 - 347 fact-finding documents were issued. Out of them, 210 (60%) found violation of at least one integrity regime and 137 (39%) did not find any violations. Out of those 210, 53% are fact-finding documents which represent the violations of the legal regime of conflicts of interests; 39% - are fact-finding documents represent the violations of the incompatibility's regime, and only 7% - assets and personal interests.

Although control proceedings have been initiated regarding several persons with positions of public dignity (e.g., President of the Republic of Moldova, MPs, judges, prosecutors etc.) - less than 4% - represent fact-finding documents against such categories of subjects, where violation of legal regime was found. More than 45% of the subjects covered in the fact-finding documents are mayors and local counsellors. 93% of

⁸ Eastern Partnership Civil Society Platform „Policy recommendations for the new Government” (2021) <https://crim.org/en/doc-peste-200-de-recomandari-ale-societatii-civile-pentru-noua-guvernare-care-ar-trebui-sa-fie-prioritatile-moldovei-pentru-urmatorii-doi-ani/>.

⁹ Draft law no. 374/2018, published on the official site of the Parliament of Moldova: http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4433/language/ro-RO/Default.aspx?fbclid=IwAR2BiWrT_Osrolb9fsgS5bqJ9IJENOKl4oRuwu1aGuer_yaij6Ts1W08Yys.

¹⁰ National Integrity Authority's (NIA) Activity Report (2020): <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3158/language/ro-RO/Default.aspx>.

the fact-finding documents, and hence of the efforts of integrity inspectors, concern violations of conflicts of interest (110) and incompatibilities (81), rather than assets and personal interests (14).

The results of NIA activity for the last four years (2016 – 2020) are modest. The transparency and efficiency of NIA needs further improvement. Until 31 December 2020, NIA had issued 532 fact-finding acts. However, an alternative analysis¹¹ found that only one out of three of such acts (354) were published on the agency's official website. In 227 (64%) acts, NIA found a violation of integrity legislation. Only 15 of the 227 violations concerned the failure to declare assets, while most (121) concerned conflicts of interest. Almost half of the inspections took more than six months. Until 2021, NIA used to verify integrity primarily at the local level: 45% of identified violations involved mayors and councillors and only 3% involved MPs, judges and prosecutors.

NIA reported that 1332 declarations of MPs, judges of all courts levels, prosecutors, heads of the units and civil servants of the Chisinau municipality Mayor's office have been verified in order to comply with the 40% quota for verification of persons holding public offices /public dignity positions (according to Article 27 paras. (1) - (4) of Law No. 132/2016). As a result of this control performed over the form and content of the declarations of assets and personal interests, only 101 notifications for initialization of detailed control of assets and income were made. Most of these controls are pending.

Until 1 July 2021 - NIA has published 18 acts referring to MPs or ex MPs. In 10 of them – failure to declare assets or holding incompatibilities of positions were found.¹² Likewise, 33 acts were published referring to judges and prosecutors. Only in 6 of them integrity problems (non-declaration of assets) were found. The confiscation of their assets did not take place. All documents were challenged in court. The judicial examination could take several years; and its finality is unclear.

The current legislation that regulates NIA's activity must be improved. On 13 August 2021 draft law was voted in first reading. All amendments have goal to increase the NIA functionality, as to extend the competences of integrity inspectors by allowing them to request the evaluation of assets during control procedures from independent evaluators, extend the scope of control to related persons in case of justified suspicion, and oblige the subjects of declaration of assets and conflicts of interest to declare assets at their real market value. The bill is likely to be voted in the second reading at the end of September, after the finishing of all public consultations.

Recommendation vi. 38. GRECO recommended that determined measures be taken in order to ensure that the procedures for lifting parliamentary immunity do not hamper or prevent criminal investigations in respect of members of Parliament suspected of having committed corruption related offences.

GRECO Recommendation is implemented.

