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Selection and Career of Judges – Duplication of Responsibilities or Additional Guarantees?

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LRCM

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**Public Policy Document:
Selection and Career of Judges – Duplication of Responsibilities or
Additional Guarantees?**

Developed by the Legal Resources Center of Moldova

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Summary

Selection and career of judges is a key element of a judicial system. Appointing judges on merit is an essential condition for having an independent, accountable and professional judiciary. This is what international recommendations on the independence of the judiciary and the common sense say. Transparency in selection and career of judge is important to ensure the trust and confidence of the public, judges themselves and court staff in the judicial system and in the authorities responsible for judicial appointments and promotion. Selection and promotion on subjective criteria and without transparency may impair the quality of justice administration by discouraging judges to be fair and professional. This makes judicial appointment and promotion a particularly important aspect for the Republic of Moldova.

This document offers an analysis of the Moldovan selection and career system of judges¹ and covers the practices of judicial appointment, transfer between courts of the same level or to lower courts level, promotion to higher courts and appointment of court presidents or vice presidents, applied during the period of January 2013 through December 2014. The report also contains a summary of relevant international recommendations on judge selection and promotion and a review of the competences of the Superior Council of Magistracy (SCM) and the Board of Selection and Career of Judges (BSCJ), including the recommendation to consider three options:

- a) to exclude the repeated review of applicants by the SCM after the BSCJ reviewed them;
- b) to dissolve the BSCJ and to assign all competences related to judge selection and career to the SCM; or
- c) to maintain the status quo.

This public policy document also addresses other important aspects of a transparent and professional system for judge selection and career and contains several recommendations for the Moldovan judicial system, such as to change the way of registering applicants for judicial positions so as to register them in the descending order of the scores they obtained with the BSCJ; to change the way of organizing competitions so as to hold one or two competitions per year to fill all vacancies in the system that arise during a year; to re-consider the criteria for judge selection, promotion and transfer so as to ensure a greater value of the training at the National Institute of Justice or of the performance review by the Board of Performance Evaluation of Judges (BPEJ) and to include all other criteria that are currently examined by the SCM and are not examined by the BSCJ.

The document has been conceived as the first step toward starting discussions about the criteria for selecting, promoting and transferring judges and appointing court presidents and vice presidents. The main subject of the report refers to the institutional framework, namely the distinction between the competences of the SCM and those of the BSCJ. According to the legislation, selection and promotion of judges and the appointment of court presidents and vice presidents is done by decisions of the BSCJ, which are final unless the SCM chooses to challenge them. In practice, this means that the SCM, which has the competence to examine the decisions of the BSCJ and to propose candidates for judicial appointment or promotion to the Moldovan President or Parliament, appoints, promotes or transfers the applicants whom the BSCJ rates best. In exceptional cases, when the SCM questions the decision of the BSCJ or finds new facts that were unknown to the BSCJ when it took the decision, the SCM may decide to appoint, promote or transfer an applicant with a lower score or to

¹ Judge selection is the procedure for selecting applicants for judicial positions and appointing them as judges. Judge career is the concept that refers to sitting judges and covers judge promotion to a higher court, appointment as court president or vice president and transfer to other courts of the same or lower level.

reject the appointment, promotion or transfer. In any case, the SCM must substantiate its decision in detail to ensure transparency and trust in the judge selection and career system.

The SCM plays an important role in appointing, selecting or transferring judges because it appoints certain members to the BSCJ, establishes the legislation on its activity and the criteria for selection, promotion and transfer, and may uphold or overrule the decisions of the BSCJ and send them back to the BSCJ for revision. According to Article 11 of Law No. 154, the SCM may challenge the decisions of the BSCJ only in the part that refers to their issuing or adoption procedure. We consider that the SCM should also be able to send back these decisions when its members consider that the BSCJ did not assess the applicant correctly, for example, when they awarded wrong score or did not take into account certain aspects of the applicant's activity.

Observations during 2013-2014 show a different understanding of the roles of the SCM and the BSCJ during judge selection and career procedures. In many cases, the SCM selected or promoted judges who accumulated a lower score without substantiating this decision. According to unofficial explanations, this is because the SCM also considers certain subjective criteria that the BSCJ does not take into account but that are important for judicial work. If this is true, the best solution might be to change the criteria used by the BSCJ for applicant selection.

This report does not cover the requirement of appointments before the retirement age for judges, judge reserve and temporary transfer of judges. Nor does it address detailed criteria for selecting, promoting, transferring and appointing court presidents and vice presidents, which can be discussed in other documents.

Abbreviations

CA – court of appeals

BPEJ – Board of Performance Evaluation of Judges

BSCJ – Board of Selection and Career of Judges

SCM – Superior Council of Magistracy

SCJ – Supreme Court of Justice

NIJ – National Institute of Justice

Law No. 514 – Law No. 514 of July 6, 1995, on the Judicial Organization

Law No. 544 – Law No. 544 of July 20, 1995, on the Status of Judges

Law No. 947 – Law No. 947 of July 19, 1996, on the Superior Council of Magistracy

Law No. 152 – Law No. 152 of June 8, 2006, on the National Institute of Justice

Law No. 154 – Law No. 154 of July 5, 2012, on Selection, Career and Performance Evaluation of judges

The Register of participants in the competition on occupation of vacancies – The Register of the participants in the competition on occupation of vacancies of judges, court presidents or vice presidents, available at:

<http://csm.md/files/Registru/sectiuneal.pdf>

The Regulation on criteria of selection – The Regulation on criteria of selection, promotion and transfer of judges, approved by the SCM's Decision No. 211/8 of March 5, 2013, available at:

http://www.csm.md/files/Acte_normative/regulamentselectie.pdf

The Regulation on the organization of the judges employment competition – The **Regulation on the organization of the judges employment competition**, approved by SCM's Decision No. 741/31 of October 15, 2014, available at: http://www.csm.md/files/Acte_normative/p5.pdf

The Regulation on criteria and procedure of transfer applied in court re-organizations – The Regulation on the criteria and procedure of judges transfer applied in case of redistribution of judges positions, or court re-organization or liquidation, approved by the SCM's Decision No. 644/31 of October 16, 2012, available at:

http://www.csm.md/files/Acte_normative/Regulament_redistribuire_reorganizare_dizolvare.pdf

BSCJ Regulations – Regulation on the organization of the activity of the Judges Selection and Career Board, approved by SCM's Decision No. 60/3 of January 22, 2013, available at:

http://www.csm.md/files/Acte_normative/Regul_activ_%20coleg_%20selec.pdf

BPEJ Regulations – The Regulation on the organization of the activity of the Judges Performance Evaluation Board, approved by SCM's Decision No. 59/3 of January 22, 2013, available at:

http://www.csm.md/files/Acte_normative/Regul_%20activ_%20coleg_%20eval_%20APROBAT.pdf

The procedure for registering participants in the competition on occupation of vacancies – The Procedure for registering the participants in the competition on occupation of vacancies of judges, court presidents and vice presidents, approved by the SCM's Decision No. 87/4, January 29, 2013, available at:

http://csm.md/files/Acte_normative/Registru_procedura.pdf.

Problem Description

a. The Summary of the Problems Addressed in this Document

The selection and career of judges are key elements for ensuring an independent and professional judiciary. In 2012, the Parliament passed a package of legislative amendments that have setted a new legal and institutional framework for selection and career of judges.

Currently, the selection and career of judges are regulated by Law No. 514 on the Judicial Organization (Law No. 514), Law No. 544 on the Status of Judges (Law No. 544) and Law No. 154 on Judge Selection, Career and Performance Review (Law No. 154). After the 2012 amendments, the legal framework was supplemented by the SCM's Regulations on the judge selection, promotion and transfer criteria (SCM Regulation on criteria of selection), the SCM's **Regulations on the organization of the employment competition of judges**, and the SCM's Regulations on the judge transfer criteria and procedure applied in case of the redistribution of judge positions, or court re-organization or liquidation (Regulations on the transfer criteria and procedure applied in court re-organizations).

The main novelties introduced in 2012 were:

- a) The establishment of the Board of Selection and Career of Judges (BSCJ) in charge of judge selection and career. It passes substantiated decisions on each judge candidate and each judge applying for promotion, transfer or appointment as a court president or vice president.
- b) The SCM's establishment by law and the detailed development of the criteria for judge selection, promotion and transfer and for court president or vice president appointments.²
- c) The establishment of the mandatory performance review and the corresponding procedure for judges who apply for promotion, transfer or appointment as a court president or vice president.³
- d) It became mandatory to keep a Register of the participants in the competition for judge, court president or vice president vacancies (Register of competition participants). This register identifies applicants and judge, court president or vice president vacancies.⁴
- e) The repeal of the requirement that 80% of judicial vacancies go to the graduates of the National Institute of Justice (NIJ) and 20% to legal professionals with work seniority status.⁵
- f) The establishment of an examination before the NIJ's Graduation commission for judge candidates with work seniority status, who have not graduated the NIJ.⁶ This examination should contribute to the improvement of the judge selection process by unifying the standards for the two categories of judicial candidates (NIJ graduates and professionals with work seniority status). During the selection

² Law No. 154, SCM's Regulations on the selection criteria, SCM's Regulations on the competitive employment of judges.

³ Law No. 154, particularly Article 5 (3).

⁴ Article 6² from Law No. 544.

⁵ Article 6 (2) of Law No. 544 was amended by Law No. 247 of July 21, 2006, which established for the first time that the number of judicial vacancies announced for non-graduates of the NIJ may not exceed 20% of all vacancies announced during three years. By Law No. 153 of July 5, 2012, Article 6 was amended completely. At the present day it does not specify quotas for the two categories of candidates. In real life, the SCM has never complied with the legal requirement regarding the selection of up to 20% of candidates from non-graduates of the NIJ (for more details, please see the Legal Resources Center of Moldova, the report "Transparency and efficiency of the Superior Council of Magistracy of the Republic of Moldova. 2010-2012," Chapter 2 "Career and Professional Training of Judges," pages 36-48, available at http://crjm.org/wp-content/uploads/2014/04/Raport_Transparenta_si_eficienta_CCSM_2010_2012.pdf).

⁶ Article 6 (3) Law No. 544.

of judge candidates, the BSCJ will take into account the examination results assigned by the NIJ's Graduation commission.⁷

The novelties introduced in 2012 to judge selection and career practices, except the repeal of the quotas for the two categories of judge candidates, are supposed to improve judge selection and contribute to the promotion of the most integer and competent judges.

This document offers the first analysis of the issues that the LRCM team noticed in the judge selection and career, as a result of the changes made to the legal framework in 2012 and the practice of the SCM in 2013 and 2014, which can be grouped in the following three categories:

(1) The duplication of the competences of the BSCJ and the SCM

The SCM's practice during 2013 and 2014 shows that the SCM does not take entirely into account the BSCJ's decisions and does not always select and promote judges with the highest score from the BSCJ.⁸ Some SCM members explain this by saying that the SCM is the entity responsible for human resources in the judicial system and is the last authority that considers other, subjective, criteria in addition to those used by the BSCJ and the BPEJ. It seems that the SCM examines supplementary the candidates' "human qualities" and, when deciding on promotions to the SCJ, it gives more weight to the administrative experience of court presidents.⁹

This situation does not seem to be completely in line with the spirit of the current legislation. According to the law, the BSCJ, formed of four judges and three civil society representatives, is subordinated to the Superior Council of Magistracy and has the purpose to ensure the selection of judge candidates, the promotion of judges to higher courts, the appointment of court presidents or vice presidents and the transfer of judges to courts of the same or lower level.¹⁰ In exercising its competences, the BSCJ issues substantiated decisions on the acceptance or rejection of judge applicants, on the promotion of judges to higher courts, on the appointment of court presidents or vice presidents and on the transfer of judges to courts of the same or lower level, and submits these decisions to the SCM.¹¹ The academic results of the initial training at the NIJ or of the examination taken before the NIJ's Graduation commission are a mandatory criterion for selecting judge candidates.¹² The performance review by the BPEJ is a mandatory criterion for promoting to higher courts, appointing court presidents and vice presidents and transferring to courts of the same or lower level.¹³

Thus, a judge aspirant is initially reviewed by the NIJ, then by the BSCJ and then by the SCM. A judge applying for promotion, appointment as a court president or vice president or transfer is initially reviewed by the BPEJ, then by the BSCJ and then by the SCM. During this procedure judges go through two "filters" before reaching the SCM. Since both the BSCJ and the BPEJ are subordinated to the SCM and the procedures in the two Collegiums are meticulously described in the regulations passed by SCM's decisions, it comes as implicit that the SCM has delegated these Collegiums the task of reviewing judges' performance and retained only the competence of examining complaints against the Collegiums' decisions. Sections 2 through 4 of this document address the practice of selection, promotion and transfer that shows that the SCM neither takes completely into account the score assigned by the BSCJ nor motivates in its decisions why it does not take into account this score. Neither candidates nor society understand this approach. The persistence of this practice could

⁷ Article 5 (2) of Law No. 154.

⁸ Examples of such decisions are presented further in this document.

⁹ An example is the February 2014 interview with Dumitru VISTERNICEAN, Acting Chairman of the SCM, available at <http://www.moldovacurata.md/interview/interviu-visternicean-text>; the October 2014 interview with Victor Micu, Chairman of the SCM, available at <http://www.moldovacurata.md/interview/n-sistemul-judectoresc-exist-corupie-dar-trebuie-demonstrat-fiecare-caz-n-parte>.

¹⁰ Article 3 (1) of Law No. 154.

¹¹ Article 5 (1) letter h) of Law No. 154. The BSCJ submits its decisions to the SCM on the next day after the expiry of the contestation time limit.

¹² Article 5 (2) of Law No. 154 and point 10 of the SCM's Regulations on the selection criteria.

¹³ Article 5 (3) of Law No. 154, points 11, 13 and 17 of the SCM's Regulations on the selection criteria.

undermine the trust in the BSCJ and in the BPEJ and is unlikely to encourage judges to do their job correctly and professionally to meet the performance review criteria. On the other hand, if this practice goes on, it could create the perception of subjectivism in deciding on the appointment and promotion of judges and seriously undermine trust in the SCM both in public and in judges' opinion.

