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Selection and promotion of judges in the Republic of Moldova - challenges and needs

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POLICY DOCUMENT

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Drafted by the Legal Resources Centre from Moldova

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Summary

The selection and career of judges are the key elements of the judiciary. The promotion of merit-based candidates is an essential condition for ensuring an independent, responsible and professional judiciary. Transparency in the process of selection and career of judges is important to ensure trust in the system, but also in the bodies responsible for the appointment and promotion of judges, both of the society and judges, as well as of the staff within the system. Selection and promotion based on subjective criteria following a non-transparent process can affect the quality of justice administration because it reduces the judges' motivation to work properly and professionally. For these reasons, the appointment and promotion of judges are particularly important for the Republic of Moldova.

This document provides an analysis report of the selection system (appointment of candidates for the position of judge) and promotion of judges in the Republic of Moldova (promotion to a higher court or promotion to the position of the chairperson or deputy chairperson of the court). The document contains a review of the main provisions of law on the powers of the bodies involved in the appointment and promotion of judges, of the contest organization procedure and of the selection and promotion criteria. The document also has an important component as empirical research. The authors analyzed the practice of appointing and promoting judges within the period of January 2013 through May 2017 and presented conclusions and recommendations regarding this practice.

The analysis refers to three main issues that were identified: the role of the score given by the Board for Selection and Career of Judges (Board for Selection) for the decision by the Superior Council of Magistracy (SCM) on appointment or promotion, the number of candidates in contests and ways in which contests are organized (announcement of contests per position and "failed" contests).

In 2015, the LRCM published the public policy document: „[Selection and career of judges – duplication of responsibilities or additional guarantees?](#)”, which included a more comprehensive analysis of the legal framework regarding the selection and promotion of judges, including the transfer of judges, the powers of the bodies involved and the criteria for appointment, transfer and promotion. The relevant conclusions and recommendations of that document are valid and have been retained in the present analysis.

The main findings of the empirical analysis regarding the appointments and promotions within the period of January 2013 and May 2017 are as follows:




- 1) The role of the evaluation by the Board for Selection (the score given) is minimized, as in a large number of decisions on the appointment and promotion of judges, the SCM does not appoint the judges who have accumulated the highest score given**

by the Board for Selection and does not provide reasoning why it is disregarded.

The data for the period of January 2013 – May 2017 show the following:




- Selection of judges for the district level courts (first level courts): Out of 150 candidates proposed for appointment by the SCM, 115 (77%) were selected based on contests where more than one candidate took part, and 35 (23%) were selected based on contests with a single candidate (without competition). Out of 115 judges selected following a contest involving more than one candidate, at least 83 (72%) candidates got a lower score at the Board for Selection and only 32 (28%) are candidates with the highest score. The results suggest that each fourth judge (35 out of 150) was proposed for appointment on the basis of a contest in which only one candidate participated. 115 out of 150 judges proposed by the SCM were selected based on contests involving two and more candidates. Of these, seven out of ten were candidates with a lower score than their opposing candidates (83 out of 115). Only 3 out of 10 candidates proposed by the SCM were candidates with the highest score given by the Board for Selection (35 out of 115).
- Promotion of judges to the courts of appeal: Following the contests for the promotion of judges to the courts of appeal, the SCM proposed 55 candidates. Out of these, 17 (31%) were candidates selected based on contests where only one single candidate participated (without competition) and 38 (69%) were selected in contests in which more than one candidate participated. Out of 38 candidates selected based on contests in which more than one candidate participated, 23 (61%) had a higher score than the other participants in the contest, and 15 (39%) were candidates with a lower score than their opposing candidates.
- Promotion of judges to the SCJ: Out of 13 judges proposed by the SCM for appointment, one judge was selected on the basis of a contest with a single candidate (8%). Out of 12 judges selected following the contest where more than one candidate participated, seven had a higher score than their opposing candidates (58%) and five – a lower score (42%). Out of 13 judges proposed by the SCM to be promoted to the SCJ, 10 judges were from first level district courts (77%).