¹¹ LRCM, Investigations carried out by the National Integrity Authority (2021) <https://crjm.org/en/infographic-investigations-carried-out-by-the-national-integrity-authority/>.

¹² NIA official website: <https://ani.md/ro/acte-constatare>.

According to national legislation, the Prosecutor General is empowered, *ope legis*, to request the waiver of parliamentary immunity [Article 10 para. (2) of Law no. 39/1994 on the status of the MP], as well as article 95 par. (1) of Law no. 797 of 2 April 1996 for the adoption of Parliament's Rules of Procedure]. In the reporting period all procedures for lifting parliamentary immunity were performed without difficulties.

Since 2018 and up until 31 August 2021, six MPs of the Republic of Moldova were stripped of their parliamentary immunity. On 19 March 2021, Prosecutor General Alexandr STOIANOGLO requested the Parliament to strip of the immunity two MPs: Petru JARDAN and Denis ULANOV of the Șor Party. The MPs granted the vote. On 15 August 2019, at the request of the prosecutor's office, the Parliament deprived Ilan ȘOR of the Șor Party of parliamentary immunity. On 20 September 2019, another MP, Vladimir CEBOTARI from the Democratic Party was deprived of his immunity, following a request from the interim Prosecutor General. On 16 September 2019, on the request of the interim prosecutor general, the Parliament approved the withdrawal of the immunity of MPs Mariana TAUBER and Reghina APOSTOLOVA.

The problem so far has not been the lifting of immunity but rather belated requests for lifting of immunity submitted by the Prosecutor General and lack of a prompt and effective investigation after the lifting of the immunity, the lifting of immunity being often just a political move.

Recommendation vii. 43. GRECO recommended (i) changing the composition of the Superior Council of Magistracy, in particular by abolishing the *ex officio* participation of the Minister of Justice and the Prosecutor General and by allowing for more diverse profiles among lay members of the Council, on the basis of objective and measurable selection criteria; (ii) ensuring that both judicial and lay members of the Council are elected following a fair and transparent procedure.

GRECO Recommendation is partly implemented.

Composition of SCM

On 30 September 2020, the Moldovan Government approved the draft law on the amendment of the Moldovan Constitution.¹³ The draft amendments envisage strengthening the independence and accountability of the judiciary. It provides, among others, removing the *ex-officio* members from the Superior Council of Magistracy (SCM) of the Minister of Justice and the Prosecutor General. The Constitutional amendments shall strengthen the independence of the judges and judicial administration. The draft law amending the Constitution was adopted in the final reading on 23 of September 2021 and will enter into force six months later (March 2022).¹⁴ Among others, it will change the composition of SCM, as envisaged by the GRECO recommendation.

Lay members

¹³ Government decision no. 730/2020 on passing the draft law amending the Constitution of Moldova https://www.legis.md/cautare/getResults?doc_id=123343&lang=ro.

¹⁴ Parliament of Moldova, draft no. 507 on amending the Constitution of Moldova, <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5364/lingua/ge/ro-RO/Default.aspx>.

When it comes to ensuring a more diverse profiles among lay members, the same draft law amending the Constitution (already adopted) proposed that candidates for the position of member of the SCM from non-judges are selected by contest, based on a transparent procedure, merit-based procedure, and appointed by the Parliament with the vote of three fifths of the elected MPs. This provision will enter into force in March 2022. In the meantime, on 10 June 2021, the Constitutional Court effectively terminated the mandates of four lay members of the Superior Council of the Magistracy (SCM) on the grounds that the law under which they had been appointed had been declared unconstitutional.¹⁵

Reset of the Superior Council of Magistracy competence

The resetting of the SCM membership most likely will take in a few more months. At the General Assembly of Judges re-scheduled for 3 December 2021, judges are expected to elect six new judges as SCM members.¹⁶ At the same time, the Parliament will also appoint non-judge members of the SCM. It is of paramount importance that the new appointments in the SCM by the Parliament follow the GRECO recommendations for them to be elected following a fair and transparent procedure.

