

**"THE JUDICIAL WORKPLACE AND THE INTERSECTION
WITH JUDICIAL INDEPENDENCE"**

[Answers of the Association of Judges of the Republic of Moldova](#)

A. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.

According to Law no. 544 of 20-07-1995 regarding the status of the judge, persons who have graduated from the National Institute of Justice or who have worked for the last 5 years as a judge or assistant judge of the Constitutional Court can apply for the position of judge, judge in international courts, prosecutor, full professor of law in accredited higher education institutions, trainer of the National Institute of Justice in the field of law, lawyer, judicial assistant or clerk. People who have the prescribed length of service, with the exception of judges in international courts and judges of the Constitutional Court, take an exam before the Graduation Commission of the National Institute of Justice.

The selection of candidates for the position of judge, the promotion to the position of judge at a hierarchically higher court, the appointment to the position of president or vice-president of the court, as well as the transfer of the judge to a court of the same level or to a lower court are carried out by the College for the selection and career of judges, with the exception of the promotion to the position of judge in the Supreme Court of Justice, which occurs based on the Decision of the Superior Council of Magistracy no. 171/10 of May 23, 2023, by which it approved the REGULATION on the selection of judges of the Supreme Court of Justice.

Following the selection process, the candidates for the position of judge or the judges who apply for promotion to a hierarchically higher court are given scores, based on which the candidates are registered in the Register of participants in the contest to fill the vacant positions of judge.

The register is kept by the secretariat of the Superior Council of Magistracy and is composed of 4 sections, including the list of candidates for vacant judge positions and the list of judges requesting promotion to a hierarchically higher court.

The competition for filling the positions of court judge is organized by the Superior Council of Magistracy based on the regulation approved by it. People registered in the Register participate in the contest.

The Superior Council of the Magistracy organizes the competition for the vacant positions of judges, as a rule, twice a year, and until the announcement of the competition, it publishes on its official web page the information regarding all the positions of judges that are vacant or that may become vacant in the next 6 months.

The persons registered in the Register will inform in writing the secretariat of the Superior Council of the Magistracy about their participation or refusal to participate in the competition for the filling of vacant judge positions.

Candidates for the position of judge, as well as candidates for promotion to the higher court or transfer to a court of the same or lower level, choose their competitive positions in descending order of the competition average. The results of the contest are published on the official web page of the Superior Council of Magistracy within 2 working days of its completion. The Superior Council of the Magistracy proposes to the President of the Republic of Moldova the appointment of the candidates designated in accordance with the results of the competition. Judges are appointed until reaching the age limit of 65 years.

Judges with at least 6 years of experience as a judge can apply for the position of judge at the Court of Appeal, and judges at the Supreme Court of Justice must have at least 8 years of experience. Promotion to the position of judge at a hierarchically higher court will be preceded by the evaluation of the judge's performance.

During the competition for judges for the promotion to the position of judge in the hierarchically superior court, the SCM Plenary will appreciate the personal motivation of the candidate for the determination aimed at occupying the position for which he is applying; proposals regarding the modernization and improvement of court activity and the quality of the judicial act. When assessing the candidate, the CSM will take into account his merits, his professional, personal and social skills.

With the majority vote of the members of the CSM, by means of a reasoned decision, the Plenary of the CSM will propose to the President of the Republic of Moldova or, as the case may be, the Parliament, the appointment of the candidate who has accumulated the highest score in the competition to the position of judge at the hierarchically superior court.

B. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.

In the Republic of Moldova, the legislative, executive and judicial powers are separated, this basic principle being enshrined in art. 6 of the Constitution of the Republic of Moldova and according to art. 116 of the Constitution, the Judges of the courts are independent, impartial and irremovable, according to the law.

The Superior Council of Magistracy is the guarantor of the independence of the judicial authority. The Superior Council of Magistracy ensures the appointment, transfer, secondment, promotion and application of disciplinary measures to judges. Thus, the basic pillar of the independence of judges is precisely the SCM. According to Law no. 947 of 19-07-1996 regarding the Superior Council of the Magistracy, amended by LP246 of 29.07.22, the CSM consists of 12 members: six judges elected by the General Assembly of Judges, representing all levels of the courts, and six persons who enjoy a high professional reputation and personal integrity, with experience in the field of law or in another relevant field, who do not work within the bodies of the legislative, executive or judicial power and are not politically affiliated. Therefore, the representative administrative body, elected in accordance with the law, based on its activity transparency, independence of the judiciary and compliance with the guarantees enshrined in the Constitution of the Republic of Moldova, will ensure the independence of the judicial system.

C. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.

A basic condition to apply for the position of judge based on Law no. 544 of 20-07-1995 regarding the status of the judge, is that the candidate must be a citizen of the Republic of Moldova, have a domicile in the country and possess the Romanian language. With regard to gender diversity, it is worth noting that, probably, the position of judge is held equally by both women and men.

D. Describe whether and if so in what way the process of appointment to judicial office is independent of government. The answer already given in 1.B

2. PROMOTION WITHIN THE JUDICIARY

A. Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted

In the Republic of Moldova, justice is administered through the Supreme Court of Justice, through the appeal courts and through the judges. According to Law no. 544 of July 20, 1995, a person with a working experience as a judge of at least 6 years and 8 years, respectively, can apply for the position of judge of the court of appeal or judge of the Supreme Court of Justice.

On December 20, 2018, the Superior Council of the Magistracy approved the Regulation on the criteria for the selection, promotion and transfer of judges.

According to the Regulation, judges can be promoted to a hierarchically higher court taking into account three main conditions: length of service as a judge, correspondingly: minimum 6 years for the position of judge at the court of appeal; lack of unextinguished disciplinary sanctions; supporting the performance evaluation, confirmed by the decision of the Judges' Performance Evaluation Board.

In the process of selecting candidates for promotion to the position of judge at a hierarchically higher court, the following basic criteria will be taken into account, such as the level of knowledge and professional skills; the ability to apply knowledge in practice; seniority as a judge or in other legal specialty positions; the qualitative and quantitative indicators of the activity carried out as a judge or, as the case may be, in other specialized legal positions; compliance with ethical standards; didactic and scientific activity, and the optional criterion: extrajudicial activity, confirmed by certificates, diplomas, judgments, decisions, orders, etc.

The degree of correspondence of each category of candidates to the listed criteria is assessed by the Selection Board by establishing the correspondence score for each criterion separately. Judges applying for promotion to a hierarchically higher court can accumulate a maximum score of 80 points.

On March 30, 2023, Law no. 64 regarding the Supreme Court of Justice. Candidates for the position of judge of the Supreme Court of Justice are selected by the Superior Council of Magistracy based on merit, following a public competition. Candidates are assessed on the basis of professional qualities and skills, which include: the ability to understand and analyze complex legal situations; clarity of written and verbal expression; the ability to work in a team and to respect the opinions of colleagues, as well as to challenge and debate them constructively; ability to work in stressful situations and complete tasks promptly; experience relevant to the position; the vision regarding the role of the Supreme Court of Justice in the development of law.

In the law, it was expressly specified that when selecting candidates for the position of judge of the Supreme Court of Justice, the provisions of the Regulation regarding the selection, performance evaluation and career of judges do not apply. The procedure for selecting candidates is established by the Superior Council of the Magistracy.

Therefore, by the Decision of the Superior Council of Magistracy no. 171/10 of May 23, 2023, the REGULATION on the selection of judges of the Supreme Court of Justice was approved. The competition consists of three stages: a) admissibility of the files of the candidates registered in the competition; b) analysis of the information and documents requested from public and private institutions regarding the candidates registered in the competition; the interview held before the Council. The Council can propose for appointment as a judge at the Supreme Court of Justice only the candidate who obtained more than 75% of the maximum score.

Similarly, the law expressly provides that the judge of the Supreme Court of Justice is appointed by the President of the Republic of Moldova, upon the proposal of the Superior

Council of Magistracy. The President of the Republic of Moldova issues the decree appointing the judge of the Supreme Court of Justice within 30 days from the date of receipt of the proposal. If further examination of the candidate's file or information held by a public authority about the candidate is required, this period may be extended by 15 days.

B. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary.