Table 1: The role of the score given by the Board for Selection in the selection of judges for courts and promotion to the courts of appeal and the SCJ within the reference period

	 Judges	 Courts of appeal	 SCJ
Number of judges proposed by the SCM within the reference period	150	55	13
Number of judges proposed by the SCM for contests where they had opposing candidates	115	38	12
%¹	77%	69%	92%
Number of judges proposed by the SCM for contests where only one candidate participated	35	17	1
%²	23%	31%	8%




¹ In relation to the total number of candidates proposed by the SCM.

² In relation to the total number of candidates proposed by the SCM.

	 Judges	 Courts of appeal	 SCJ
Number of judges with a higher score (named following the contests where more than one candidate participated)	32	23	7
%³	28%	61%	58%
Number of judges with a lower score (named following the contests where more than one candidate participated)	83	15	5
%⁴	72%	39%	42%




- Promoting judges for administrative positions at the district level courts: Out of 70 candidates proposed for appointment by the SCM, 25 (35%) were selected based on contests where more than one candidate participated and 45 (65%) were selected based on contests with a single candidate (without competition). Out of 25 judges selected following a contest involving more than one candidate, at least 8 (32%) are candidates with a lower score given by the Board for Selection and 17 (68%) are candidates with the highest score.
- Promoting judges for administrative positions at the courts of appeal: During the reference period, 32 contests for promotion to the positions of the chairperson or deputy chairperson of the courts of appeal were organized. Out of these, for 20 announced contests (63%) either no applications were submitted or the candidates withdrew from the contest. Out of the remaining 12 contests, 10 judges (83%) were selected following contests where only one candidate participated (without competition) and in the other two contests, with more than one candidate taking part, the SCM has chosen the candidate with a lower score given by the Board for Selection (100%).
- Promoting judges for administrative positions at the SCJ: 13 contests were organized in order to promote for the positions of the chairperson and deputy chairperson of the SCJ, as well as of the Criminal and Civil Boards within the period of 13 January 2013 and 20 May 2017. Out of these contests, no applications were submitted in five contests (38%), and in two contests (15%) the candidates did not get the necessary number of votes of the SCM. In the rest of the contests – six in number, only one candidate participated, which makes up 46% of all organized contests or 100% of the contests that resulted in the promotion to leadership positions at the SCJ.

Table 2: The role of the score given by the Board for Selection in the promotion of judges for administrative positions at the courts, courts of appeal and the SCJ within the reference period

	 Judges	 Courts of appeal	 SCJ
Number of judges proposed by the SCM within the reference period	70	12	6

³ In relation to the number of candidates proposed by the SCM, who participated in contests with several candidates.

⁴ In relation to the number of candidates proposed by the SCM, who participated in contests with several candidates.

	 Judges	 Courts of appeal	 SCJ
Number of judges proposed by the SCM for contests where they had opposing candidates	25	2	0
%⁵	35%	17%	-
Number of judges proposed by the SCM for contests where only one candidate participated	45	10	6
%⁶	65%	83%	100%
Number of judges with a higher score (named following the contests where more than one candidate participated)	17	0	-
%⁷	68%	-	-
Number of judges with a lower score (named following the contests where more than one candidate participated)	8	2	-
%⁸	32%	100%	-

Thus, the highest number of appointments where the score given by the Board for Selection was disregarded is observed with appointments to the first level district courts (72% of 115 judges selected following contests in which more than one candidate participated), followed by the promotion to the SCJ (42% of 12 judges selected based on contests in which more than one candidate participated) and promotion to the courts of appeal (39% of 38 judges selected following contests in which more than one candidate participated). A better situation was observed in case of the promotion to administrative positions at the first level district courts, where only eight candidates out of 25 (32%) were appointed following the contests with several candidates, and were promoted with a lower score. However, given the high rate of contests with a single candidate (45 candidates or 65% out of 70 appointed candidates), this percentage is also an issue of concern.

In the case of promotions to the leadership positions at the courts of appeal and the SCJ, the situation is even more complicated because of the very high percentage of contests with a single candidate (10 out of 12 candidates proposed for the courts of appeal (83%) and all six candidates (100 %) proposed for the SCJ leadership positions). In addition, in the only two contests for leadership positions at the courts of appeal in which more than one candidate participated, the SCM has chosen the candidate with the lower score.