(2) The Register of candidates and the organization of separate competitions for each position

Article 6² of Law No. 544 requires keeping the Register of competition participants. Paragraph 3 of this article requires registering candidates irrespective of whether the competition was announced or not. The procedure for registering the participants in the competition for judge, court president and vice president vacancies is regulated by SCM's Decision No. 87/4 of January 29, 2013.¹⁴

The Register of participants in the competition on occupation of vacancies basically consists of four lists: the list of judge applicants, the list of judges applying for promotion to a court of the same or higher level, the list of judges requesting transfer to a lower court, and the list of judges applying for court president or vice president. These lists include the applicants' last and first names, their present position, the level of the court for which they apply, and the application registration date. Neither Law No. 544 nor the SCM's Regulations clarify the principle of the candidate registration on the basis of the score assigned by the BSCJ and the Register consulted in December 2014 did not indicate the score obtained from the BSCJ. Moreover, the Register indicated only the level of the courts that candidates applied for rather than concrete courts. In fact, such a Register represents just a list of potential candidates and not a tool that facilitates the selection of the best candidates. We understand that this happens because of the way in which competitions are organized.

The competitions for appointing, promoting to higher courts, transferring to lower or same level courts and appointing as a court president or vice president are organized separately for each individual vacancy, without any predictability for candidates. The organization of numerous competitions takes considerable logistical effort from the SCM and prevents candidates from planning their career adequately. On the other hand, not all pending or prospective vacancies are announced open at once. This creates the impression that certain vacancies are withheld from competitions deliberately.

(3) The criteria for judge selection, promotion and transfer and for the appointment of court presidents and vice presidents

The BSCJ's criteria for reviewing applicants are established by the SCM and each criterion has a maximally allowed score. The SCM's regulations in this regard, albeit quite detailed, lend greater weight to work seniority than to applicants' capabilities and efficiency. Moreover, the review of judges' performance and NIJ's training has a lower maximal score, whereas such criteria as candidate's motivation or interview with the BSCJ allow a higher maximal score. The low maximal score allowed for performance review does not encourage judges to excel in their daily work. The low maximal score allowed for NIJ's training coupled with the repeal of the 80% quota of candidates from NIJ graduates may result in a low interest in the NIJ and, in the long run, in the reduction of the number of applicants with professional legal education.

¹⁴ The Procedure for registering the participants in the competition for judge, court president and vice president vacancies, approved by SCM's Decision no. 87/4 of January 29, 2013, available at: http://csm.md/files/Acte_normative/Registru_procedura.pdf.

b. Legal Framework and the Practice of Selection, Transfer and Promotion

1. Judge Selection

General Presentation

The main regulatory acts that describe the selection of judges are Law No. 544, Law No. 154, the SCM's Regulations on criteria of selection and the SCM's Regulations on the competitive employment of judges.

Under Article 6 (1) of Law No. 544, to become a judge a candidate must have legal competence and a license degree in law or its equivalent, be either a graduate of the NIJ or a legal professional with relevant work seniority status, have no criminal record, know the state language and meet certain health requirements.¹⁵ Consequently, judge candidates come from two categories: NIJ graduates and professionals with the required work seniority. Article 9 of Law No. 544 establishes that judge vacancies are filled by the candidates from the Register of competition participants.

Under Article 18 of Law No. 152 on the National Institute of Justice, **NIJ graduates** are obliged to participate in a competition for judge vacancies during 3 years after the graduation. After they apply to the competition announced by the SCM, the BSCJ considers their applications and proposes to the SCM for appointment.

If, for unfounded reasons, a graduate does not participate in the competition for judge vacancy during three years, the NIJ's Board may request the refund of his/her initial training fellowship.

Before the July 2012 amendments, NIJ graduates used to apply for employment competitions on the basis of their cumulated grade point average. The Regulations on the competitive employment of judges provided for the NIJ graduates' right to choose a vacancy in the descending order of their cumulated grade point average. The SCM repealed this norm by its Decision No. 741/31 of October 15, 2013. In fact, this rule had never been observed. The NIJ graduates could never choose vacancies in the descending order of their cumulated grade point average.

Before the July 2012 amendments, Article 6 of Law No. 544 required that 20% of newly appointed judges be from legal professionals with a minimal five-year work experience¹⁶ and 80% of newly appointed judges be from NIJ graduates.

As shown in Table 1 based on the SCM's activity reports for 2011 and 2012, this proportion was not observed. By Law No. 153 the 80% quota of judge candidates for NIJ graduates was cancelled.¹⁷

Table 1: The quotas of judges appointed from NIJ graduates and those from legal professionals with work seniority in 2011 and 2012

Year	Judges appointed by presidential decree (total)	Appointed judges			
		NIJ graduates		Legal professionals with work seniority	
		Number	% of total	Number	% of total

¹⁵ Judge candidates must pass the screening by the Information and Security Service of Moldova (ISS) under Article 8 of Law No. 271 of December 18, 2008, on the Screening of Public Servants and Candidates to Public Offices. The note prepared by ISS has a consultative character and does not contain data coming within the purview of Law No. 52 of March 29, 2012, on the Special Investigation Activity.

¹⁶ Article 2 of Law No. 247 of July 21, 2006, and Article 6 (2) of Law No. 544 of July 20, 1995.

¹⁷ Article 6 (2) of Law No. 544 was amended by Law No. 247 of July 21, 2006, which established for the first time that the number of judicial vacancies announced for non-graduates of the NIJ may not exceed 20% of all vacancies announced during three years. By Law No. 153 of July 5, 2012, Article 6 was amended completely. At the present day it does not specify quotas for the two categories of candidates.

2011	24	15	63%	9	37%
2012	19	10	53%	9	47%

By 2013, NIJ graduates were reluctant to participate in competitions because all vacancies in Chisinau and neighbor districts were filled by transfer and they did not want to get a job in the districts that were too far from the capital city. This reluctance seems to persist but recently the SCM gave up the practice of transfers and announced many judge vacancies in Chisinau.¹⁸

To become judges, **candidates with work seniority in legal profession** must meet the following requirements established in Article 6 (2) of Law No. 544: recent five-year experience of working as a judge or assistant judge at the Constitutional Court or an international court, as a prosecutor, tenure professor in a certified higher education institution, a lawyer, a judicial assistant or a clerk. These candidates must take an examination before the NIJ's Graduation commission.¹⁹ If the applicant for a judicial position is compatible with this position, meets relevant health requirements, and has passed the examination before the NIJ's Graduation commission,²⁰ then the SCM issues a decision on sending his/her application to the BSCJ for selection for judicial position.

According to Article VIII point (7) letter d) of Law No. 153, by January 1, 2013, the SCM was expected to propose the NIJ the development and approval of new regulations on the examination of legal professionals with work seniority status before the NIJ's Graduation commission. Although during 2013 and 2014 the SCM passed many decisions requesting the NIJ to develop a procedure for the examination for professionals with seniority in legal profession,²¹ only on June 24, 2014, the NIJ's Board passed [Decision No. 8/2](#) by which it approved the procedure for the proficiency examination for applicants with work seniority status. By its [Decision No. 11/3 of September 29, 2014](#), the NIJ's Board approved the composition of the Commission for the organization of proficiency examinations for applicants for judge positions on the basis of their work seniority.²²

The results of the examination before the NIJ's Graduation commission is one of the selection criteria considered by the BSCJ, which issues a decision for each judge applicant depending on the result of the selection procedure. The BSCJ's decision may be contested in the SCM in the part referring to the issuing and adoption procedure.²³

¹⁸ In 2013, the SCM announced the following competitions for judicial vacancies in the courts of Chisinau: five competitions for vacancies under general conditions and five competitions for vacancies filled by transfer. In 2014, the SCM announced 12 competitions for judicial vacancies in the courts of Chisinau. All of them were under general conditions.

¹⁹ Article 9 of the Regulations on the competitive employment of judges.

²⁰ According to Article 6 (3) of Law No. 544, the applicants who worked as judges in international courts or at the Constitutional Court are exempted from the examination, although it is unclear what score will serve as the basis for their participation in the competition.

²¹ By [SCM's Decision No. 457/15](#) of May 15, 2014, the SCM established that for two years no graduation examination was held for judge applicants positions with work seniority and that there were 60 judge vacancies.

²² On July 5, 2013, the NIJ's Board concluded that it could not form a single Graduation commission and approve any regulations on the examinations for professionals with work seniority in legal profession because apparently the legislation did not allow that. From 2013 through 2014, the NIJ addressed the SCM on several occasions with the request to express its opinion about a draft law on the amendment of the NIJ's Law. Every time, the SCM considered the NIJ's requests regarding the amendment of the law as unfounded. The SCM considered that the effective legislation did not prevent the NIJ from regulating the work of a single Graduation commission ([SCM's Decision No. 594/24](#) of August 6, 2013, SCM's Decision No. 859/39 of November 26, 2013).

On June 24, 2014, the NIJ's Board approved the procedures required for this purpose ([Decision No. 8/2 of June 24, 2014, of the NIJ's Board](#)). By [Decision No. 11/3 of September 29, 2014, of the NIJ's Board](#), the NIJ approved the membership of the Commission for proficiency examinations for applicants for judge, who have work seniority status. The belated reaction of the NIJ was possibly determined by legislative initiatives of an MP, available at <http://parlament.md/LegislationDocument.aspx?Id=9681092f-2d62-4e67-897a-e62e723c7c61>; and of the Ministry of Justice, which launched an initiative to reform the NIJ's activities, available at <http://justice.gov.md/libview.php?l=ro&idc=191&id=2033>).

²³ Article 11 of Law No. 154.

As of January 25, 2015, the Register of participants in the competition on occupation of vacancies²⁴ contained 126 registered candidates. 22 of them were NIJ graduates and 9 were appointed judges.²⁵

Judge Selection Criteria and the Score Assigned to Them

By [SCM's Decision No. 211/8](#) of March 5, 2013, the SCM approved the Regulations on criteria of selection.²⁶ By [SCM's Decision No. 739/31](#) of October 15, 2013, several provisions of these regulations were amended, including a new score scale for the criteria for candidates, presented in Table 2:

Table 2: The amendments to the Regulations on criteria of selection by SCM's Decision No. 739/31 of October 15, 2013

Criteria according to the Regulations on criteria of selection	Maximal score, Decision No. 211/8	Maximal score, Decision No. 739/31
a) Academic results at the initial training at the NIJ and at the examination taken before the NIJ's Graduation commission	30	30
b) Work seniority in legal profession	10	10
c) The nature of the work performed in the legal position ²⁷	10	10
d) Information technology knowledge	5	5
e) Knowledge of any of the languages spoken at the European Court of Human Rights	5	5
f) Scientific degree, teaching experience, thematic publications and articles	<u>10</u>	<u>5</u>
g) Personal qualities and skills appropriate for judges (integrity, correctness, ability to keep stress under control, analytical skills, etc.)	15	15
h) A verbal presentation of the motivation (also in writing) and an interview with the judge applicant before the BSCJ	<u>15</u>	<u>20</u>
Total	100	100

For 18-month training at the NIJ or an examination before the NIJ's Commission, applicants can receive maximum 30 points. On the other hand, for motivation, interview and personal qualities, applicants can receive 35 points in total. We do not want to minimize the importance of personal qualities and the applicant's motivation but we do not believe that the score offered for these criteria should exceed the maximal score offered for training at the NIJ. Moreover, training at the NIJ already implies the review of judge applicants' capabilities. On the other hand, applicants' motivation is of little relevance considering that they have already studied for 18 months at the NIJ or applied for the competition after at least five years of work. The appraisal

²⁴ SCM's Register of competition participants, accessed on January 25, 2015, available at <http://csm.md/files/Registru/sectiuneal.pdf>.

²⁵ Grigore BOTNARU - Decree No. 1360 of October 30, 2014; Veronica JOMIRU-NICULITA – Decree No. 1361 of October 30, 2014; Maria COZMA – Decree No. 1362 of October 30, 2014; Constantin ROSCA – Decree No. 1363 of October 30, 2014; Sergiu SUVAC - Decree No. 1393 of December 3, 2014; Mihaela GROSU - Decree No. 1394 of December 3, 2014; Olga BEJENARI - Decree No. 1416 of December 18, 2014; Sofia ARAMA - Decree No. 1415 of December 18, 2014; Valentina STRATULAT - Decree No. 1424 of December 30, 2014.

²⁶ SCM's Regulations on the selection criteria, approved by [SCM's Decision No. 211/8](#) of March 5, 2013, available at http://csm.md/files/Acte_normative/regulamentselectie.pdf.

²⁷ Judge experience is scored 2 points for every year of work and, in the case of positions described in Article 6 (2) of Law on the Status of Judges, 1 point for every year of work. Experience in other legal professions is scored 0.5 points for every year of work. The total score accumulated by a candidate may not exceed 10 points.

of the applicants' motivation with as much as 20 points (57% of the score offered for training at the NIJ) seems unreasonable and leaves room for arbitrary decisions.

In September 2013, the LRCM sent the SCM proposals regarding supplements and amendments to the Regulations on criteria of selection. Among other things, the document recommended merging two of the criteria for judge applicants, namely "work seniority in legal profession" and the "nature" of this activity. These criteria seem to refer to the same aspect – the applicants' work experience, and the score that can be assigned for the two criteria is 20 points out of the total of 100. In addition, the LRCM proposed the SCM to revise the score for the criteria for judge applicants by increasing the number of points assigned for training at the NIJ or the graduation examination at the NIJ to 50 and to decrease the number of points assigned for other criteria.²⁸ The score assigned for "scientific degree, teaching experience, thematic publications and articles" could be harder to accumulate for judges who work in localities lacking higher education institutions or judges whose workload is double in comparison with the country average. The SCM did not take into account the proposals of the LRCM in its [Decision No. 739/31](#) of October 15, 2013.

A low score for the academic results obtained at the NIJ undermines the prestige of this institution and potentially even its purpose. On the other hand, a high score for personal qualities, motivation and interview, which is difficult to assess objectively, may raise critique against the BSCJ and the SCM because the selection becomes excessively subjective.

By [SCM's Decision No. 739](#) of October 15, 2013, the SCM changed the score calculation procedure for some criteria as follows:

Table 3: The amendments to the Regulations on criteria of selection in the part describing the score calculation procedure for some review criteria

Text according to SCM' Decision No. 211/8 of March 5, 2013	Text according to SCM's Decision No. 739 of October 15, 2013
Point 6. To be admitted to the competition, judge applicants must accumulate at least <u>75</u> points.	Point 6. To be admitted to the competition, judge applicants must accumulate at least <u>70</u> points.
Point 10 letter a): „... is scored with 30 points as follows: <ul style="list-style-type: none"> • for the grade of 10 – 30 points; • for the grade of 9 – 20 points; • for the grade of 8 – 10 points; • for the grade of 7 – 5 points. <p>If the grade contains decimals, the number of points will correspond to the grade. For example, the grade of 9.13 will correspond to 21 points, 9.16 to 22 points, 9.2 to 22 points, 9.25 to 22 points, etc.”</p>	Point 10 letter a): „... is scored with maximum 30 points and minimum 5 points as follows: <ul style="list-style-type: none"> for the grade of 10 - 30 points; for the grade of 9 - 25 points; for the grade of 8 - 20 points; for the grade of 7- 15 points; for the grade of 6 - 10 points; for the grade of 5 - 5 points. <p>If the grade contains decimals, the number of points will increase by 1 for every 0.2 of the grade. For example: the grade of 9.00 will correspond to 25 points; 9.2 to 26 points; 9.4 to 27 points; 9.6 to 28 points; 9.8 to 29 points.”</p>
Point 10 letter b) „...Each year of work seniority is equivalent to <u>0.5</u> points, but the total value of the score may not exceed 10	Point 10 letter b) „...Each year of work seniority is equivalent to <u>1</u> point but the total value of the score may not exceed 10 points.”