Recommendation viii. 51. GRECO recommended that decisions of the Superior Council of Magistrates be adequately reasoned and be subject to judicial review, both on the merits of the case and on procedural grounds

GRECO Recommendation is partly implemented.

In March 2019, the International Commission of Jurists (ICJ) presented a report¹⁷ on the independence of judges in the Republic of Moldova. While the report acknowledges important progress in many areas, the report stresses the lack of transparency in the decision-making at the SCM, the debates behind closed doors and poor reasoned decisions. Up to the reporting period, decisions of the Superior Council of Magistracy are often inadequately reasoned, especially in matters of selection and promotion of judges. Although the institution of the so-called deliberations / in camera/ closed doors decision making was excluded from the law, the SCM continues to often pause the discussions on sensitive issues, hold discussions behind closed doors and adopt the decision after the respective pause, without a proper reasoning but rather using the members' vote as reasoning. for example, often decisions include such a reasoning: the judge X or Y was not promoted / appointed for lack of necessary votes, with no further explanations.

As for the second part of the GRECO recommendation, it was fulfilled by the Moldovan authorities in 2018. In July 2018, the Parliament of Moldova passed the law no.

¹⁵ Constitution Court of Moldova, decision no. 17 from 10 June 2021:

https://www.legis.md/cautare/getResults?doc_id=126757&lang=ro.

¹⁶ Superior Council of Magistracy, decision no. 171/17 from 15 June 2021:

<https://www.csm.md/files/Hotaririle/2021/17/171-17.pdf>.

¹⁷ ICJ Report, „Only an empty shell” – the undelivered promise of an Independent Judiciary in Moldova” (2019) <https://www.ici.org/wp-content/uploads/2019/03/Moldova-Only-an-empty-shell-Publications-Reports-Mission-reports-2019-ENG.pdf>.

137/2018¹⁸ repealing the provisions which limited the possibility to challenge the SCM decisions only on procedural grounds.

Recommendation ix. GRECO recommended (i) that appropriate measures be taken, with due regard to judicial independence, in order to avoid the appointment and promotion to judicial positions of candidates presenting integrity risks; and (ii) abolishing the five-year probation period for judges

GRECO Recommendation is partly implemented.

The current system for verifying the integrity of judges includes several institutions. For acting judges, the responsibility lays within the Superior Council of Magistracy and its specialized bodies: - the Judges' Performance Evaluation Board, the Judges' Selection and Career Board and the Disciplinary Board, as well as the National Integrity Authority (NIA) that controls the asset declarations of judges. In case of candidates aspiring to become judges, the National Institute of Judges (NIJ), the institution which professionally prepares future judges, requires as a criterion of eligibility the lack of evidence from those applying to NIJ of a prior five-year record of manifestations of corruption and professional integrity.

Despite such many actors involved in checking the integrity of judges, the system has proven to be inefficient. In 2020, 11 investigations were initiated by NIA in relation judges, 8 were resulted in contravention/misdemeanours sanctions, while one investigation ended in NIA issuing a fact-finding document regarding the violation of the legal regime of incompatibilities. Although the task of controlling the assets and interests of judge's rests with NIA, its decisions are not always complied with.

Based on an alternative assessment report elaborate by a civil society organisation on the integrity of judges conducted in 2021, integrity as such, appears to be an evaluation criterion and not an eligibility criterion for acceding to a judge position.¹⁹ This is a wrong approach as integrity cannot be assessed as a percentage but should be considered as an essential criterion in access to the position of judge. Lack of mechanisms to verify the integrity at the NIJ already at the admission stage, vague formulations regarding the assessments given to the integrity of candidates for the position of judge, lack of a clear distribution of the score given by the SCM by evaluation criteria, lack of motivated decisions of appointment, promotion and transfer of judges by the SCM, proves the lack of a genuine process to verify the integrity of actors in the justice system, which entails the access and promotion in the system of people with suspected lack of integrity and, implicitly, diminishing the credibility in the long run.