2) A single candidate participates in a large number of contests. Thus, the data for the period of January 2013 – May 2017 show the following:

- Selection of judges for courts: out of 150 candidates proposed, 35 (23%) of the candidates were proposed based on contests in which only one candidate participated;

⁵ In relation to the total number of candidates proposed by the SCM.

⁶ In relation to the total number of candidates proposed by the SCM.

⁷ In relation to the number of candidates proposed by the SCM, who participated in contests with several candidates.

⁸ In relation to the number of candidates proposed by the SCM, who participated in contests with several candidates.

- Promotion of judges to the courts of appeal: out of 55 candidates proposed, 17 (31%) of the candidates were proposed based on contests in which only one single candidate participated;
- Promotion of judges to the SCJ: out of 13 candidates proposed, one (8%) candidate was proposed based on contests in which only one single candidate participated;
- Promotion to the leadership positions at the courts: out of 70 candidates proposed, 45 (65%) of the candidates were proposed based on contests in which only one candidate participated;
- Promotion to the leadership positions at the courts of appeal: out of 12 candidates proposed by the SCM, 10 (83%) candidates were proposed based on contests in which only one candidate participated;
- Promotion to the leadership positions at the SCJ: out of six candidates proposed, all six (100%) candidates were proposed based on contests in which only one candidate participated;

The large number of contests with a single candidate raises questions regarding the existence of a critical number of judges wishing to participate in contests or their reluctance to participate for various reasons. Contests with a single candidate do not ensure true competition and selection of the best candidate.

3) Many contests are declared by the SCM as failed, without any argumentation, being only specified that a candidate or the participating candidates did not obtain the required number of votes. Thus, within the period between January 2013 and May 2017, the following situation is observed:

- Appointment to the courts: 10 contests (9.5%) of the total number of 105 contests were declared failed because the candidates did not get the required number of votes from the SCM members;
- Promotion to the courts of appeal: in six contests (8%) out of a total of 78, the candidates did not get the required number of votes of the SCM, and in 36 contests (46%) either no applications were submitted or the candidates withdrew their applications before the contest was held;
- Promotion to the SCJ: out of 14 contests, three (21%) failed because the candidates did not get the required number of votes;
- Promotion to the leadership position at the first level district courts: following those 78 contests that were organized, nine contests (11%) were considered to have failed because the candidates did not get the required number of votes;
- Promotion to the leadership positions at the courts of appeal: out of 32 organized contests, none failed because of the lack of votes of the SCM members, and in 20 announced contests (63%) either no applications were submitted or the candidates withdrew;
- Promotion to the leadership positions at the SCJ: out of 13 contests, two (15%) were considered to have failed because the candidates did not get the required number

of votes of the SCM members and in five contests (38%) no applications were submitted.

The large number of failed contests for the reasons of not getting the required number of votes of the SCM members raises questions about the reasons for not granting these votes. The SCM should explain the reasons for not granting votes or change the rules of the contest organization to exclude the possibility of declaring a contest failed due to the lack of votes. The lack of votes could also mean a simple absence of quorum, and this is not sufficiently explained in the SCM decisions.

4) Several contests announced by the SCM regarding the promotion to the courts of appeal or to the leadership positions at the courts of appeals and the SCJ did not take place because there were no candidates or they withdrew until voting and the SCM announced repeated contests. Thus, within the period between January 2013 and May 2017, the following situation is observed:

- Promotion to the courts of appeal: in 36 contests out of a total of 78, i.e. in 46% of the contests, either no applications were submitted, or the candidates withdrew their applications before the contest was held. It has been noticed that contests for the same court of appeal are announced practically every month so that they can then be merged and later more candidates to be selected⁹;
- Promotion to the leadership positions at the courts of appeal: out of 32 contests that were organized, in 20 contests (63%) either no applications were submitted or the candidates withdrew before the contest was organized;
- Promotion to the leadership positions at the SCJ: in five contests out of 13, i.e. 38%, no applications were submitted.