²⁸ The LRCM proposed the following points: a) academic results of the training at the NIJ (academic results of the initial training at the NIJ and the results of the examination taken before the NIJ's Graduation commission) - maximum 50 points; b) professional experience that exceeds the required minimal experience – maxim 10 points; c) IT knowledge – maximum 7 points; d) knowledge of any of the languages spoken at the European Court of Human Rights – maximum 7 points; e) scientific degree and teaching experience – maximum 8 points; f) personal qualities and skills appropriate for judges – maximum 8 points; h) impressions created during the interview – maximum 10 points. The proposals of the LRCM are available at http://crjm.org/wp-content/uploads/2013/09/2013-09-23-the-LRCM.opinie.modific.reg_criterii.selectie.promovare.transferare.pdf.

Thus, the amendments of October 15, 2013, reduced the minimal requirements for judge applicants. The minimal score required for the admission to a competition was reduced from 75 to 70 points; the applicants who obtained a lower grade than 7 at the examination before the NIJ’s Graduation commission were allowed to participate in the employment competition, and the score calculated for each year of work seniority doubled, retaining the same ceiling of 10 points. For example, from October 15, 2013, through December 31, 2014, nine judge applicants who received between 70 and 75 points in the review by the BSCJ were admitted.²⁹ In case of the applicants Vasilisa MUNTEAN and Irina MAXIM, the BSCJ did not admit them to employment competitions because they had received 70 points each.³⁰ Later, however, the SCM admitted them and they were appointed by Decrees No. 1014 and No. 1015 of February 26, 2014, of the Moldovan President.

The amendment of the score calculation procedure for training at the NIJ consisted in increasing the score for academic grades. For example, before the amendment, the grade of 8 corresponded to 10 points; after the amendment this grade corresponds to 20 points. The purpose of this amendment is unclear because it allows weaker applicants (with lower grades and, consequently, poorer expertise and capabilities) to accede to judge positions. This amendment would have been justified if there had been few judge applicants or the grades assigned at the NIJ had been lower than those assigned during the establishment of the initial score scale. No such circumstances were valid or at least publicly discussed at the moment these amendments were adopted.

From April 24, 2013, through October 15, 2013,³¹ the BSCJ passed 24 decisions regarding judge candidates.³² However, the score assigned to judge applicants before October 15, 2013, was not adjusted to the new

²⁹ The SCM has proposed the President to appoint the following candidates as judges: Elena LUPAN, 70 points ([BSCJ’s Decision No. 79/10](#) of December 26, 2013), appointed by Decree of the Moldovan President No. 1092 of April 11, 2014; Vladislav HOLBAN, 74 points ([BSCJ’s Decision No. 77/10](#) of December 26, 2013), appointed by Decree of the Moldovan President No. 1091 of April 11, 2014; Gheorghe STRATULAT, 71 points ([BSCJ’s Decision No. 81/10](#) of December 26, 2013), appointed by Decree of the Moldovan President No. 1089 of April 11, 2014; Olga CERNEI, 72 points ([BSCJ’s Decision No. 72/10](#) of December 26, 2013), appointed by Decree of the Moldovan President No. 1090 of April 11, 2014; Maria COZMA, 71.5 points ([BSCJ’s Decision No. 73/10](#) of December 26, 2013), appointed by Decree of the Moldovan President No. 1362 of October 30, 2014; Olga BEJENARI, 72.5 points ([BSCJ’s Decision No. 21/4](#) of May 13, 2014), appointed by Decree of the Moldovan President No. 1416 of December 18, 2014; Vitalie-Silviu MIDRIGAN, 72 points ([BSCJ’s Decision No. 78/10](#) of December 26, 2013), appointed by a Decree of the Moldovan President of January 2015; Corneliu CRETU, 70 points ([BSCJ’s Decision No. 74/10](#) of December 26, 2013), [SCM’s Decision No. 733/24](#) of September 17, 2014, and Petru HARMANIUC, 70 points ([BSCJ’s Decision No. 76/10](#) of December 26, 2013), [SCM’s Decision No. 735/24](#) of September 17, 2014. The President did not appoint the latter two candidates.

Previously, the Moldovan President has requested the Information and Security Service to check the information presented in a public appeal launched by several nongovernmental organizations in respect of five judge candidates—Petru HARMANIUC (Riscani Court), Lucia BAGRIN (Centru Court), Corneliu CRETU (Centru Court), Maria COZMA (Ciocana Court) and Natalia BERBEC (Buiucani Court) (SCM’s Decisions No. 733/24, 734/24, 735/24 and 736/24). The signatories of the public appeal requested that the accuracy and authenticity of the published information regarding five judge candidates proposed by the SCM be checked and if this information raises suspicion of the lack of integrity or impeccable reputation, that these judge candidates be rejected (Public Appeal, Civil Society Calls the Moldovan President to check the information regarding judge candidates and to admit in the system only those who have impeccable reputation, available at <http://crjm.org/ong-uri-solicita-presedintele-rm-verifice-informatii-candidati-judecatori-si-admita-pe-cei-cu-reputatie-ireprosiabila/>). During the examination of the candidates’ compliance with the requirements of the Law on the Status of Judges and of the information submitted by relevant state agencies, the Chief of State found that the other candidates do not meet the requirements of the Judges’ Ethical Code and did not appoint them as judges (see <http://www.presedinte.md/rom/presa/presedintele-republicii-moldova-nicolae-timofti-a-semnat-decretele-de-numire-in-functie-a-sase-magistrati/>). In the end, the Moldovan President appointed two of the five candidates.

³⁰ See BSCJ’s Decisions [No. 8/1 of 24 April 2013](#) and [No. 10/1 of 24 April 2014](#).

³¹ On October 15, 2013, the SCM passed the Regulations on the competitive employment of judges, which were published in the Official Gazette of the Republic of Moldova No. 262-267/1733 of November 22, 2013.

³² According to the Web site containing the decisions of the BSCJ, the first decision dates April 24, 2013. More details at <http://csm.md/files/Hotaririle%20CSelectie/2013/HotaririleCSC2013.pdf>.

provisions from the Regulations on criteria of selection.³³ By its [Decision No. 83/3](#) of January 28, 2014, which addressed the competitive employment of judges at Buiucani Court, Chisinau, the SCM referred to the amendments to the Regulations on criteria of selection, particularly the reduction of the minimal score required for the admission to the competition from 75 to 70. The SCM stated that “...the candidates that obtain at least 70 points and have been previously rejected by the BSCJ must be admitted to competitions.”

The grades of the candidates who participate in the competition on the basis of the assessment from the previous Judge Qualification and Certification Collegium were equaled to the grades offered by the BSCJ.³⁴

Register of Judge Candidates

Judge candidates are registered in the Register of judge candidates. Point 7 of the SCM’s Regulations on criteria of selection requires the registration of candidates in the descending order of the accumulated score. However, the Register published on the SCM’s Web site lists candidates in alphabetical order and does not indicate the accumulated score at all.³⁵ On January 25, 2015, the Register of judge candidates included 126 candidates. 9 of them were appointed judges.

Competitions for Judge Applicants

Under Article 9 (3) of Law No. 544, the competition for selecting judge candidates takes place three months before the vacation of the announced position. Individuals registered in the Register of participants in the competition on occupation of vacancies can opt for any of the competitions announced by the SCM by submitting a letter of confirmation regarding their willingness to participate in a certain competition.³⁶

The SCM announces the competition and indicates the application deadline, which is usually 15 or 30 days after the publication of the decision in the Official Gazette.³⁷ The SCM publishes its decision on the competition on its Web site. Before 2013, the SCM used to announce the competition for judge vacancies in Chisinau and neighbour districts first for judges willing to be transferred, then for NIJ graduates and then for legal professionals with the required work seniority.³⁸ After the change in the composition of the SCM in 2013, competitions are announced for the latter two categories of applicants at once, whereas competitions for vacancies filled by transfer in Chisinau are almost never announced.

During 2013, the BSCJ received materials regarding 40 judge applicants of whom 27 were admitted and 13 were rejected. Only one decision of the BSCJ was contested in the SCM.³⁹ During 2014, the BSCJ published the

³³ The Web page with the decisions of the BSCJ does not contain any decision regarding the revision of Decisions No. [8/1](#), [10/1](#), [16/1](#) of April 24, 2013, and No. [27/4](#), of June 6, 2013, by which the BSCJ rejected the following candidates who scored less than 75 points: Elena GURSCHI (70.5 points), Vasilisa MUNTEAN (70 points), Irina MAXIM (70 points), Corneliu GUZUN (63 points).

³⁴ According to [SCM’s Decision No. 62/3](#) of January 22, 2013, judge candidates who passed proficiency examination before the Judge Qualification and Certification Collegium in line with the provisions of Law No. 949 of July 19, 1996, on the Judge Qualification and Certification Collegium (Law No. 949 was repealed by Law No.154.) are entitled to participate in the competitions carried out by the SCM for judge vacancies in accordance with the results assigned by the Judge Qualification and Certification Collegium during the 3 years of validity of these results. The grades assigned by the Judge Qualification and Certification Collegium were equaled to the reviews by the BSCJ, which was indicated in the following decisions of the SCM ([BSCJ’s Decision No. 3/1](#) of April 24, 2013, [BSCJ’s Decision No. 32/4](#) of June 6, 2013, and [BSCJ’s Decision No. 27/4](#) of June 6, 2013).

³⁵ Register of judge candidates, Section I, available at <http://csm.md/files/Registru/sectiuneal.pdf> (accessed on January 25, 2015).

³⁶ Point 16 of the SCM’s Regulations on competitive employment of judges.

³⁷ For example, [SCM’s Decision No. 433/15](#) of May 15, 2014, [SCM’s Decision No. 461/16](#) of May 27, 2014 (later amended by [SCM’s Decision No. 600/19](#)), [SCM’s Decision No. 462/16](#) of May 27, 2014, [SCM’s Decision No. 498/17](#) of June 3, 2014, etc.

³⁸ For example, announcements for NIJ graduates, available at <http://csm.md/files/Hotaririle/2012/18/315-18.pdf>, <http://csm.md/files/Hotaririle/2012/23/443-23.pdf>, <http://www.csm.md/files/Hotaririle/2012/29/583-29.pdf>; announcements for candidates with work seniority in legal profession, available at <http://csm.md/files/Hotaririle/2012/8/96-8.pdf>.

³⁹ By [SCM’s Decision No. 512/21](#) of July 3,, 2013, the contestation filed by Elena GURSCHI was rejected. [BSCJ’s Decision No. 27/4](#) of June 6, 2013, was upheld without changes.

review results for 19 judge applicants of whom 17 were admitted and 2 rejected. In 2014, only one decision of the BSCJ regarding the appointment of a judge was contested.⁴⁰

In 2013, the SCM announced 13 competitions for judge vacancies. Based on these competitions, the SCM proposed the Moldovan President 18 candidates for appointment. In 2014, the SCM announced 27 competitions for judge vacancies and proposed the Moldovan President 39 candidates for appointment. From 2013 through 2014, in at least four of its decisions, the SCM proposed more candidates for appointment than the number of vacancies indicated in the decision on the announcement of the competitions.⁴¹ In 2014, only one applicant replied in each of the competitions announced by the SCM for nine courts.⁴² The SCM put up all 9 candidates for appointment by the Moldovan President.

On July 1, 2014, there were 63 judge vacancies in the judicial system and 60 judge candidates registered in the Register of judge candidates. On December 31, 2014, there were 414 judges and 59 vacancies⁴³ in comparison with 425 judges and 48 vacancies for the same period of 2013. Although in 2014, 35 judges were appointed (19 in courts from Chisinau), there were more vacancies by the end of the year than in 2013. This is explained by numerous dismissals (46) in 2014 (27 more than in 2013).

The SCM's Proposal of Judge Candidates

After the BSCJ passes a substantiated decision on judge candidates, it sends this decision to the SCM for consideration on the next day after the expiry of the contestation time limit.⁴⁴ The legislation does not describe a detailed procedure for examining candidates by the SCM. Law No. 947 describes only the procedure for examining contestations against BSCJ's decisions. Perhaps, this is explained by the fact that, in the Legislator's understanding when developing Law No. 154 and establishing the BSCJ, the BSCJ is the only authority empowered to consider judge candidates, whereas the SCM has only the competence of accepting decisions or sending them for re-examination in case of contestations. Nevertheless, point 18 of the SCM's Regulations on competitive employment of judges requires the SCM to interview candidates and the law does not oblige the SCM to blindly follow the score assigned by the BSCJ.

After the assessment, the SCM examines the candidates and assessment results at a meeting. An SCM member presents candidates in accordance with their personal files. Any SCM member can address questions to the candidate. During the period of monitoring SCM meetings from 2011 through 2014, the LRCM found that candidates are usually asked about their academic average at university or the NIJ and sometimes about whether they would choose other court than the one for which they applied. Moreover, questions are not always formulated in the same way and we did not observe a systemic manner of addressing them.

⁴⁰ By [SCM's Decision No. 463/16](#) of May 27, 2014, the contestation filed by Ruslan BERZOI was rejected. [BSCJ Decision No. 22/4 of May 13, 2014](#) was upheld without changes.

⁴¹ For example, by [Decision No. 49/2](#) of January 21, 2014, the SCM announced a competition for a judge vacancy in a court and by [Decision No. 235/9](#) of March 4, 2014, the SCM proposed two judge candidates; by [Decision No. 831/36](#) of November 19, 2013, the SCM announced a competition for a judge vacancy and by [Decision No. 82/3](#) of January 28, 2014, the SCM proposed two judge candidates; by [Decision No. 351/14](#) of April 23, 2013, the SCM announced a competition for a judge vacancy and by [Decision No. 83/3](#) of January 28, 2013, the SCM proposed four judge candidates.