As with the second part of the GRECO recommendation, it was implemented but is not yet in force. The initial appointment of judges for a five-years term is provided in the Constitution. The provisions which set a five-year initial term will be abolished by March

¹⁸ Parliament of Moldova, law no. 137/2018:

https://www.legis.md/cautare/getResults?doc_id=105496&lang=ro.

¹⁹ Institute for European Reforms and Policies, Opinion on the verification of judges integrity at various stages (2021): <http://ipre.md/2021/06/01/opinie-privind-verificarea-integritatii-judecatorilor-la-diverse-etape-ale-carierii/>.

2022. (Please see details on the draft law in the paragraphs above regarding GRECO recommendation on SCM composition).

Recommendation x. GRECO recommended that additional steps be taken (i) to ensure that cases are adjudicated without unjustified delays and (ii) to increase the transparency and accessibility of information available to the public on judicial activity.

GRECO Recommendation is partly implemented (implemented part (i) and not implemented, part (ii)).

The Republic of Moldova doesn't have chronic problems regarding the time limit for the examination of cases by the courts. On the contrary, Moldovan courts deal with all types of cases, in the first instance, appeal and appeal on the points of law in just 259 days on average, which is 2.8 times faster than the average of Council of Europe (CoE) countries.²⁰ Protracted examination of cases in the Republic of Moldova is an exception, which, as a rule, is due to frequent postponement of court hearings and returning of cases for retrial. Until 30 June 2020, ECtHR found the Republic of Moldova in violation of reasonable time in 9 cases where judicial proceedings lasted too long. At the same time, Moldova has a problem with unjustified postponements of court hearings, which often leads to examination of court cases over long periods of time and superficial examination at the end, when court hearings are jammed in order to quickly finish the case, usually before the end of the year. The situation has worsened as a result of the pandemic, during which many court hearings have been postponed due to the restrictions imposed and lack of effective use of online tools for case examination.

Another problematic issue in the Republic of Moldova is the non-enforcement or delayed enforcement of enforceable judgments. Based on 2020 data, the ECtHR found Republic of Moldova in violation of Article 6 of the ECHR in 67 judgments. At least a quarter of these judgments involved the failure to pay monetary compensations by the authorities for more than 12 months. Apparently, such situations are no longer a systemic problem.

As for the transparency and accessibility of information on judicial activity, a major problem remains the excessive and defective depersonalization/anonymisation of court judgements. The depersonalization of court judgements is defective or inconsistent in six out of every ten cases (63%). This is the conclusion of a comprehensive study conducted by the Legal Resources Centre from Moldova based on the analysis of 1,340 judicial decisions adopted from 1 January 2018 to 31 March 2019.²¹ According to the national legislation, until published on internet, certain information in the judgment is excluded from the content of a court decision. The rules on anonymization are set out by the Superior Council of Magistracy (SCM).

²⁰ LRCM report: "Justice in figures" (2019): https://crjm.org/wp-content/uploads/2019/10/Justi%C8%9Bia-din-Republica-Moldova-%C3%AEn-cifre-%E2%80%93-o-privire-comparativ%25%204%25%2083_final-web.pdf.

²¹ LRCM, „"Transparency of the Judiciary versus Data Protection" – An Analysis on the Publication of Court Decisions in the Republic of Moldova" (2020): <https://crjm.org/wp-content/uploads/2020/01/Transpar-just-vs-date-pers-En.pdf>.