According to the Law on the status of the judge, the judge is forbidden to be a member of a political party or to carry out any activity of a political nature, including during the period of secondment from office.

The judge can collaborate in specialized publications of a literary, scientific or social nature, or in audiovisual broadcasts, being forbidden to pronounce on current internal political issues in his studies, articles and interventions. Judges are also required to refrain from expressing or manifesting their political beliefs in any way in the exercise of their duties.

C. Describe the transparency involved in the process of promotion within the judiciary.

As I mentioned above, the selection of candidates for the position of judge in the courts of first instance, as well as in the hierarchically higher courts, is based on the written criteria provided by the law and the regulations adopted by the Superior Council of the Magistracy. So at the moment we have 2 basic Regulations 1) The Regulation on the organization and conduct of the competition for the positions of judge, vice-president and president of the court and 2) The Regulation on the selection of judges of the Supreme Court of Justice. The eligibility conditions that must be met by the candidates are expressly provided by the Law on the status of judges and the Law on the Supreme Court of Justice.

The announcement of the competition, the way of submitting the file and the documents to be presented by the candidates for the position of judge are approved by the decision of the Superior Council of the Magistracy and published on its web page. The information regarding the competition must contain:

- 1) the function for which the competition is organized;
- 2) deadline for submitting documents.

Within the term set by the CSM, the persons registered in the Register will inform the Secretariat of the Superior Council of the Magistracy in writing about the option to participate or the refusal to participate in the contest for filling the vacant positions of judge by submitting a request in this sense. The competition takes place after the expiry of the deadline for submission of applications to participate in the competition, during the meeting of the Plenary of the Council. The competition is held in the presence of the candidate. Meetings are streamed online and recorded. During the meeting, the CSM Plenary assesses the personal motivation

of the candidate and his suitability for the position of judge: the reasons that led the candidate to participate in the competition; the determination regarding the occupation of the position for which he is applying; firmness in exposure during the interview, as well as the person's reputation in the context of legal provisions. Following the majority vote of its members, the CSM will propose for the appointment as a judge, the candidate who has accumulated the highest score in the competition by cumulating the results of all stages.

3. WORKLOAD WITHIN THE JUDICIARY

A. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

In the Republic of Moldova, the management and distribution of files to judges is done automatically based on the Integrated File Management Program (PIGD). PIGD also fulfills several important functions such as providing data for the creation of electronic statistical reports and performance indicators, but also ensuring increased transparency of data related to the activity of courts.

Thus, through the PIGD, the Courts Performance Measurement Module was created, which includes 8 performance indicators and the electronic statistical reporting module that generates the statistical data.

The court performance measurement module contains indicators such as the resolution rate of cases, the duration of pending cases, the examination of cases on time, the rate of adjourned court hearings, the rate of cases closed through a single hearing, the average number of administrative personnel per judge, the average cost of an examined case and the commitment of court staff.

Thus, these indicators are in line with the fundamental values of the judicial system in the Republic of Moldova and with the obligations assumed regarding the prudent management of its resources, vigilant protection and increasing access to justice for every citizen. The indicators aim to monitor, analyze and manage the judicial system and the transparency of the judicial system. These indicators are used to evaluate the performance of judges. The judge through the personal office of the PIGD has access to the personal performance module in the examination of the files received on the roll, as well as of the courts in the country per assembly.

The electronic statistical reporting mode is a software program that extracts the data from the PIGD and fills them in separate statistical reports. Statistical reporting contributes to improving the quality and efficiency of statistical data collection and storage. Thus, it provides the Superior Council of Magistracy, the Ministry of Justice and the courts with statistical information. Through this system, statistical reports are generated for judges and the court of appeal, their number reaching 79 types of reports.

The statistical reports are published on the portal of the Agency for the Administration of Courts, being available to the general public.

B. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –

- (i) that judge's workload is allocated to other judges;**
- (ii) the overloaded judge can recover from workload arrears and from any other disabling factor that leads to overload.**
- (iii) there are other mechanisms to address judicial delinquency.**

The judicial act in the Republic of Moldova is influenced by a number of factors, both institutional and organizational. The way in which the process of administration of justice is organized, including the processes in which judges are involved, directly and indirectly influences the quality of the act of justice. The subject of excessive workload was addressed by the Committee of Ministers of the Council of Europe back in 1986. Among the recommendations are the exclusion of non-judicial tasks of judges, the establishment of extrajudicial procedures for separate and low-value proceedings, the promotion of arbitration and the periodic review of the workload of the courts in order to ensure a fair distribution of the workload.