⁴² Two vacancies for each of the competitions announced for Balti Court and Strasenii Court and one vacancy for each of the courts of Calarasi, Glodeni, Leova, Cimislia, Ungheni, Singerei and Riscani (Chisinau). See SCM's Decisions No. 52/2 of January 21, 2014, No. 175/7 of February 25, 2014, No. 176/7 of February 25, 2014, No. 236/9 of March 11, 2014, No. 461/16 of May 27, 2014, No. 812/26 of October 7, 2014, No. 850/28 of October 28, 2014, No. 880/29 of November 11, 2014, No. 924/30 of November 25, 2014, No. 975/32 of December 9, 2014, and No. 100/33 of December 16, 2014.

⁴³ One judge vacancy in each of the courts of Ciocana (Chisinau), Cahul, Calarasi, Cimislia, Hincesti, Ialoveni, Leova, Orhei, Rezina, Rabnita, Riscani, Sangerei, Soroaca, Strasenii, Soldanesti, Stefan Voda, Taraclia, Telenesti and the Military Court. Two vacancies in each of the courts of Botanica, Buiucani and Riscani (Chisinau), Comrat, Edinet, Vulcanesti; three vacancies in each of the courts of Briceni, Floresti, Grigoriopol; four vacancies in Slobozia Court; five vacancies in each of the courts of Centru (Chisinau) and Balti.

⁴⁴ Article 5 (1) letter h) of Law No. 154.

Under Article 19 (2) of Law No. 947, in the version prior to the amendments of summer 2012, irrespective of the grade received at the examination organized by the Judge Qualification and Certification Collegium, the appointment of judge candidates was at the discretion of the SCM. This situation changed in 2012. According to the logic of the legislative amendments of 2012, the SCM should follow the score assigned by the BSCJ and give priority to candidates with the highest score. This principle is based on Laws No. 154 and No. 544 and point 19 of the Regulations on the competitive employment of judges, approved by [SCM's Decision No. 741/31](#). Point 19 of the Regulations on competitive employment of judges establishes that “as a result of the debates about the appointment of a certain candidate to the announced position, the SCM shall issue a substantiated decision that may not be in contradiction to the decision of the Selection Collegium regarding the score.” Nevertheless, points 19 and 20 of the Regulations on competitive employment of judges allow the SCM to change the score for the criteria used by the NIJ and the BSCJ to assess the candidates in the following situations:

- 1) When priority is given to the candidate with relevant work seniority or to the candidate believed to have a better discipline, higher self-motivation or higher integrity and impeccable reputation (point 19).
- 2) When it is necessary to waive the general rule of appointing a candidate in accordance with Article 2 of Law No. 544 deferring the powers and competence of appointed judges (Military Court, Commercial Court), and of the past judge experience in cases of professionals returning into the judicial system (point 20).

The Regulations on the competitive employment of judges also establish that if two or more candidates participating in the same competition obtained equal score from the BSCJ, the SCM will issue a substantiated decision, if necessary, on whom it chooses to propose for appointment (point 19 of the SCM's Regulations on competitive employment of judges).

In 2013 and 2014, on many occasions, the SCM proposed the Moldovan President to appoint candidates who received a lower or the same score as other candidates without motivating its decision.⁴⁵ For example, by [Decision No. 733/24 din 17 September 2014](#), the SCM proposed the following judge candidates: Lucia BAGRIN, 83.5 points from the BSCJ, Constantin ROSCA, 76 points, and Corneliu CRETU, 70 points. Other competitors reviewed by the BSCJ received the following score: Natalia BERBEC – 87.5 points and Petru HARMANIUC – 70 points. By [Decision No. 235/9](#) of March 4, 2014, the SCM proposed to appoint Victoria HADIRCA, 76 points from the BSCJ, and Olga CERNEI, 72 points. Other competitors reviewed by the BSCJ received the following score: Natalia BERBEC – 87.5 points, Lucia BAGRIN – 83.5 points, Natalia SANDU – 78 points, Vladislav HOLBAN – 74 points, Vitalie-Silviu MIDRIGAN – 72 points, Gheorghe STRATULAT – 71 points, Corneliu CRETU – 70 points, Petru HARMANIUC – 70 points. By [Decision No. 82/3](#) of January 28, 2014, the SCM proposed to appoint Eduard GALUSCEAC, 75 points from the BSCJ. Other competitors reviewed by the BSCJ received the following score: Angela FURDUI – 90 points, Tatiana VASILICA – 86 points, Svetlana VISCU – 78 points, Sergiu BULARU – 77 points, Alexandru NEGRU – 76 points, Inga VESTIMAN – 75 points, Violeta GIRLEANU – 75 points, Violeta CHISILITA – 75 points, Natalia PATRASCU – 75 points. By [Decision No. 154/7](#) of February 26, 2013, the SCM proposed to appoint Ina TÂBÂRNA, 8.1 points, but rejected Vitalie BESLEAGA, 8.3 points, and Corneliu GUZUN, 8.9 points.

Another aspect that is not clearly regulated and consequently generates a confusing practice is the way the SCM decides to propose a judge candidate for a certain court. In 2013 and 2014, in many competitions the

⁴⁵ The members of the SCM's secretariat do not know the circumstances discussed by SCM members in deliberation although editing of SCM's decisions is one of their duties. The substantiation of SCM's decisions could improve if SCM members edited decisions themselves (respectively rapporteur member for each decision) or if the deliberations were open for representatives of the SCM's secretariat. The legislation allows the participation of the members of the SCM's secretariat in voting, because Article 24 (2) of Law No. 947 requires that voting should be carried out in the absence of the person whose case is under vote and in the absence of other invited persons.

SCM took decisions “in packages,” *i.e.* it decided on several judge candidates at one meeting. It is not clear whether the candidates with the highest score from the BSCJ enjoy priority or are allowed to choose their court.⁴⁶

If the SCM proposes a candidate with a lower score, it must substantiate its decision.⁴⁷ The proposal of other candidates than those who received the highest score from the BSCJ is logical only if the candidates with the highest score are incompatible with judge position. This, however, doesn't apply to the candidates listed above or at least the public didn't receive any information in this regard. In practice, the SCM's decisions do not usually indicate the reason for preferring candidates with lower score and invoke the confidentiality of the ballots cast by SCM members.

After the adoption of the SCM's decision on the competition for judge vacancies, the SCM proposes the Moldovan President judge candidate(s) for appointment. The President has 30 days to consider this proposal. During this period he can request certain institutions (like SIS, the National Integrity Commission, and the National Anticorruption Center) to present information about the proposed candidates. This period may be extended by 15 days if circumstances requiring additional research arise. The selected candidates who meet the requirements of Article 6 of Law No. 544 are appointed for an initial 5-year term. After the expiry of this term, judges are re-appointed for the rest of their professional life until the retirement age of 65.

If the Moldovan President rejects the proposed candidates, the SCM can propose the same or another candidate by the ballot of two thirds of its members. The President's refusal to appoint must be substantiated. Once the materials for repeated consideration are sent to the SCM, the Judicial Inspection must consider the candidate rejection reasons invoked by the President under Article 7¹ (6) letter d) of Law No. 947 and sends the SCM a brief in which it may propose to put up the same candidate again only if he/she insists on the repeated proposal.

Although both Article 11 of Law No. 544 and Article 19 of Law No. 947 regulate the appointment of judges, the SCM selects candidates for a certain court and proposes the President to appoint each candidate in a concrete court and the President issues a decree with the same content. We consider that it is unreasonable that the President of Moldova appoints judges in concrete courts once the SCM has the competence to establish the number of judges necessary for each court.⁴⁸ Moreover, once this practice is cancelled, it will become unnecessary to issue decrees on transfers to other courts.⁴⁹

2. The Transfer of Judges to a Court of the Same or Lower Level

General Presentation

A permanent transfer means a permanent assignment of a judge to another court of the same or lower level than that in which he/she works. Judges may be transferred to another court of the same or lower level by a decree of the Moldovan President, at the proposal of the SCM, following a public competition or a decision on the re-organization or re-allocation of judge positions.

⁴⁶ Another aspect is the failure to exclude from the competition the candidates who were proposed for appointment before the new competition. For example, in at least seven decisions ([SCM's Decision No. 82/3](#) of January 28, 2014, [SCM's Decision No. 83/3](#) of January 28, 2014, [SCM's Decision No. 84/3](#) of January 28, 2014, [SCM's Decision No. 85/3](#) of January 28, 2014, [SCM's Decision No. 235/9](#) of March 4, 2014, [SCM's Decision No. 733/24](#) of September 17, 2014, and [SCM's Decision No. 736/24](#) of September 17, 2014.), the SCM did not indicate that it had excluded from the competition some of the candidates because of his/her previous appointment as a judge, thus creating the impression that certain candidates participate in new competitions even if they had already been appointed.

⁴⁷ This obligation is also based on point 19 of the SCM's Regulations on competitive employment of judges.

⁴⁸ Article 21 of Law No. 514 of July 6, 1995.

⁴⁹ For example, Decree of the Moldovan President No. 1300-VII of August 7, 2014, on the appointment of Steliana LAZARI by transfer to Orhei Court.

Article 20 (3) of Law No. 544, Article 2 of Law No. 154, the SCM's Regulations on criteria of selection and the SCM's Regulations on criteria and procedure of transfer applied in court re-organization establish the judge transfer rules. Article 20 (3) of Law No. 544 requires that judges may request transfer to a court of the same level only after the expiration of the 5-year term of judicial appointment and court presidents or vice presidents may request transfer to a court of the same or lower level only after the expiry of their terms or dismissal.⁵⁰ Point 17 of the SCM's Regulations on criteria of selection requires that the judge requesting transfer must be appointed before reaching the retirement age of 65. Transfers to courts of the same or lower level may be performed only with the judge's consent.

The requirement of Article 20 (3) of Law No. 544, regarding the possibility to appoint by transfer to a court of the same level only after the 5-year term of judicial appointment generated conflicting interpretations. For example, in a competition for judge vacancy filled by transfer in Chisinau CA, the Moldovan President refused to issue a decree on the appointment of a judge by transfer even after a repeated proposal⁵¹ from the SCM. In reply to [SCM's Decision No.369/14](#) of April 23, 2013, the President invoked Article 20 (3) of Law on the Status of Judges, according to which judges may request transfer to other court of the same level only after the expiration of the 5-year term, and that the judge proposed for transfer to Chisinau CA had been appointed as a judge in Balti CA the previous year. In its [Decision No. 536/22](#) of July 9, 2013, the SCM invoked that this condition applied only to the initial appointments of judges, who had never held this position before, and proposed the same candidate for transfer to Chisinau CA repeatedly by a unanimous vote of its members. The President of Moldova did not conform and on May 30, 2014, accepted the resignation letter from the judge in question.⁵²

In case of admissions to competitions, materials regarding applicant judges are sent to the BSCJ and the BPEJ, which reviews judges' performance and select candidates. Both the applicants participating in competitions for transfer and those who request transfer to a lower court must pass a review by the BSCJ in line with the criteria established in point 12 of the SCM's Regulations on criteria of selection, which refer to checking the professional expertise and skills, the capability to apply knowledge, judge experience, qualitative indicators of the activity carried out in judicial positions or, as the case might be, in other legal positions, the observance of ethical standards and teaching and scientific activity. Judges who request transfer to a lower or same level court may accumulate maximum 100 points. Table 4 shows the conditions and criteria for reviewing these candidates.

Table 4: The conditions and review criteria for transfers to courts of the same or lower level

⁵⁰ Article 20 (3) of Law No. 544.

⁵¹ [SCM's Decision No.369/14](#) of April 23, 2013, and [SCM's Decision No. 536/22](#) of July 9, 2013, by which the SCM repeatedly proposed the appointment of Valeriu HARMANIUC as a judge by transfer to Chisinau CA.

⁵² Decree No. 1164-VII of May 30, 2014, on the dismissal of judge Valeriu HARMANIUC Balti CA. Published in the Official Gazette on June 6, 2014.

Eligibility conditions for transfers to courts of the same level

- *Judge appointed before the retirement age, which is confirmed by a decree of the Moldovan President (a minimum of 5 years of judge experience)*
- *Lack of disciplinary penalties in the past year*
- *Performance review for appointment as court president or vice president confirmed by a decision of the Judge Performance Review Collegium*
- *Signing of the verification statement in line with Article 9 (7) of Law No. 544 point 17 of the SCM's Regulations on the selection criteria*

Review conditions for transfers to courts of the same level

- *Judge experience confirmed by a work record book. For every year beyond the minimal period required by the law the judge receives **2 points**. The total score, however, may not exceed **20 points**.*
- *Quality, efficiency and integrity in judge position. Appreciated with the following rating assigned by decision of the Board of Performance Evaluation of Judges . "Excelent" – **40 points**, "very good" – **30 points**, "good" – **20 points**.*
- *Knowledge of any of the languages spoken at the European Court of Human Rights, confirmed by corresponding certificates or documents is scored **maximum 5 points**.*
- *Scientific degree, teaching experience, thematic publications and articles, participation in the development of draft regulatory acts and notes to regulatory acts as an expert or consultant in national or international groups, confirmed by diplomas, work record book, certificates, publications or other relevant articles are scored **maximum 10 points**.*
- *Candidates' motivation confirmed in writing and verbally before the BSCJ is scored **maximum 25 points****
- *Point 12 of the SCM's Regulations on the selection criteria.*
**Before the amendment of the SCM's Regulations on the selection criteria, the motivation necessarily included the circumstances that determined the transfer (age, domicile, health condition, spouse's workplace and domicile, family situation and other relevant circumstances).*

Selection criteria for re-distribution of judge positions, re-organization or liquidation of a court*

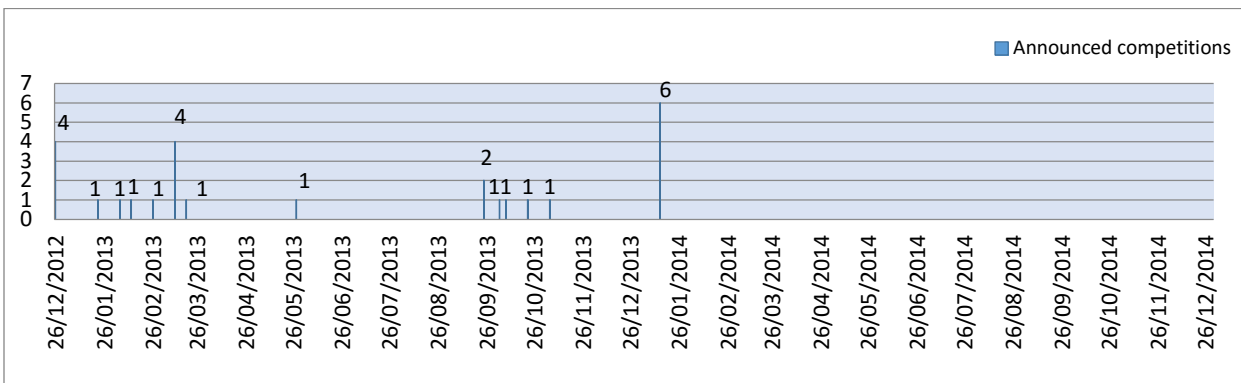
- *Work efficiency*
- *Work quality*
- *Integrity*
- *In-service training*

**The Regulations on the judge transfer criteria and procedure applied in case of the redistribution of judge positions, or court re-organization or liquidation establishe other 23 indicators used to apply these criteria*

Competitions for Transfer of Judges in 2013 and 2014

During the reference period, the SCM announced 26 competitions for 28 judge vacancies filled by transfer. The information on the regularity of the announced competitions is shown in Table 5.