Most of the times, the courts fail to follow the provisions regarding the obligation to hide, *ex officio*, the home address, the date and place of birth, the personal identification number or the registration plate. This rule was breached in 305 decisions analyzed (38% of the total analyzed). In 179 decisions (34% of the total criminal and misdemeanours decisions analyzed) the judges (with the exception of the SCJ judges) abusively anonymized the names of the authors, perpetrators or instigators. In 163 decisions (20% of the total decisions analyzed), provisions of the Regulations not allowing the anonymization of the name of the judge, prosecutor, police officer, mediator, the bailiff, notary or the lawyer were breached. In 100 decisions (12% of the total decisions analyzed) a violation of the rule regarding anonymization in the interests of minors, privacy or morality occurred. In 172 decisions (21% of the total decisions analyzed) only part of the decision was depersonalized.

The results confirm that the failure to follow the provisions of the Regulation regarding the publication of court decisions approved in 2018²², affects the entire judicial system. In the case of the district courts, the average rate of violations of the Regulation is 75%, and in some courts, it exceeds 90%. At the level of the courts of appeal, the situation is much better, but equally worrisome. 47% of the court decisions from the courts of appeal fail to meet the SCM Regulation.

Failure to follow the provisions of the Regulation regarding the publication of court decisions, for one reason, breaches the privacy of individuals who appear before the court. On the other hand, incoherent anonymization makes the whole exercise of the publication of court judgements useless. At the same time, information that should stay is excluded, limiting the public's access to information of public interest. This further erodes confidence in the judiciary.

Recommendation xiii. GRECO recommended that the legal and operational framework for the disciplinary liability of judges be revised with a view to strengthening its objectivity, efficiency and transparency.

GRECO Recommendation remains not implemented.

The mechanism of disciplinary liability of judges in Moldova is extremely complex. Over the period of 2016 to 2020, more than 7,500 complaints have been filed to the Superior Council of Magistracy (SCM) regarding the actions of judges, based on which 250 judges have appeared before the Disciplinary Board and 49 sanctions have been applied. Most of the sanctions refer to the judges' failure to fulfil procedural actions, namely the deadlines for issuing motivated court decisions.²³

For each case, which goes through all stages of a disciplinary procedure, at least five institutions are involved and between 30 and 38 people are allocated. On average, each case lasts up to 400 days. In 2015, a new law on the disciplinary liability of judges came

²² SCM decision no. 658/30 from 10 October 2018:

https://www.csm.md/files/Acte_normative/Legislatia/Interne/2017/Regulament_pagina_web_CSJ.pdf.

²³ LRCM, Cristi Danilet (2020) "Disciplinary liability of judges in the Republic of Moldova. Evaluation of legislation and practices <https://crim.org/wp-content/uploads/2020/11/CRJM-2020-07-Raspundere-disciplin-MD-En.pdf>

into force, which should have streamlined this procedure. But even with significant amendments made in 2018, the results are still waited. According to an analytical document on the subject „Disciplinary liability of judges” elaborated in 2020²⁴, the dysfunctions of the disciplinary system are related not only to the way the disciplinary offences are being defined and the procedure of disciplinary liability of judges itself, but also to the issues related to the administration of justice and the independence of judges.

The current legal framework has certainly set off a disciplinary activity that has a long way to become more efficient. Today even to impose a simple warning to a judge, a disciplinary verification and investigation by the Judicial Inspection shall be launched, followed by an examination at the Disciplinary Board, then an appeal before the SCM, and finally an appeal against the decision before a court of appeal and the Supreme Court of Justice. The time and the human resources involved in this process are enormous.

The shortcomings of the disciplinary system are related not only to the procedure for holding judges accountable and sanctioning them but also to aspects related to the judicial independence. The Supreme Court of Justice lost its credibility after the September 2019 scandal, when evidence came to the public’s knowledge that the Chief Justice had given instructions to judges in certain cases — evidence that could be categorized as related to politics or to some politically affiliated interest groups.²⁵ The fact that all cases get to the SCJ has a compromising effect on the authority of lower court judges. In addition, the judiciary itself made statements that judges who had applied solutions that were contrary to expectation or had tried to oppose such influences were immediately subjected to various disciplinary or other actions, got poor performance evaluation scores, or were driven out of the system.²⁶

Recommendation xv GRECO recommended that appropriate measures be taken to ensure that the composition and operation of the Superior Council of Prosecutors be subject to appropriate guarantees of objectivity, impartiality and transparency, including by abolishing the ex officio participation of the Minister of Justice and the President of the Superior Council of Magistracy

GRECO recommendation is not implemented.