Insufficient reasoning of the SCM decisions and organization of contests, many of which are declared to have failed, may be among the causes that deter judges from participating in contests. The lack of candidates for the leadership positions at the courts denotes a systemic problem that requires the SCM to question this approach.

5) Frequent organization of contests related to the career of judges, announced separately for each vacancy. The analysis of the practice of appointing and promoting of judges within the period of January 2013 and May 2017 showed a high frequency of contests organization for each separate vacancy. For example, during the reference period, on average, two contests per month were organized for the selection of candidates for the position of a judge (105 contests in 53 months), one contest per month for the promotion to administrative positions at the courts (78 contests in 53 months) and by one contest a month to promote judges to the courts of appeal (78 contests in 53 months). In addition, there were organized 14 contests for the promotion to the SCJ, 32 contests for the leadership positions at the courts of appeal and 13 contests for the promotion to the leadership positions at the SCJ.

⁹ For example, the SCM merged contests to fill the positions of a judge at Chisinau Court of Appeal announced on 30 June 2015, 7 July 2015 and 2 September 2015, <http://csm.md/files/Hotaririle/2015/30/769-30.pdf>

Such an approach does not allow adequate planning for either candidates or the SCM. Such an approach does not create predictability and clarity for the society, but rather facilitates opportunities for abuse. Moreover, there was observed a lack of interest of judges to participate in contests, especially for the leadership positions at the district level courts. Insufficient reasoning of the SCM decisions and frequent organization of contests, many of which are later declared as failed, may be among the causes that deter judges from participating in contests. The SCM has already improved the way of keeping the register of competitors by including candidates in the descending order after the score they obtained from the Board for Selection. This first step is important and is the starting point for further enhancing the selection and promotion process, by regular organization of contests and use of the register for the selection of candidates.

Finally, the document provides some recommendations for improving the system of selection and promotion of judges in order to ensure a transparent and merit-based process of selection and promotion.

1. It is advisable to clarify the SCM approach to the evaluation provided by the Board for Selection, namely the appointment of candidates based on the score given by the Board for Selection. If two or more candidates with similar score participate in the contest, the SCM has to make a further evaluation, for example, through an interview, to select the best candidate. The SCM could also make an additional evaluation if new information about the candidate appears since the moment of evaluation by the Board for Selection;
2. It is advisable to stipulate expressly in the law the right of candidates with the highest score to choose the court in the case of appointments to the first instance court. This will ensure clarity and predictability of the appointment process, and the SCM will not be overloaded with so many contests.
3. In close connection with the first two recommendations, it is proposed to modify the approach to the contest organization with the view to organize the contest for all vacant positions in the system once or twice a year. This will allow candidates to plan their careers in advance and bring clarity and predictability that are important for the system. This will also help improve the perception of society, which will be able to follow the appointments and promotions in the judiciary. So far they raise a series of questions, as shown in the document.
4. In close connection with the first three recommendations, it is advisable to improve the quality of reasoning of the SCM decisions on the career of judges. The exclusive vote of the SCM members is not a sufficient reasoning in a system based on the rule of law. This recommendation is particularly valid for all problematic situations stated in the report: disregarding the score given by the Board for Selection and declaring the contest failed due to the lack of the required number of votes of the SCM members.
5. It is recommended to reassess the criteria for the selection, promotion and transfer of judges in order to provide greater value to professional studies at the NIJ and performance appraisal by the Board for Performance Evaluation of Judges and to

include all other criteria currently examined by the SCM and which are not examined by the Board for Selection¹⁰;

6. It is recommended to stipulate a prohibition for the SCM members to participate in the contests for the selection of judges and promotion during their term of office as members of the SCM as well as for the next 6 months after the termination of their mandate, similar to the rules established by the Regulations on the Superior Council of Prosecutors. This provision could be included into the Regulations on the organization and operation of the SCM or the Law on the SCM.

The document was developed and designed to relaunch discussions with decision-makers, civil society and development partners on the procedure and criteria for the selection and promotion of judges. The issues concerning the system have been highlighted in various reports by civil society organizations and important evaluation documents drafted by the development partners, one of the main documents being the Conclusions of the Council of the European Union as of 15 February 2015¹¹.