Table 5: The frequency of competitions for vacancies filled by transfer in 2013 and 2014



Although basically it doesn't constitute a promotion criteria, the selection and review criteria for transfer are basically similar to those for the promotion procedure. Most competitions in 2013 and 2014 (59%, 17 judge positions) were announced for courts in Chisinau (including for Chisinau CA) and Balti. This can be indicative of the fact that judges perceive transfer to these courts as a quasi-promotion.

Out of 26 announced competitions only 7 ended in appointments by transfer.⁵³ In 14 cases, the competitions could not be held because of the lack of applications. In other two cases, applicants for transfer did not meet mandatory requirements for admission to the competition because they either had not judge status or had less than five years of judge experience.⁵⁴

During the reference period, the SCM used to announce competitions for vacancies filled by transfer and in the end the position would be awarded to applicants applying for judge positions for the first time.⁵⁵ Thus, in its [Decision No. 176/7](#) of February 24, 2014, proposing a judge candidate, the SCM made a reference to the competition for vacancies filled by transfer, announced by [SCM's Decision No. 3/1](#), which implied the possibility to participate only for judges with experience of at least 5 years, appointed before the retirement age. Similarly, in its [Decision No. 236/9](#) of March 11, 2014, proposing to appoint a judge candidate, the SCM did not indicate a concrete decision on the announcement of the competition although at that time only one competition for a judge vacancy filled by transfer had been announced for Glodeni Court.⁵⁶ At the same time, none of the candidates proposed in these two cases were listed in the SCM's Register of judges requesting transfer to a court of the same or lower level.⁵⁷ Nevertheless, both candidates proposed by the SCM were later confirmed as judges for a 5-year term by Decrees of the Moldovan President No. 1094-VII and 1095-VII of April 11, 2014. This phenomenon may be explained by the fact that no judge requested a transfer to the positions announced by the SMC. On the other hand, in another competition for a judge vacancy filled by appointment, after the judge candidate withdrew from the competition, the vacancy was filled by transfer⁵⁸ although there were other 8 judge candidates who had applied.⁵⁹

⁵³ By Decrees of the Moldovan President No. 1010-VII; 1011-VII; No. 1029-VII; 1030-VII; 1095-VII; 1231-VII and No. 1300-VII, the following judges were transferred: Renata POPESCU (Anenii Noi); Ludmila HOLEVITCAIA and Ludmila URSU (Riscani, Chisinau); Angela BRAGA (Botanica, Chisinau) Svetlana GHERCAVII (Balti); Silvia VRABII (Chisinau CA) and Steliana LAZARI (Orhei).

⁵⁴ Work seniority - Judge Irina TONOV (Causeni Court) for transfer to Botanica Court - [SCM's Decision No.18/2](#) of January 15, 2013; lack of judge status – judge applicants – Tatiana GUTU for transfer to Balti Court - [SCM's Decision No. 354/14](#) of April 23, 2013.

⁵⁵ For example, [SCM's Decision No. 3/1](#) and [SCM's Decision No. 27/01](#), both of January 14, 2014, on the announcement of competitions for vacancies filled by transfer.

⁵⁶ [SCM's Decision No. 27/01](#) of January 27, 2014.

⁵⁷ <http://csm.md/files/Registru/sectiuneall.pdf>.

⁵⁸ Decision CSM No. 994/32 of December 9, 2014, by which the SCM proposed the appointment of judge Victoria SARBU by transfer to Ciocana Court from Hincesti Court.

⁵⁹ SCM's Decision No. 736/24 of September 17, 2014, on the competition for two judge vacancies at Ciocana Court, Chisinau.

During the reference period, there was another similar case of a judge vacancy initially intended to be filled by appointment at a lower court but which in the end was filled by transfer.⁶⁰

Assessment by the BSCJ of Judges Willing a Transfer

During the reference period, the BSCJ issued 16 decisions based on the examination of applications and documents submitted by judges requesting a transfer. All 16 were admitted to the competition. Table 6 presents more information in this regard.

Table 6: The results of the review by the BSCJ of judges who wanted a transfer to other courts in 2013 and 2014

Judge	Court to which the judge applies	Work seniority (years, points)		Rating by the BPEJ (rating, points)		Knowledge of the languages spoken at the ECHR (points)	Teaching/scientific activity (points)	Motivation (points)	Total score
2013									
Aurelia CAZACLIU	Botanica Court, Chisinau	9 years	8	Very good	30	5	7	10	60
Silvia VRABII	Chisinau CA	7 years	2	Very good	30	2	3	10	47
Angela BRAGA	Botanica Court, Chisinau	5 years	0	Very good	30	0	0	10	40
Renata POPESCU	Anenii Noi Court	6 years	2	Very good	30	0	0	25	57
Ludmila HOLEVITCAIA	Riscani Court, Chisinau	5 years	0	Very good	30	0	0	25	55
Ion TUTUNARU	Botanica Court, Chisinau	10 years	10	Very good	30	0	0	25	65
2014									
Maria NEGRU	Straseni Court	9 years	6	Very good	30	3	7	25	71
Serghei POPOVICI	Botanica Court, Chisinau	7.5 years	5	Very good	30	0	1	15	51
Steliana LAZARI	Orhei Court	6 years	2	Good	20	0	0	20	42
Svetlana CAITAZ	Cantemir Court	30 years	20	Very good	30	0	10	25	85
Mihail TURCAN	Stefan-Voda Court	8 years	6	Good	20	0	0	25	51
Dorin MUNTEANU	Botanica Court or Ciocana Court, Chisinau	5 years	0	Good	20	0	0	20	40
Diana CRISTIAN	Straseni Court	5 years	0	Very good	30	0	0	20	50

⁶⁰ SCM's Decision No. 849/28 of October 28, 2014, on the competition for a judge vacancy at Cantemir Court.

Tamara BOUBATRIN	Ialoveni Court	18 years	20	Good	20	0	0	25	65
Viorelia VARANITA	Botanica Court, Chisinau	5 years	0	Very good	30	0	0	25	55
Victoria SIRBU	Chisinau Court	5 years	0	Very good	30	5	0	20	55

None of the reviewed judges accumulated the maximal score. In four cases, judges accumulated less than the maximal 100 points. Finally, the SCM proposed three of these applicants for transfer, all of whom were appointed by the President of Moldova as judges until the retirement age.⁶¹ In cases of vacancies for transfer only one judge usually applies and consequently the SCM proposes him/her for designation irrespective of the score accumulated at the BSCJ.

An important role during the performance review is assigned to the applicants' motivation presented in writing and verbally before the BSCJ (25 points or 25% of the allowed maximum). Quality, efficiency and integrity in judge position may take maximum 40 points during performance review;⁶² work seniority may take 20 points and knowledge of the languages spoken at the European Court of Human Rights may take maximum 5 points.⁶³ We consider that the score assigned for applicants' motivation should be reduced in comparison with other criteria. In addition, due to the important role of the written motivation in judges' performance review, it should be publicly available, include relevant circumstances that determined the transfer request (age, domicile, health, spouse's workplace and domicile, family situation, etc.),⁶⁴ and the assigned score should be substantiated in the BSCJ's decision. The lack of such measures may leave room for subjective reviews that favor or hinder such candidates. Out of 16 decisions of the BSCJ taken in 2013 and 2014, none contained the substantiation of the score assigned for the judges' motivation.

Transfer Due to the Re-organization or Liquidation of a Court

In case of a re-organization or liquidation of a court, the judge is transferred with his/her consent under the law to another court. If he/she refuses the transfer, the judge may resign under Article 26 of Law No. 544.⁶⁵ In case of the re-organization or liquidation of the court, the judge's consent will be expressed by a request for transfer or as a result of an SCM's decision taken in accordance with the judge's work efficiency, quality, integrity and in-service training.⁶⁶

By Law No. 153 of July 5, 2012, the judges number at the SCJ was reduced from 49 to 33, which determined the transfer of 16 judges to lower courts. By [Decision No. 741/36](#) of November 20, 2012, the SCM proposed the Parliament to transfer 8 judge positions⁶⁷ from the SCJ to either appellate or first level courts. Although the SCM's decision makes a reference to reviewing the work efficiency and quality, integrity and professional training of transferred judges, the SCM did not send their files to the BPEJ or the BSCJ for choosing judges who will be transferred to a lower court. Some judges contested (unsuccessfully) the SCJ's decision on the grounds

⁶¹ Decrees of the Moldovan President No. 1029 of March 10, 2014; No. 1231 of July 4, 2014; and No. 1300 of August 7, 2014, by which the following candidates were appointed as judges by transfer before the age ceiling: Silvia VRABII, Angela BRAGA and Steliana LAZARI.

⁶² For judges' work quality, efficiency and integrity rated in accordance with the BSCJ's decisions the following score can be assigned: "excellent" – 40 points; "very good" - 30 points; "good" – 20 points.

⁶³ The SCM Regulation on criteria of selection.

⁶⁴ Before the amendment of the SCM's Regulations of October 15, 2013, on the selection criteria, in their motivations judges had to include the circumstances that determined the request for transfer (age, domicile, health condition, spouse's domicile or work place, family situation and other relevant circumstances).

⁶⁵ Article 20 (5) and (6) of Law No. 544.

⁶⁶ Points 7 and 9 of the SCM's Regulations on the transfer criteria and procedure applied in court re-organizations.

⁶⁷ At the moment of adopting this decision, the SCJ had 41 judges and 8 vacant positions.

that no written information about their performance review was prepared and that the decision was based only on verbal information from the SCJ's Chief Justice.⁶⁸

During the reference period, some judges were also transferred because of the liquidation of a court of law. On August 8, 2014, [Law No. 177 of July 25, 2014](#) by which Bender CA was liquidated became effective. Article 4 of this Law established that the SCM would propose the judges from this court a transfer with their consent to judge positions in other courts and would send the pending cases and the goods managed by Bender CA to Chisinau CA. The SCM did not transfer all 10 judges from Bender CA to Chisinau CA. By [Decision No. 679/22](#) of September 2, 2014, the SCM decided to distribute these positions between the following courts: 5 judges to Chisinau CA, 2 judges to Cahul CA and 1 judge to each of Buiucani Court, Centru Court and Riscani Court from Chisinau.

By the same [decision](#) of September 2, 2014, the SCM ruled out that judges from Bender CA would apply for transfer to judge positions in other courts. Nevertheless, on September 17, 2014, by [SCM's Decision No. 732/24](#), the applications of the 5 judges from Bender CA who applied for Chisinau CA were rejected. The decision mentioned that as a result of the voting, none of the judges accumulated the number of votes required for transfer and that every one of them accumulated four votes in favor and four votes against. Separate opinions signed by three SCM members mentioned that the existence of a sufficient number of vacancies and the imperative nature of the legal norms required beyond doubt the consent of the judges to transfer and that the SCM was obliged to ensure the fulfilment of the right to transfer when there was objective possibility to do so⁶⁹ because the right to accept a transfer in case of a liquidation of a court of law belongs exclusively to the judge.⁷⁰

On October 7, 2014, the SCM re-examined the requests of the judges in question, cancelled its [Decision No. 732/24](#) of September 17, 2014, and proposed, on the basis of voting, to appoint 2 of the 5 judges from Bender CA who had requested transfer to Chisinau CA as judges in Chisinau CA.⁷¹ Two SCM members wrote a separate opinion mentioning that the cancelation by the SCM of its own decision lacked legal grounds and was inappropriate.⁷² The three judges whose requests regarding transfer to Chisinau CA were rejected filed complaints requesting to have SCM's decision of October 7, 2014, revised, and mentioning that in case their request for revision was rejected they were ready to be transferred to a same level court, such Comrat CA or Cahul CA.⁷³ On October 14, 2014, by [Decision No. 828/27](#), the SCM rejected the requests for revision but proposed to appoint these judges to Comrat CA and Cahul CA.

None of the SCM's decisions that refer to the transfer of judges from Bender CA mention the selection criteria established in the SCM's Regulations for redistribution of judge positions, re-organization or liquidation of a court. The decisions are substantiated solely on the results of the SCM members' vote. Consequently, it is difficult to identify the reasons that determined some SCM members to change their vote expressed on September 17, 2014 (four in favor and four against) so that on October 7, 2014, two of the five judges were proposed for transfer with eight votes in favor and one against.

Moreover, it is not clear why some judges who were deemed non-eligible for transfer to Chisinau CA were later proposed for transfer to Comrat CA or Cahul CA by a majority of eight votes.⁷⁴ The selection, transfer or

⁶⁸ [SCJ's Decision No. 03-21/12](#) of December 17, 2012, and [SCJ's Decision No. 3-8/12](#) of December 19, 2012.

⁶⁹ Separate opinion of SCM Member Dumitru VISTERNICEAN. <http://www.csm.md/files/Hotaririle/2014/24/732-24-opinia.pdf>.

⁷⁰ Separate opinion of SCM Members Anatolie TURCAN and Vera TOMA. <http://www.csm.md/files/Hotaririle/2014/24/732-Opinie2.pdf>.

⁷¹ [SCM's Decision No. 782/26](#) of October 7, 2014.

⁷² [Separate opinion](#) of SCM Members Dumitru VISTERNICEAN and Anatolie TURCAN.

⁷³ [SCM's Decision No. 828/27](#) of October 14, 2014.

⁷⁴ By [SCM's Decision No. 828/27](#) of October 14, 2014, the SCM proposed the Moldovan President to appoint judges Mihail ANTONOV (9 votes in favor and 3 against) and Nicolae NOGAI (8 votes in favor and 4 against) by transfer to Comrat CA and judge Aurelia PARPALAC (9 votes in favor and 3 against) by transfer to Cahul CA.

promotion criteria applied for Chisinau CA are the same for all appellate courts. In addition, because by September 2, 2014, the Moldovan appellate courts had 14 judge vacancies and by [SCM's Decision No. 679/22](#) of September 2, 2014, another five judge positions for Chisinau CA were created, it is impossible to justify the SCM's refusal, which could be expressed only in the absence of vacancies.⁷⁵

In addition, none of the decisions contains a motivation of the transfer based on judges' performance although this data,⁷⁶ at least for four of the five judges, was available on the date of issuing the decisions of September and October 2014, as shown in Table 7.