In the Republic of Moldova, according to the Decision of the Superior Council of Magistracy (CSM) no. 175/7 of February 26, 2013 regarding the approval of the Regulation on the criteria of determining the number of judges in the courts, the following criteria should be taken into account when determining the necessary number of judges: the degree of load with files of the judges from the last three years, the complexity of the cases, the number of inhabitants in the jurisdiction of the court, the number of specific cases and other specific criteria that affect the work of the court.

According to art. 21 paragraph (2) of Law no. 514 of 07/06/1995 regarding the judicial organization established a number of 504 judge posts for all courts in the Republic of Moldova.

There is currently no mechanism in place to deal with the high workload in overburdened courts or judges with a higher volume. As a recommendation, for the efficient management of the distribution of cases and the decrease of the workload would be the gradual increase of the number of judges to ensure an acceptable workload, as well as the increase of the attractiveness of the positions of clerk and assistant to the judge.

C. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.

As I mentioned above, no mechanism is established to streamline the workload assigned to a judge. However, it should be noted that in the Republic of Moldova there are

courts where it is possible to specialize judges for a certain category of files such as civil, criminal, contravention and administrative.

I believe that specialization can increase the efficiency of the court and the case management system because, thanks to the accumulation of experience by judges in a specific legal field, they will be able to examine cases more efficiently.

4. REMOVAL FROM JUDICIAL OFFICE

A. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including-

- (i) who decides that the judge is to be removed from office;**
- (ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there is an appeal process if removed;**
- iii) what are the grounds for seeking the removal of a sitting judge;**
- (iv) what is the relationship between violation of the ethics code/principles and removal; and**
- (v) describe the transparency in the process.**

According to art. 116 enshrined in the Constitution of the Republic of Moldova, (1) the judges of the courts are independent, impartial and irremovable, according to the law. Decisions regarding the appointment of judges and their careers must be made on the basis of objective, merit-based criteria and a transparent procedure, in accordance with the law. The promotion or transfer of judges is done only with their consent. Judges only have functional immunity under the law. Sanctioning of judges is done in accordance with the law.

The conditions for the release of the judge from office are described in art. 25 of the Law on the status of the judge and provides that the judge is released from office in case:

submitting the resignation request; obtaining the qualification "insufficient" in two consecutive performance evaluations; committing a disciplinary offense specified in Law no. 178 of July 25, 2014 regarding the disciplinary liability of judges; pronouncing the final sentencing decision; establishing, by means of the definitive finding, the conclusion directly or through a third party of a legal act, taking or participating in the making of a decision without resolving the real conflict of interests in accordance with the provisions of the legislation on the regulation of the conflict of interests; failure to submit the declaration of wealth and personal interests or refusal to submit it, under the terms of art. 27 para. (8) from Law no. 132 of June 17, 2016 regarding the National Integrity Authority; the disposition by the court, through an irrevocable decision, of the confiscation of unjustified assets; the negative result of the professional integrity test based on the decision of the disciplinary board; loss of citizenship of the Republic of Moldova; ascertaining incapacity for work, proven by a medical certificate; his reaching the age limit; the establishment of a judicial protection

measure. The release of the judge from office is made by decision of the Superior Council of Magistracy.

Law no. 178 of 25-07-2014 regarding the disciplinary liability of judges, provides for the release from office as a sanction applied to the judge for disciplinary violations. Dismissal from the position of judge represents the de jure termination of the judge's powers as a result of committing a serious or repeated disciplinary offense. The proposal for release from the position of judge is submitted by the Superior Council of Magistracy.

Disciplinary sanctions are applied to the judge by the Disciplinary Board. The disciplinary board consists of 4 judges and 3 people from civil society. The disciplinary case is examined with the mandatory summons of the concerned judge. When examining the disciplinary case, the judge subject to the referral may be assisted by a lawyer chosen by him.