The career of judges is the façade of the judiciary of a state. If there are any suspicions on its integrity, it seriously affects the perception of the functioning of justice in general. We count a lot on the decision makers' openness to discuss the issues highlighted in the document and together come up with the necessary improvements.

¹⁰ The recommendation on selection criteria was explained in more detail in the analysis provided by the LRCM in 2015. Recommendations regarding the criteria are also included in the Report of the Centre for the Analysis and Prevention of Corruption for 2017, available at: http://capc.md/files/Raport%20de%20monitorizare%20CAPC_30.05.17.pdf. To avoid repeating the same recommendations, we shall confine ourselves to general recommendation on the urgent need to amend the criteria. Regarding the content of the criteria as such, on 3 June 2015 the LRCM submitted detailed recommendations regarding the amendment of the Regulations on the appointment, promotion and transfer criteria to the SCM. Recommendations given by the LRCM are available at: <http://www.crjm.org/wp-content/uploads/2015/06/2015-06-03-Op-RegulSelectieJud-CRJM.pdf>. We consider it is important to amend the regulations as soon as possible, possibly by setting up a working group that could analyse the criteria in detail and come up with the appropriate recommendations. We will contribute with certain proposals to amend the criteria as soon as the process is initiated.

¹¹ See p. 7 of conclusions available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/02/15-fac-moldova-conclusions/>.

Abbreviations

The analysis regarding the selection and promotion drafted by the LRCM in 2015 – Legal Resources Centre from Moldova, Public policy document „Selection and carrier of judges – duplication of responsibilities or additional guarantees?”, 2015, available at: <http://crjm.org/wp-content/uploads/2015/01/CRJM-DPP-Selectie-si-cariera.pdf>.

CA – Court of Appeal

BPEJ or Board for Evaluation – Board for Performance Evaluation of Judges

BSCJ or Board for Selection– Board for Selection and Career of Judges

SCJ – Supreme Court of Justice

SCM – Superior Council of Magistracy

NIJ – National Institute of Justice

Law no. 514 – Law no. 514 as of 6 July 1995 on judicial organization

Law no. 544 – Law no. 544 as of 20 July 1995 on the status of judges

Law no. 947 – Law no. 947 as of 19 July 1996 on the Superior Council of Magistracy

Law no. 152 – Law no. 152 as of 8 June 2006 on the National Institute of Justice

Law no. 154 – Law no. 154 as of 5 July 2012 on selection, performance evaluation and career of judges

The procedure for enrolment in the Register of competitors – The procedure for enrolment in the Register of competitors for filling of the vacant position of a judge, approved by the SCM Decision no. 87/4 as of 29 January 2013

Register of competitors– the Register of competitors for filling of the vacant position of judge, the chairperson or deputy chairperson of the court

Regulations on the criteria for the selection – Regulations on the criteria for selection, promotion and transfer of judges, as of 5 March 2013, approved by the SCM Decision no. 211/8

Regulations of the BSCJ – Regulations on the organization of activity of the Board for Selection and Career of Judges, as of 22 January 2013, approved by the SCM Decision no. 60/3

Regulations on the organization of the contest for the position of judge – Regulations on the way of organization and conducting of the contest for holding the vacant position of the judge, as of 15 October 2014, approved by the SCM Decision no. 741/31

Methodology

This document has been drafted based on the analysis of the legislation on the selection and promotion of judges, including the SCM regulations on the criteria for the selection, promotion and transfer of judges and organization of contests for the position of a judge. Also, there were analysed decisions by the SCM regarding contests on appointment and promotion to a higher court and administrative positions issued within the period of January 2013 – May 2017. Tables on the data collected from the SCM decisions are available online on the LRCM website (www.crjm.org).

In 2015, the LRCM published the public policy document: „Selection and carrier of judges – duplication of responsibilities or additional guarantees?”¹² (the analysis regarding the selection and promotion drafted by the LRCM in 2015) which included a more comprehensive analysis of the legal framework regarding the selection and promotion of judges, including the transfer of judges, the powers of the bodies involved and the criteria applied. In the current document, we decided to narrow the subject of the analysis to three main points that we identified as the most urgent, requiring improvements:

- 1) the score given by the Board for Selection and the SCM decisions on appointment and promotion, including their reasoning;
- 2) the high rate of contests in which only one candidate participates;
- 3) the procedure of contests organization (per position, rate of „failed“ contests and their reasoning as „failed“.