On 24 August 2021, the Law no. 3/2016 on the Prosecution Service was amended in part of reducing from 15 to 12 the number of members on the Superior Council of Prosecutors (SCP).²⁷ Thus the Prosecutor General, the Chief Prosecutor of the Gagauz autonomy and the president of the Bar Association were removed from SCP.

²⁴ Ibidem, <https://crjm.org/en/mecanismul-de-raspundere-disciplinara-a-judecatorilor-trebuie-sa-devina-mai-simplu-si-mai-eficient/>.

²⁵ Ziarul de Garda Newspaper (October 2019) <https://www.zdg.md/stiri/stiri-justitie/fostul-presedinte-al-csj-ion-druta-citat-la-pa-in-noul-dosar-in-care-este-vizat-acum-este-audiat-de-procurori>.

²⁶ Filipe César Marques/Council of Europe, Review of the Composition and operation of the Superior Council Of Magistracy of The Republic Of Moldova <https://rm.coe.int/eccd-mld-tp1-scm-composition-and-operation-eng/1680a2b152>.

²⁷ Draft law amending the Law no. 3/2016 https://www.legis.md/cautare/getResults?doc_id=127870&lang=ro.

The new ruling majority from the Parliament argues that the Prosecutor General needs to be removed in order to reduce his influence on the SCP and on the rest of the SCP prosecutor-members. As concerns the removal of Gagauzia's chief prosecutor, the authors of the law consider that this eliminates inequality and inequity in relation to other chief prosecutors from regions. As regards the president of the Bar Association, the authors of the law mention that there are no objective reasons for the Bar president to be member to be on the SCP. The last argument seems to be quite contradictory, or the lawyers are in daily contact with the prosecutors, and they know well what problems they encounter in practice.

In addition to the amendments mentioned above, a mechanism for evaluating the activity of the Prosecutor General was established. The General Prosecutor Offices notified the Constitutional Court regarding the verification of the constitutionality of all the approved amendments.²⁸ To this date, the request is pending.

An analysis conducted by LRCM in 2020 recommended to exclude the General Prosecutor from the SCP which will certainly increase the SCP's contribution to guaranteeing the independence of prosecutors and will remove suspicions that he directly influences it.²⁹ The exclusion of the General Prosecutor is imperative given its broad competencies in relation to prosecutors' career, as well as the fact that 6 members of the SCP are prosecutors. However, this does not mean that the General Prosecutor will not be able to come to the CSP meetings to discuss the issues within its competence, but he will not have the right to vote. This exclusion is logical given the proposal to exclude the General Prosecutor and the Minister of Justice from the composition of the Superior Council of Magistracy (SCM).

Regardless of the amendments, the Minister of Justice and the President of the Superior Council of Magistracy still remain ex officio members of the SCP, contrary to what was recommended by GRECO.

Recommendation xvii GRECO recommended (i) that the Code of Ethics and Conduct be communicated effectively to all prosecutors and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the prosecution service be provided for all prosecutors

GRECO Recommendation is partly implemented (both (i) and (ii) are partly implemented).

A new version of the Code of Ethics and Conduct for Prosecutors was published in July 2019, and later on, communicated to all the prosecutors, including through the General Prosecutors "Prosecutor's Magazine"³⁰. It remains unclear whether a further written guidance on ethical questions – including explanations, interpretative guidance and

²⁸ Prosecutor's General Office, Press-release 24 August 2021 <http://procuratura.md/md/news/1211/1/8670/>.