The decision of the disciplinary college regarding the application of the sanction of release from the position of judge, president or vice president of the court is adopted by the Superior Council of Magistracy after the expiry of the appeal period.

On March 30, 2023, Law no. 65 regarding the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice and has as its object the legal reports related to the external evaluation procedure of the ethical and financial integrity of judges of the Supreme Court of Justice and candidates for the position of judge of the Supreme Court of Justice. The evaluation is carried out by the evaluation committee. Following the judge's evaluation, the Evaluation Commission draws up a reasoned report on the evaluation containing the proposal regarding the promotion or non-promotion of the evaluation. The evaluation report is sent to the evaluated judge, to his e-mail address, and to the Superior Council of Magistracy. On the same day, the Evaluation Commission publishes the information about the evaluation result on its official web page.

The Superior Council of the Magistracy examines in a public meeting, based on the evaluation file received from the Evaluation Commission, the results of the judge's evaluation. The judge can present additional information that he considers relevant only if he proves that he was unable to present it previously. The representative of the Evaluation Commission and the evaluated judge, in person, are entitled to present their position.

Through a reasoned decision, adopted within 30 days at most from the receipt of the documents submitted by the Evaluation Commission, the Superior Council of Magistracy accepts the report or rejects it and notes the promotion or non-promotion of the evaluation. The decision of the Superior Council of Magistracy regarding the non-promotion of the evaluation has the effect of dismissing the judge. The judge released from office based on the provisions of this law does not have the right to exercise the position of judge and other positions of public dignity for 7 years, from the date of finality of the decision of the Superior Council of Magistracy; is deprived of the right to the single severance allowance, provided for in art. 26 paragraph (3) of Law no. 544/1995 regarding the status of the judge; is deprived of the right to the special pension provided for in art. 32 of Law no. 544/1995 regarding the status

of the judge, with the maintenance of the general pension for the age limit according to the general conditions established by Law no. 156/1998 on the public pension system.

The decision of the Superior Council of the Magistracy can be contested by the concerned judge at the Supreme Court of Justice within 5 days from the communication of the reasoned decision of the Superior Council of the Magistracy.

B. If removed from office, describe the adverse consequences that may affect the removed judge including -

- (a) financial (especially pension) consequences;**
- (b) future employment consequences following removal;**
- (c) societal consequences including loss of title or civic decorations; and**
- (d) disciplinary steps that may be taken against the removed judge.**

As was described above, in the case of the release of the judge through the prism of Law no. 65 regarding the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice, as a result of the release from office by the Decision of the Superior Council of Magistracy regarding the non-promotion of the evaluation, the judge released from office does not have the right to exercise the function of judge and other positions of public dignity for 7 years, from the date of finality of the decision of the Superior Council of Magistracy; is deprived of the right to the single severance allowance, provided for in art. 26 paragraph (3) of Law no. 544/1995 regarding the status of the judge; is deprived of the right to the special pension provided for in art. 32 of Law no. 544/1995 regarding the status of the judge, with the maintenance of the general pension for the age limit according to the general conditions established by Law no. 156/1998 on the public pension system.

According to the law on the status of the judge, a judge can be dismissed from office for the following reasons:

1. Obtaining an "insufficient" qualification in two consecutive performance evaluations.
2. Committing a disciplinary offense as specified in Law no. 178 of July 25, 2014, concerning the disciplinary liability of judges.
3. Receiving a final judgment of conviction.
4. Engaging, either directly or through a third party, in a legal act or participating in decision-making without resolving the real conflict of interests. This is determined by an act of ascertainment that remains definitive and is in accordance with the provisions of the legislation regulating conflict of interests.
5. Failing to submit or refusing to submit the declaration of wealth and personal interests as stipulated under art. 27 para. (8) of Law no. 132 of June 17, 2016, concerning the National Integrity Authority.

6. Having assets confiscated based on an irrevocable court decision due to them being deemed unjustified.
7. Obtaining a negative result on the professional integrity test, as determined by the decision of the disciplinary board.

Judges dismissed under these conditions are deprived of the right to a single severance allowance and the establishment of a special pension. However, they retain the right to an old-age pension according to general conditions.