Table 7: The performance review results for judges from the liquidated Bender CA

Judges from Bender CA	Court to which judges were transferred	Seniority in judicial position	Year of review by the BPEJ	Rating by the BPEJ	Year of review by the BSCJ	Score by the BSCJ
Grigore DRUGUS	Chisinau CA	18 years	2014	good	-	-
Svetlana LEU	Chisinau CA	6 years	2013	good	2013	47
Mihai ANTONOV	Comrat CA	26 years	2013	very good	2013	105
Nicolae NOGAI	CA Comrat	20 years	-	-	-	-
Aurelia PARPALAC	CA Cahul	10 years	2013	very good	2013	75

The LRCM signaled the obscure circumstances of the transfer of the judges from Bender CA as early as on July 8, 2014, by an opinion on the draft law on the liquidation of Bender CA, in which it mentioned that the omission to indicate the court to which the judges from Bender CA would be transferred could create the impression that there were other interests than streamlining the court system.⁷⁷ The lack of transparency in taking the decision on the transfer to Chisinau CA in accordance with the request of the judges in question could create the impression that the transfer was not based on objective criteria.

By December 31, 2014, none of the judges from Bender CA had been transferred to other court yet. In the meantime, the Moldovan President signed the decree on the dismissal of two of the five judges: in one case following a personal resignation letter,⁷⁸ in the other case as a result of the final conviction decision.⁷⁹

⁷⁵ Separate opinion of SCM Member Dumitru VISTERNICEAN. <http://www.csm.md/files/Hotaririle/2014/24/732-24-opinia.pdf>.

⁷⁶ BPEJ's Decisions No. [61/6](#), [65/6](#), [66/6](#) of September 27, 2013 and [30/3](#) of March 21, 2014.

⁷⁷ The opinion of the LRCM is available at http://crim.artsintez.md/wp-content/uploads/2014/07/2014-07-08_Opin-Parlam-lichid-CA-Bender-the-LRCM.pdf

⁷⁸ Svetlana LEU - Decree of the Moldovan President No. 1425 of December 30, 2014

⁷⁹ Nicolae NOGAI – Decree of the Moldovan President No. 1430 of January 19, 2015

3. Judge Promotions to Higher Courts or the Appointment of Court Presidents or Vice Presidents

General Presentation

The promotion of judges to higher courts or the appointment of court presidents or vice presidents are regulated by Article 16¹ of Law No. 514, Article 20 (3) of Law No. 544, Article 2 of Law No. 154 and the SCM's Regulations on criteria of selection.

Promotion to a Higher Court

Judge promotion means a permanent assignment of a judge to a court of higher level. Just as in appointments or transfers, the SCM announces the competition publicly for the available vacancies. The competition is open for persons with judge experience of minimum six years for appellate courts and 10 years for the SCJ. Judges' applications are sent to the BPEJ and the BSCJ for performance review and selection of candidates. Following the applications consideration and review, the SCM proposes the Moldovan President or the Parliament, as the case may be, candidates for assignment or refuses to promote any of them by a substantiated decision.

The BSCJ reviews the applicants for promotion to a higher courts on the basis of the criteria established in point 12 of the SCM's Regulations on criteria of selection, which include the professional expertise and skills, ability to apply knowledge, work seniority, work quality indicators (for judges or other legal professions, as the case may be), compliance with ethical standards and teaching and scientific work.

The Appointment of Court Presidents or Vice Presidents

The appointment of court presidents or vice presidents implies additional duties, namely administrative and managerial duties required for a smooth operation of the court, described in Article 16¹ of Law No. 514. The presidents and vice presidents of first level and appellate courts are appointed by the President of Moldova at the proposal of the SCM for a four-year term. The presidents and vice presidents of the SCJ are appointed by the Parliament at the proposal of the SCM for a four-year term. Court presidents and vice presidents may hold maximum two consecutive terms.

Applicants for administrative judicial positions in courts are also reviewed on the basis of additional selection criteria established in points 13 through 15 of the SCM's Regulations on criteria of selection.

Criteria for Promotion to Higher Courts or to Administrative Judicial Positions in Courts

The BSCJ reviews the applicants for promotion to higher courts or to administrative judicial positions in courts on the basis of the criteria established by point 12 of the SCM's Regulations on the selected criteria, shown in Table 8.

Judges applying for a higher court may accumulate maximum 100 points. Judges applying for court president or vice president may accumulate maximum 125 points.

Table 8: Candidates and criteria for promotion to higher courts or to administrative judicial positions in courts

Eligibility conditions for promotion to a higher court

- *Work seniority: 6 years for appellate courts; 10 years for the SCJ*
- *Lack of disciplinary penalties over the past year*
- *Review for promotion to a higher court confirmed by the decision of the BPEJ*
- *Statement of review in line with Article 9 (7) of the Law on the Status of Judges*

Review criteria for promotion to a higher court

- *Work seniority confirmed with a work record book. For each year beyond the minimal threshold required by the law the applicant receives 2 points but the total score may not exceed **20 points**.*
- *Judge's work quality, efficiency and integrity rated in line with the BPEJ's decision: excellent - **40 points**; very good - **30 points**; good - **20 points**.*
- *Knowledge of any of the languages spoken at the European Court of Human Rights, confirmed by corresponding certificates or documents is scored **maximum 5 points**.*
- *Scientific degree, teaching experience, thematic publications and articles, participation in the development of draft regulatory acts, comments to regulatory acts as an expert or consultant in national or international work groups, confirmed by diplomas, work record books, certificates, publications and articles or other relevant acts are scored with **maximum 10 points**.*
- *Candidate's motivation in writing and also presented verbally before the JSCC, scored with **maximum 25 points**.*

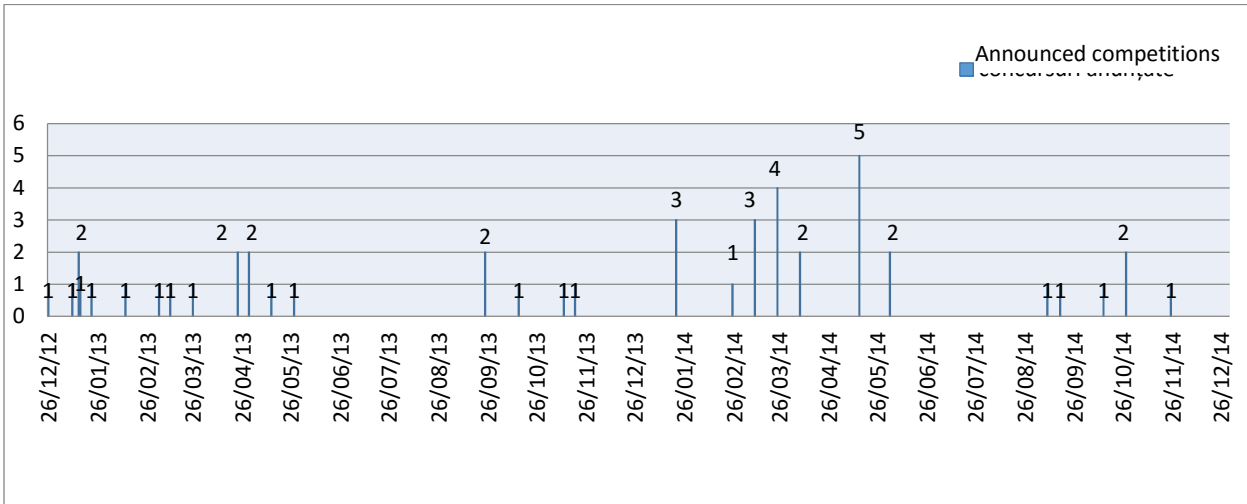
Additional criteria for the competitions for court president or vice president

- *The recent development by the candidate of a 4-year work plan or strategy for a court - **up to 10 points**.*
- *The participation in activities related to court administration (commissions, decision-making, competitions, collective performance review commissions etc.) - **maximum 5 points**.*
- *The presentation of proposals on the improvement of organizational and administrative activity in recent 3 years - **maximum 5 points**.*
- *Previous administrative experience (including administrative positions) - **maximum 5 points**.*

The Practice of Promotion to Higher Courts in 2013 and 2014

During the reference period, the SCM announced 47 competitions for judge positions in higher courts (40 in appellate courts and 7 in the SCJ). Just as in the case of competitions for vacancies filled by transfer, these competitions are announced for each new vacancy separately rather than organized in a planned order. The frequency of the competitions is presented in Table 9.

Table 9: The frequency of the competitions announced for promotion to higher courts in 2013 and 2014



Only 19 of the 47 announced competitions (14 in appellate courts and 5 at the SCJ) were carried out. As a result, 26 judges were promoted to higher courts. Although 10 competitions were announced for Cahul CA, none of them resulted in the promotion of judges to this court.⁸⁰ The most “popular” courts for judges seeking promotion were the SCJ (7 announced competitions, 5 carried out, 8 promoted judges),⁸¹ Chisinau CA (8 announced competitions, 6 carried out, 10 promoted judges)⁸² and Balti CA (7 announced competitions, 5 carried out, 8 promoted judges).⁸³

SCM’s Decision on the Promotion and the Score Assigned by the BSCJ

In 2013 and 2014, the BSCJ issued 49 decisions (15 in 2013 and 34 in 2014) on the admission to the competition for judge promotion to appellate courts or the SCJ. All considered judges were admitted to the competition. The average score assigned by the BSCJ was **65 points** (out of maximum 100). When taking decisions on the promotion of a certain judge, the SCM does not seem to heed the score assigned by the BSCJ. In **at least six cases**, the SCM proposed and the President of Moldova appointed candidates with a lower score to higher courts. These data is shown in Tables 10 through 15.

Table 10: The competitions for judge vacancies at the SCJ, announced by SCM’s Decision No. 387/15 of April 30, 2013, and SCM’s Decision No. 443/17 of May 28, 2013

⁸⁰ By SCM’s Decision No. 846/28 of October 28, 2014, the latest competition for judge vacancies at Cahul CA was considered failed because none of the candidates accumulated the required number of votes.

⁸¹ By [SCM’s Decision No. 522/21](#) of July 3, 2013, the SCM proposed judges Liliana CATAN and Ion DRUTA for promotion to the SCJ. By [SCM’s Decision No. 81/3](#) of January 28, 2014, the SCM proposed judges Oleg STERNIOALA and Dumitru MARDARI for promotion to the SCJ. By [SCM’s Decision No. 124/4](#) of February 4, 2014, the SCM proposed judge Ion GUZUN for promotion to the SCJ. By [SCM’s Decision No. 550/19](#) of July 1, 2014, the SCM proposed judges Maria GHERVAS, Petru MORARU and Nadejda TOMA for promotion to the SCJ. All judges were later appointed by the Parliament of the Republic of Moldova.

⁸² By [SCM’s Decision No. 41/2](#) of January 21, 2014, the SCM proposed judge Nichifor COROCHII for promotion to Chisinau CA; by [SCM’s Decision No. 239/9](#) of March 11, 2014, the SCM proposed judges Oxana ROBU and Elena COBZAC for promotion to Chisinau CA; by [SCM’s Decision No. 551/19](#) of July 1, 2014, the SCM proposed judges Ludmila OUS and Borislav BABENCO for promotion to Chisinau CA; by [SCM’s Decision No.843/28](#) of October 2014 the SCM proposed judges Stelian TELEUCA and Maria NEGRU for promotion to Chisinau CA; by SCM’s Decision No. 1025/34 of December 23, 2014, the SCM proposed judges Angela BOSTAN, Natalia SIMCIUC and Veronica NEGRU for promotion to Chisinau CA. The latter three must be confirmed by a decree of the Moldovan President.

⁸³ By [SCM’s Decision No. 667/28](#) of September 24, 2013, the SCM proposed judges Dumitru PUSCA and Ion TALPA for promotion to Balti CA. By [SCM’s Decision No.42/2](#) of January 21, 2014, the SCM proposed judge Elena GRUMEZA for promotion to Balti Ca. By [SCM’s Decision No. 460/16](#) of May 27, 2014, the SCM proposed judges Adriana GARBUZ and Svetlana MELNIC for promotion to Balti CA. By [SCM’s Decision No. 845/28](#) of October 28, 2014, the SCM proposed judges Aurelia TODERAS and Ghenadie LIULCA for promotion to Balti CA. By SCM’s Decision No.1000/33 of December 16, 2014, the SCM proposed judge Oleg MORARU for promotion to Balti CA. The latter must be confirmed by a decree of the Moldovan President.

Judge	Work seniority (years)	Score	Rating by the BPEJ	Score by the BPEJ	Knowledge of the languages spoken at the ECtHR (points)	Teaching/scientific work	Motivation (points)	Total score by the BSCJ
Dina ROTARCIUC	29	20	Excellent	40	2	7	25	94
<i>Dumitru MARDARI</i>	19	18	<i>Excellent</i>	40	0	8	25	91
Aliona DANILOV	16.5	26.5	Very good	30	4	5	10	75.5
Viorica PUICA	10.5	20.5	Very good	30	4	5	10	74.5
Oleg STERNIOALA	12	4	<i>Very good</i>	30	0	0	25	59
Ion GUZUN	11	2	Very good	30	2	5	15	57

By [Decision No. 81/3](#) of January 28, 2014, the SCM proposed judges Dumitru MARDARI and Oleg STERNIOALA⁸⁴ for the appointment by the Parliament as a judge to the SCJ. Other three competition participants received a higher score than Oleg STERNIOALA from the BSCJ.

Table 11: The competition for a judge vacancy at the SCJ, announced by SCM's Decision No. 830/36 of November 19, 2013

Judge	Work seniority (years)	Score	Rating by the BPEJ	Score by the BPEJ	Knowledge of the languages spoken at the ECtHR (points)	Teaching/scientific work	Motivation (points)	Total score by the BSCJ
Dina ROTARCIUC	29	20	Excellent	40	2	7	25	94
Maria GHERVAS	26	20	Very good	30	0	10	25	85
Aliona DANILOV	16.5	26.5	Very good	30	4	5	10	75.5
Viorica PUICA	10.5	20.5	Very good	30	4	5	10	74.5
<i>Ion GUZUN</i>	11	2	<i>Very good</i>	30	2	5	15	57

By [Decision No. 124/4](#) of February 4, 2014, the SCM proposed judge Ion GUZUN for the appointment by the Parliament as a judge to the SCJ, although he had received the lowest score from the BSCJ.⁸⁵

Table 12: The competition for a judge vacancy at the SCJ, announced by SCM's Decision No. 331/12 of April 8, 2014, and SCM's Decision No. 430/15 of May 15, 2014

Judge	Work seniority (years)	Score	Rating by the BPEJ	Score by the BPEJ	Knowledge of the languages spoken at the ECtHR (points)	Teaching/scientific work	Motivation (points)	Total score by the BSCJ
<i>Maria GHERVAS</i>	26	20	<i>Very good</i>	30	0	10	25	85
Domnica MANOLE	23	20	Very good	30	5	10	18	83
Maria IFTODII	22	20	Very good	30	0	5	25	80

⁸⁴ Confirmed by Decision of the Moldovan Parliament No. 5 and 6, respectively, of February 14, 2014.