²⁹ LRCM, opinion on the competence and competence of SCP (2020) <https://crjm.org/wp-content/uploads/2020/10/2020-10-12-CRJM-Opinie-componenta-si-competente-CSP-fin.pdf>.

³⁰ Prosecutor's Magazine (2019) https://ibn.idsi.md/sites/default/files/imag_file/79-85_12.pdf.

practical examples was performed. Based on the monitoring the sittings of the Superior Council of Prosecutors from 2018 until 2021, the SCP never discussed a subject related to the prosecutor's ethics or a case regarding a possible ethical question.

The SCP official website, which hosts the decisions of the Disciplinary and Ethics Board published only two decisions which refer to disciplinary procedures initiated against prosecutors.³¹ One of these decisions cites the Code of Ethics and Conduct, in particular the obligation of the prosecutors to abide the national legislation.

Recommendation xviii. 102. GRECO recommended that additional measures be taken in order to strengthen the objectivity, efficiency and transparency of the legal and operational framework for the disciplinary liability of prosecutors.

Recommendation remains not implemented.

According to the Prosecution activity report for 2020³², the Inspection of Prosecutors examined 279 complaints (with 30% more as in 2019) against 336 prosecutors. The number of complaints increased because it came from citizens, lawyers etc., who reported more alleged violations in the activity of prosecutors. Further, the Inspection of Prosecutors identified grounds for disciplinary liability in 55 cases (19.7%). In another 194 cases it issued decisions of cessation the disciplinary proceedings. The Disciplinary and Ethics Board registered 33 disciplinary proceedings and 13 sanctioned prosecutors (seven cases - warning; four cases - reprimand, one case - salary reduction and one case – dismissal from office).

Nevertheless, the available data fail to show a clear picture of the objectivity and effectiveness of the disciplinary mechanism. Moreover, the decisions of the Disciplinary and Ethics Board are not published³³, and even the Board sittings' protocols are not being published as well, even although law no. 3/2016 requires this (art. 51 para. 4)³⁴. Also the appeals against Disciplinary and Ethics Board decisions are discussed within CSP sittings under closed doors. The law does not provides how the examination of appeals within CSP sittings against the decisions of the Board(s) must take place. In practice, in favour closed doors examination, the SCP members invoke to data protection requirements.

Transfer of the Inspection of Prosecutors to the CSP, introduction of a transparent and merit-based procedure for the selection of Inspection of Prosecutors and ensuring the functional autonomy of the Inspection of Prosecutors in relation to the CSP, including as regards staff, the internal hierarchy and the funds allocated to the inspection are required. Also after an assessment of the national framework on the disciplinary liability of prosecutors, in May 2021, the Council of Europe experts³⁵, additionally recommended

³¹ <http://csp.md/colgiu/colgiul-de-disciplina-si-etica/hotarari>.

³² Prosecutor's Service from Moldova, Annual report (2020):

<http://procuratura.md/file/Raport%20de%20activitate%20a%20Procuraturii%20Republicii%20Moldova%20pentru%20anul%202020.pdf>.

³³ <http://www.csp.md/index.php/colgiu/colgiul-de-disciplina-si-etica/hotarari>.

³⁴ <http://www.csp.md/index.php/colgiu/colgiul-de-disciplina-si-etica/sedinte>.

³⁵ The legislative and regulatory framework on the disciplinary liability of prosecutors in the Republic of Moldova discussed with national authorities, Council of Europe(Chisinau) Newsroom:

the simplifying the disciplinary liability procedures in regard to prosecutors and establishing clear disciplinary violations and sanctions applicable to prosecutors (including in regard to prosecutors that left the prosecutorial system), and need to consolidate the legal reasoning of decisions issued in disciplinary matters and ensuring their proper publication. These are necessary to strengthen the status of the prosecutors' inspection and to increase the independence of prosecutors.



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