⁸⁵ Confirmed by Decision of the Moldovan Parliament No. 4 of February 14, 2014.

Aliona DANILOV	16.5	26.5	Very good	30	4	5	10	75,5
Viorica PUICA	10.5	20.5	Very good	30	4	5	10	74,5
Mihail DIACONU	9	6	Very good	30	4	10	20	70
Petru MORARU	11	2	Very good	30	0	10	25	67
Nadejda TOMA	12	4	Good	20	5	10	25	64

By [Decision No. 550/19](#) of July 1, 2014, the SCM proposed judges Maria GHERVAS, Petru MORARU and Nadejda TOMA⁸⁶ for each judge vacancy at the SCJ to the Parliament. The latter two obtained the lowest score of all competition participants from the BSCJ.

Table 13: The competition for a judge vacancy at Chisinau CA, announced by SCM's Decision No. 273/9 of March 11, 2014

Judge	Work seniority (years)	Score	Rating by the BPEJ	Score by the BPEJ	Knowledge of the languages spoken at the ECtHR (points)	Teaching/scientific work	Motivation (points)	Total score by the BSCJ
Stelian TELEUCA	8	4	Very good	30	5	10	25	74
Ludmila OUS	11	10	Very good	30	0	7	20	67

By [Decision No. 551/19](#) din 1 July 2014, the SCM proposed judge Ludmila OUS,⁸⁷ who had accumulated a lower score than her rival, for the appointment of a judge to Chisinau CA.

Table 14: The competitions for judge vacancies at CA Comrat, announced by SCM's Decisions No. 282/11 of March 25, 2014, and No. 431/15 of May 15, 2015

Judge	Work seniority (years)	Score	Rating by the BPEJ	Score by the BPEJ	Knowledge of the languages spoken at the ECtHR (points)	Teaching/scientific work	Motivation (points)	Total score by the BSCJ
Ion STOIAN	11	10	9.0 ⁸⁸	25	0	25 ⁸⁹	20	80
Serghei GUBENCO	9	6	Very good	30	0	0	25	56
Grigorii COLEV	7	2	Very good	30	3	0	15	50
Stefan STARCIUC	10	8	Bine	20	0	0	15	43

By [Decision No. 847/28](#) of October 28, 2014, the SCM proposed judges Serghei GUBENCO, Grigorii COLEV and Stefan STARCIUC for the appointment of judges to Comrat CA,⁹⁰ although the BSCJ had assigned the highest score to Ion STOIAN.

⁸⁶ Confirmed by Decision of the Moldovan Parliament No. 139 of July 11, 2014.

⁸⁷ Confirmed by a decree of the Moldovan President No. 1299-VII of August 7, 2014.

⁸⁸ The score was assigned by Decision No. 148/7 of December 7, 2012, of the Judge Qualification and Certification Collegium.

⁸⁹ The score was assigned for work in other legal professions (10 points) and personal qualities (15 points).

Table 15: The competition for a judge vacancy at Chisinau CA, announced by SCM's Decision No. 876/28 of October 28, 2014

Judge	Work seniority (years)	Score	Rating by the BPEJ	Score by the BPEJ	Knowledge of the languages spoken at the ECtHR (points)	Teaching/scientific work	Motivation (points)	Total score by the BSCJ
Vladimir BRASOVEANU	19	20	Very good	30	0	0	25	75
Liubovi BRINZA	11	11	Very good	30	5	8	20	74
Angela BOSTAN	8	4	Very good	30	3	10	25	72
Ghenadie PAVLIUC	9	6	Very good	30	4	4	20	64
Svetlana BALMUS	13	14	Very good	30	0	0	20	64
Natalia SIMCIUC	9	6	Very good	30	4	2	20	62
Veronica NEGRU	11	10	Very good	30	3	2	15	60
Veaceslav LAZARI	14	16	Good	20	0	0	15	51

By [Decision No. 1025/34](#) of December 23, 2014, the SCM proposed judges Angela BOSTAN, Natalia SIMCIUC and Veronica NEGRU for the appointment of a judge to Chisinau CA.⁹¹ Four other competition participants had received a higher score from the BSCJ than Natalia SIMCIUC and Veronica NEGRU.

Appointment of Court Presidents or Vice Presidents in 2013 and 2014

During the reference period, the SCM announced 67 competitions for court president or vice president positions (4 at the SCJ; 12 for appellate courts; and 51 for first level courts). By December 31, 2014, 26 competitions were carried out resulting in the appointment of 23 judges to administrative positions. Two of the 26 competitions were considered failed because of the insufficient number of votes for applicants from the SCM members.⁹²

In 2013 and 2014, the BSCJ issued 49 decisions (22 in 2013 and 27 in 2014) addressing judges' applications for administrative positions. Out of the 49 reviewed judges, 46 were admitted to the competition. The average score assigned by the BSCJ was 79.1 points (of maximum 125). Just as in promotions to higher courts, the SCM did not heed BSCJ's decisions in proposing candidates for appointment. The information in this regard is presented in Tables 16 and 17.

Table 14: The competition for vice president of Botanica Court, announced by SCM's Decision No. 69/3 of January 22, 2013

⁹⁰ The candidates must be confirmed by a decree of the Moldovan President in 2015.

⁹¹ The candidates must be confirmed by a decree of the Moldovan President in 2015.

⁹² [SCM's Decision No. 504/21](#) of July 3, 2013, on the competition for the vacancy of the president of Bender CA and [SCM's Decision No. 923/30](#) of November 25, 2014, on the competition for the vacancy of the president of Straseni Court.

Judge	Work seniority (years)	Score	Rating by the BPEJ	Score by the BPEJ	Knowledge of the languages spoken at the ECtHR	Teaching/scientific work	Court's work strategy for 4 years	Court administration activities	Proposals for the improvement of the organizational	Administrative experience	Motivation	Total score by the BSCJ
Svetlana GARSTEA-BRIA	19	20	Good	20	3	5	5	5	3	2	25	88
Radu TURCANU	6	1	Very good	30	4	10	5	5	3	0	15	74

By [Decision No. 47/2](#) of January 21, 2014, the SCM proposed judge Radu TURCANU for the appointment by the President as the vice president of Botanica Court for a four-year term, although he had received a lower score than his rival.⁹³

Table 15: The competition for vice president of Chisinau CA, announced by SCM's Decision No. 153/7 of February 26, 2013

Judge	Work seniority	Score	Rating by the BPEJ	Score by the BPEJ	Knowledge of the languages spoken at the ECtHR	Teaching/scientific work	Court's work strategy for 4 years	Court administration activities	Proposals for the improvement of the	Administrative experience	Motivation	Total score by the BSCJ
Domnica MANOLE	23	35	Very good	30	2	5	3	0	0	0	9,3	84,3
Nelea BUDAI	23	35	Very good	30	0	5	0	0	0	0	10	80

By [Decision No. 500/21](#) of July 3 2013, the SCM proposed judge Nelea BUDAI for the appointment by the President as the vice president of Chisinau CA for a four-year term, although she had received a lower score than her rival.⁹⁴

Motivation of SCM's Decisions

According to Article 19 (2) of the Law on the SCM, the SCM expresses its opinion on judge candidates by a motivated decision with an open vote of the majority of its members.⁹⁵ However, in many cases,⁹⁶ the ruling of the SCM's decision does not indicate the number of votes assigned to a candidate or the criteria used to decide on the promotion of certain judges.⁹⁷ The substantiation is limited to a formal expression, such as in these two examples:

"Guided by Article 16 (3) of the Law on the Judicial Organization, and Articles 4, 17, 19 (1) and 24 of the Law on the SCM, the Superior Council of Magistracy rules..."⁹⁸ or

"Thus, having considered the applications and the submitted materials, as a result of the vote and guided by Article 20 (1) of the Law on the Status of Judges, and Articles 4, 17, 19 (1) and 24 of the Law on the SCM, the Superior Council of Magistracy rules..."⁹⁹

⁹³ Confirmed by Decree of the Moldovan President No. 1028-VII of March 10, 2014.

⁹⁴ Confirmed by Decree of the Moldovan President No. 713-VII of July 15, 2013.

⁹⁵ [SCM's Decision No. 81/3](#) of January 28, 2014; [SCM's Decision No. 549/19](#), [SCM's Decision No. 550/19](#) and [SCM's Decision No. 555/19](#) of July 1, 2014, by which SCM members voted for each judge candidate for a higher court.

⁹⁶ [SCM's Decision No.667/28](#) of September 24, 2013; [SCM's Decision No.42/2](#) of February 17, 2014; [SCM's Decision No.231/9](#) and [SCM's Decision No. 232/9](#) of March 11, 2014.

⁹⁷ [SCM's Decision No.551/19](#) of July 1, 2014; [SCM's Decision No. 42/2](#) of February 17, 2014.

⁹⁸ [SCM's Decision No. 233/9](#) of March 11, 2014.

⁹⁹ [SCM's Decision No. 231/9](#) of March 11, 2014.

The SCM passes decisions “in deliberation,” in the absence of candidates, other participants and representatives of the SCM’s secretariat. Most often, just as in the case of the initial appointment of judges, the SCM invokes the distribution of votes among its members as a reason for its decision rather than concrete opinions expressed by majority. Odd are the situations in which nobody accumulates the required number of votes. Thus, in a competition carried out for the position of the president of Bender CA,¹⁰⁰ the SCM rejected all competition participants, even though they had been reviewed by the BSCJ and the BPEJ and received the ratings “very good” and were admitted for promotion,¹⁰¹ as shown in Table 16.

Table 16: The competition of January 15, 2013, for the president of Bender CA

In	Judge	Rating by the BPEJ	Score by the BPEJ	Score by the BSCJ	Decision by the BSCJ	this
	Silvia VRABII	Very good	30	77	Admitted	
	Veronica NICHITENCO	Very good	30	77	Admitted	

case, the SCM’s decision is limited to the regulations that prescribe the procedure for adopting decisions, particularly making reference to Article 19 (2) of the Law on the SCM. Nevertheless, the decision does not specify the reason for the refusal to propose one of the two candidates for the appointment as the president of Bender CA.

c. Relevant International Recommendations

The judges’ role is essential for an effective observance of the right to a fair trial. The independence and impartiality of justice administration—indispensable for ensuring fair court proceedings—are described in several documents developed by international organizations to help states to implement general principles. Judge selection and career are important elements of a judicial system, which influence directly the independence of justice.

According to the UN’s Basic Principles on the Independence of the Judiciary, any judge selection method should prevent appointments based on improper reasons and exclude discrimination and therefore any promotion, where such system exists, should be based on objective factors and, particularly, on abilities, integrity and experience.¹⁰²

At the European level, to ensure the best practices and guarantees of competence, independence and impartiality of judges, the agencies of the Council of Europe use a range of documents that include recommendations on judge selection and career: the European Charter on the Statute of Judges (CESJ);¹⁰³ Opinion No. 1 of the Consultative Council of European Judges (CCJE);¹⁰⁴ the recommendations of the Committee of Ministers,¹⁰⁵ and of Venice Commission;¹⁰⁶ the recommendations of the Organization for

¹⁰⁰ [SCM’s Decision No. 504/21](#) of July 3, 2013, by which the SCM rejected the candidates for the president of Bender CA and announced a new competition.

¹⁰¹ [BSCJ’s Decision No. 19/4](#) and [BSCJ’s Decision No. 18/4](#) of June 6, 2013, on the admission of judges Veronica NICHITENCO and Silvia VRABII to the competition for the vacancy of the president of Bender CA.

¹⁰² UN’s Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly by Resolution 40/32 of November 29, 1985, para §10; §13.

¹⁰³ European Charter on the Statute of Judges (CESJ), adopted in Strasbourg on July 8-10, 1998, para § 2; § 4.

¹⁰⁴ Opinion No. 1 of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the standards concerning the independence of the judiciary and the irremovability of judges, 2001, para § 25 § 73.

¹⁰⁵ Recommendation CM/Rec. (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibility, passed by the CM for November 17, 2010, para § 44-48.

¹⁰⁶ Recommendations of the Venice Commission CDL-AD(2007)028 on judicial appointments, para § 46-47; CDL-AD(2010)004 on the independence of the judicial system, part I: the independence of judges, para § 26-27; § 38.

Security and Cooperation in Europe (OSCE);¹⁰⁷ and the European Network for Councils of the Judiciary (ENCJ).¹⁰⁸

As for the authorities that appoint judges, it is recommended that the selection authority be independent from the Executive, be representative and responsible before the public,¹⁰⁹ and have competences independent and separate from the duties of a judicial administration authority.¹¹⁰ It is recommended that the members of this authority to be selected from legal professionals and that at least half of them be judges appointed by their colleagues.¹¹¹ Judges should not form an absolute majority in the selection authority to avoid the risk of becoming a self-serving entity that favors only certain judges from among those who have chosen them.¹¹² The members of the selection authority should include various professionals (lawyers, law professors) appointed on the basis of relevant legal culture and experience¹¹³ and civil society representatives.¹¹⁴ The quality of the members of such an authority should ensure that political considerations do not prevail over qualifications of a judge candidate.¹¹⁵

As for the judge selection and appointment procedure, it is recommended that the authorities responsible for appointments, reviews and/or promotions introduce and apply objective criteria to guarantee that judge selection and career are based on merits.¹¹⁶ The law should clearly define judge selection criteria.¹¹⁷ Access to judicial positions should be allowed not only for young lawyers with higher education but also to lawyers with extensive experience of work in legal profession.¹¹⁸ The appointment of judges to courts should not be the subject of the vote in the Parliament because political interests may prevail over an objective decision.¹¹⁹ If the final appointment of a judge is the responsibility of the Chief of State, the discretion of appointing should be limited to candidates approved by the selection authority. The refusal to appoint a candidate should be based only on procedural reasons and should be substantiated.¹²⁰ It is recommended to appoint judges before the age ceiling and to avoid probation periods because they may undermine the independence of judges.¹²¹

As for the judge promotion systems, it is recommended to base them exclusively on the qualities and merits proven during the performance of professional duties and identified by objective reviews, and on professional qualification, integrity, capacity and efficiency.¹²² Although proper professional experience is an important condition for promotion, it is considered that in modern times work seniority is not generally accepted as a prevailing principle for deciding on promotion.¹²³ Promotions based entirely on work seniority may result in a reduced dynamism and this cannot be justified by real gains in terms of independence. Judges who were rejected promotion should have the possibility to file a complaint to an authority independent from the Executive and Legislative powers and which should include at least half of judges elected by their colleagues in

¹⁰⁷ OSCE/ODIHR's Kyiv Recommendations on judicial independence in Eastern Europe, South Caucasus and Central Asia, 2010 para §2; §4; §8; §16; §17; §21; §23.

¹⁰⁸ Dublin Declaration on standards for the recruitment and appointment of members of the judiciary. ENCJ, 2012, Chapter II para § 2.

¹⁰⁹ OSCE/ODIHR's Kyiv Recommendations, para § 21.

¹¹⁰ *Ibid*, para § 2.

¹¹¹ Opinion No. 1 of the CCJE, para § 46.

¹¹² Dublin Declaration on standards for the recruitment and appointment of members of the judiciary, ENCJ, Dublin, 2012, Chapter II para § 2.

¹¹³ OSCE/ODIHR's Kyiv Recommendations, para § 21; § 8.

¹¹⁴ ENCJ's Dublin Declaration, para § 5 page. 9.

¹¹⁵ OSCE/ODIHR's Kyiv Recommendations, para § 8.

¹¹⁶ Opinion No. 1 of the CCJE, para §25

¹¹⁷ OSCE/ODIHR's Kyiv Recommendations, para § 21

¹¹⁸ *Ibid*, para § 17

¹¹⁹ Recommendation of the Venice Commission CDL-AD(2007)028, para § 47

¹²⁰ OSCE/ODIHR's Kyiv Recommendations, para § 23

¹²¹ Recommendations of the Venice Commission CDL-AD(2010)004, Chapter V, para § 5

¹²² CESJ, para § 2; § 4,1

¹²³ Opinion No. 1 of the CCJE, para § 29

line with procedures that guarantee their best representation.¹²⁴ The selection of court presidents should be transparent and a good practice is to allow judges from each court to elect the president for their respective courts.¹²⁵

¹²⁴ CESJ, para § 4.1.

¹²⁵ OSCE/ODIHR's Kyiv Recommendations, para § 17

Policy Options and Recommendations

The key problem addressed in this document refers to the establishment of institutional competences on the appointment, promotions and transfer of judges between the BSCJ and the SCM. The practice shows that judges go through three stages before getting to the appointment by the President or the Parliament, namely:

- 1) Training and graduation examination at the NIJ (NIJ graduates) or the proficiency examination before the NIJ's Graduation commission (candidates with work seniority status) in case of appointment as a judge or the review at the BPEJ in case of promotions or transfers;
- 2) Judge Selection and Career Collegium;
- 3) Superior Council of Magistracy.

The NIJ, BPEJ and BSCJ have training norms and assessment criteria, and candidates obtain a certain score. The criteria for reviews by the SCM are vaguely regulated and decisions are only substantiated by the number of votes expressed in an open meeting. Such a system creates the impression of appointments and promotions based on subjective or preferential criteria of SCM members. This decreases the public and judges' trust in the SCM and the judicial system. Moreover, judges who pass the review by the BPEJ and the BSCJ and later receive a decision of the SCM that does not take into account the results of reviews by the BPEJ and the BSCJ may lose their motivation to comply with the judge performance review criteria. For these reasons, the current situation should be improved by clarifying the institutional competences of the BSCJ and the SCM and by improving the quality of the substantiation of SCM's decisions on judge appointments, promotions and transfers. In addition, it is necessary to improve candidate selection, promotion, transfer and review criteria.

We identified the following options listed in the order of the preference of the authors of this document:

- 1) The SCM appoints, transfers and promotes judges in accordance with the score and substantiation from the BSCJ's decisions;
- 2) The BSCJ is liquidated and the SCM takes its tasks;
- 3) The present situation remains unchanged.

We believe that all these three scenarios are compliant with the Constitution of the Republic of Moldova. Although Article 123 of the Constitution states that the SCM "ensures" the appointment, transfer, detachment and promotion of judges, this norm cannot be interpreted, as some did, as assigning exclusive competence to the SCM in deciding on judges' careers. This norm was introduced in the Constitution in 1994 to ensure judges' independence. The review of candidates by the BSCJ cannot hinder judges' independence because the BSCJ is part of the SCM and most of its members are judges. Moreover, such an interpretation is illogical considering that special collegiums were established to review and select judges and the SCM itself adopted detailed judge review and selection criteria and waived its competence to review the score assigned by the BSCJ for the merits of review (SCM, however, can change the score if it finds procedural deviations). In a modern society it is illogical to establish two permanent administrative entities (BSCJ and BPEJ) without lending the decisive weight to their reviews.

a. Competence Models Proposed for the SCM and the BSCJ

Model 1: The SCM Appoints, Transfers and Promotes in Accordance with the Score and the Substantiation from the BSCJ's Decisions

In this case, the SCM is the authority empowered to propose candidates for appointments, promotions and transfers to the President or the Parliament but the BSCJ is responsible for the technical task of reviewing and identifying candidates. This option is the most recommended of all and is practiced in many European countries. However, the SCM maintains the following competences:

- a) To examine contestations against BSCJ's decisions both on the merits and on procedural aspects of adopting and issuing these decisions. (Under the current legislation, this competence is limited to procedure. Accordingly, to implement Model 1, it is necessary to change the legislation). If the SCM establishes that the BSCJ reviewed candidates improperly, the SCM may cancel the BSCJ's decision and send the application back for a repeated review. This procedure should take place before the competition and after the registration of applicants in the Register of candidates.
- b) To decide on the candidates with equal score from the BSCJ (the competence established at the present time legislation). This procedure should take place before the competition and the registration of candidates in the Register of candidates;
- c) To refuse the appointment, promotion or transfer of a judge irrespective of the BSCJ's decision if the SCM finds out information proving the incompatibility of the candidate with judicial position. This procedure may take place either before or after the competition. In the latter case, the candidate will be excluded from the Register of candidates.

According to this model, the BSCJ functions as an autonomous entity. Its procedures, however, are established by the SCM, which can intervene in the decisions of the BSCJ in case of gross deviations.

This option offers the following advantages:

- a) It establishes a clear legal and institutional framework for the society and judges, excluding the duplication of duties of the SCM and BSCJ.
- b) Considering the SCM's practice so far, by which it does not heed the score assigned by the BSCJ, the new system will exclude suspicions that promotions in the judiciary are based on other criteria than those established in the SCM's regulations and will increase the trust and confidence in the judiciary and the SCM.
- c) It will encourage the best candidates to participate in competitions for judicial positions or for promotions, unlike the current situation, when potential applicants are rather distrustful.
- d) It will increase the weight of the performance review, which will ultimately result in better quality of judges' work.
- e) It will allow the SCM to focus on the administration of the judicial system rather than getting distracted by personnel policy.
- f) It will create premises for the reduction of the work load of the SCM's secretariat and members by organizing all competitions in advance in a programmed manner irrespective of the participating candidates.
- g) It will make the whole process much more predictable for candidates for judge positions or promotions, who will be able to plan their careers.

The downside of this option is:

- a) It requires a major revision of the present judge selection and promotion process, mostly by revising the SCM's practices.
- b) The SCM should give up the discretion of ignoring the results assigned by the BSCJ.
- c) It requires strengthening the role of the BSCJ by increasing its autonomy and the time allocated by BSCJ members to its work.

Model 2: The BSCJ is liquidated and the SCM takes its tasks

In this option, the SCM takes all competences related to the review of candidates for appointments, promotions and transfers and the BSCJ is liquidated.

The advantage of this option is the simplicity of the judge selection, promotion and transfer procedure and the elimination of the duplication of competences of the SCM and the BSCJ.

The downside of this option is:

- a) It poses the risk of excessive work load for the SCM and concentration of too many competences in the SCM.
- b) The increase of the SCM's work load will logically result in a less careful review of candidates.
- c) The presence of the members by law in the SCM could create the impression of the Executives' involvement in judge selection and career.

The recommendations of the OSCE/ODIHR from Kiev do not support this model. Paragraph II of these recommendations states that the authority responsible for judge selection and career should be other than the authority responsible for judicial administration.

Model 3: The Present Situation Remains Unchanged

The least recommended option is to preserve the present situation. The highest risk posed by the present situation is the decrease of the trust in the judiciary and the SCM. Nevertheless, the present mechanism can be improved by:

- a) Analyzing the criteria established by the BSCJ and the score assigned for each criterion to make sure that it ensures the selection of the best candidates. The maximal score for the training / examination at the NIJ and performance review should account for at least 50% of the score assigned by the BSCJ.
- b) Introducing complete information in the Registers of competition participants, and the arrangement of this information in accordance with the court for which candidates apply and the score they obtain.
- c) Strengthening the recent practice of announcing competitions before vacancies arise.
- d) Organizing competitions in a programmed manner several times a year for all vacancies from the system or at least all vacancies in each court at once.
- e) Abandoning the practice of announcing competitions by transfer and later under general conditions for the same vacancies in the same courts.
- f) Having the SCM to decide on candidates in accordance with the score they obtain at the BSCJ and to offer a detailed substantiation of opting for other candidate than the one with the highest score from the BSCJ. The substantiation of the SCM's decision by a simple distribution of ballots does not represent appropriate substantiation. SCM's decisions should reproduce the arguments of the majority.
- g) Erasing the candidates whom the President of Moldova rejected and the SCM did not propose repeatedly from registers and from all competitions.

b. Other Aspects of Judge Selection and Career

In addition to the duplication of competences of the SCM and the BSCJ, the document highlights other three crucial problems of the judge appointment and career system:

- a) the organization of competitions;
- b) the preparation and the role of the Register of competition participants;
- c) the criteria for selecting and appointing court presidents and vice presidents, and for promoting and transferring judges;
- d) the selection of a candidate.

The following are the recommendations for each of these problems, which are interconnected and represent essential conditions for a well-balanced system of judge appointment and promotion.

The Organization of Competitions for Appointment, Promotion and Transfer

- a) Instead of organizing a competition for each individual vacancy, we recommend to organize one or two competitions a year to ensure predictability, order and really competitive conditions rather than choosing candidates in accordance with the vacancy or candidates' personalities. For example, a competition could be organized in spring or summer after the graduation examination at the NIJ. A second competition could follow in autumn, if necessary.
- b) Opening all vacancies available in the judicial system at the moment of the announcement of a competition. Vacancies should be announced before they arise. If a vacancy arises suddenly, it will be filled from the judge reserve until the next employment competition.

The Preparation and the Role of the Register of competition participants

- a) The registration of candidates in the Register of participants in the competition on occupation of vacancies in the descending order of the score they have accumulated at the BSCJ. If a candidate disagrees with the score he/she obtained from the BSCJ, he/she should contest it at the SCM and if he/she is found right, the SCM should assign a fair score to him/her (following the BSCJ's procedure) or send the candidate for another review to the BSCJ.
- b) The completion of the register irrespective of the announced competition and the participation of only the candidates entered in the Register before the announcement of vacancies by the SCM. Candidates should be entered in the Register automatically immediately after their review by the BSCJ and the expiry of the period for contesting its decision. A more relaxed rule could be applied for judge promotions or appointment of court presidents or vice presidents.
- c) The use of the Register for appointing candidates with the highest score, which will spare the SCM effort to consider each candidate after the introduction of the candidate in the Register.
- d) Candidates entered in the Register are obliged to participate in choosing positions for application. Otherwise they should lose the right to participate in employment competitions and should refund the training fees.

Judge Selection, Promotion and Transfer Criteria

- a) The amendment of the judge selection, promotion and transfer criteria by including additional criteria that were used in 2013 and 2014 to ignore the score assigned by the BSCJ so that the BSCJ could review candidates in every possible aspect and the SCM function only as the authority checking the correctness of the review.
- b) The revision of the selection criteria and the score calculation procedure so that the score for the initial training/results of the examination before the NIJ's Graduation commission or the performance review by the BPEJ be higher than the score assigned for motivation, interview and personal qualities of the candidate. This is necessary to increase the role of the professional training at the NIJ and of the judge performance review.¹²⁶
- c) As for the requirement established in Article 20 (3) of Law No. 544 regarding the possibility of a transfer to a court of the same level only after the expiry of 5 years from the appointment, it should be interpreted by the Parliament to avoid diverging interpretations. This requirement should rather be repealed or interpreted as being applicable only to the first transfer because it seems difficult to justify

¹²⁶ The value of the professional training at the NIJ is too low (30%) in comparison with other criteria, for example, with those related to the applicant's motivation or work seniority status. Coupled with the repeal of the 80% quota of judge candidates from NIJ graduates, this situation may result in a reduction of the interest in the NIJ and in the long run in the reduction of candidates with professional judicial education. In addition, the weight of the judges' performance is too small in the reviews performed by the BSCJ (only 40%).

in 2014, when increasingly more judicial positions in Chisinau and Balti are filled directly by competition and not by transfer as was the case during the term of the previous SCM members.

- d) The amendment of the SCM's regulations on judge selection, promotion and transfer in the part referring to judge transfer to differentiate the transfer criteria from the criteria for promotion to a higher court.
- e) The reduction of the maximal score assigned for the motivation in writing and presented verbally before the BSCJ in favor of other review criteria or obliging the BSCJ to publish motivations performed in writing.
- f) The establishment of a minimal accession scores for candidates reviewed by the BSCJ if only one candidate participates in the competition.
- g) The amendment of the SCM's Regulations on criteria and procedure of transfer applied in court re-organizationsto establish guarantees of a transparent selection during the re-organization/reallocation of judge positions.

Candidate Selection

- a) The candidates with the highest score in the Register of participants in the competition on occupation of vacancieswill chose vacancies in the descending order of their score. All candidates listed in the Register are obliged to choose a vacancy.
- b) The SCM will only validate the selection of all candidates or will reject candidates who are incompatible with judge positions by a single decision. Rejected candidates will be excluded from the Register of candidates.
- c) Candidates with work seniority in a legal profession may fill vacancies only in the courts where vacancies were not filled by NIJ graduates. As a general rule, judge vacancies should be awarded to NIJ graduates. For this, it is necessary to increase the number of trainees for judge positions at the NIJ. This number should be correlated to the existing or projected number of vacancies in the system.

Useful lessons on the organization of training and acceding to judge positions could be learned from the Romanian practice.