The document also contains recommendations on amendment of the selection and promotion criteria. Criteria are listed in the first chapter (legal framework), but are not analysed in the document as they have not been amended since 2013 and, therefore, an additional analysis is not useful. The recommendations provided by the analysis of 2015 are included in the text of the present analysis.

Terminology used:

- selection or appointment of judges – refers to the proposal of the SCM on appointment to the position of a judge of candidates for the position of a judge;
- promotion of judges – refers to the SCM proposal for the promotion of judges to a higher court – the courts of appeal or the Supreme Court of Justice – and to the SCM proposal for the appointment to the leadership positions at the courts of any level – the chairperson and the deputy chairperson.

¹² Legal Resources Centre from Moldova, Public policy document: „Selection and carrier of judges – duplication of responsibilities or additional guarantees?”, 2015, available at: <http://crjm.org/wp-content/uploads/2015/01/CRJM-DPP-Selectie-si-cariera.pdf>.

Description of the issue

1. The legal framework for the selection and promotion of judges

A. Introductory explanations

The selection and career of judges are key elements for ensuring an independent and professional judiciary. In 2012, several legislative amendments which established a new legal and institutional framework for the selection and career of judges were adopted.

Currently, the selection and career of judges are governed by Law no. 514 on judicial organization, Law no. 544 on the status of judge and Law no. 154 on the selection, performance evaluation and career of judges. After the amendments of 2012, the legal framework was supplemented by the SCM Regulations on the criteria for the selection, promotion and transfer of judges, the SCM Regulations on the organization and conduct of the contest for holding the position of the judge and other relevant acts. The main novelties introduced in 2012 are as follows:

- 1) The Board for Selection, responsible for the selection and career of judges, has been established. It adopts reasoned decisions on every candidate for the position of judge and every judge who enters the contest for promotion, transfer or appointment as the chairperson or deputy chairperson of the court;
- 2) Criteria for the selection, promotion and transfer of the judge and the appointment of the chairperson or deputy chairperson of the court were stipulated by the law and detailed by the SCM¹³;
- 3) The mandatory evaluation and the procedure for performance evaluation of every judge who enters the contest for promotion, transfer or appointment to the position of the chairperson or deputy chairperson of a court were established¹⁴;
- 4) An obligation to create a register of competitors for filling of the vacant positions of judge, chairperson or deputy chairperson of the court, that includes candidates, vacant positions of a judge, chairperson or deputy chairperson of the court was established¹⁵;

¹³ Law no. 154, the SCM Regulations on the criteria for the selection, promotion and transfer of judges, the SCM Regulations on the organization and conduct of the contest for holding the position of the judge.

¹⁴ Law no. 154, in particular art. 5 para. (3), the ordinary evaluation of the performance of judges takes place once a year.

¹⁵ Art. 6² of Law No. 544 on the status of the judge.



- 5) The examination before the Final Examination Board of the NIJ was set up for candidates who have not graduated the NIJ but have the necessary tenure¹⁶. This exam should help improve the selection process for judges by unifying the standards for those two categories of judges (NIJ graduates and those having tenure). In the process of selecting candidates for the position of judge, both for candidates who have graduated the NIJ and for those with tenure, the Board for Selection takes into account the results of the exam held before the Final Examination Board of the NIJ¹⁷.

The novelties introduced in 2012 regarding the selection and career of judges should have improved the selection process for judges, ensuring a transparent and merit-based process. However, as the practice within the period of 2013 to May 2017 shows, there are many gaps in this process.

B. Procedure and powers of the involved bodies

The selection and promotion of judges has several stages, illustrated in the table below.

Table 3: Stages for the selection and promotion of judges

 Appointment of judges	STAGE	 Promotion of judges
Training and graduation exams at NIJ ¹⁸ or the exam before the Final Examination Board of the NIJ ¹⁹	1	Evaluation by the Board for Performance Evaluation of Judges
Evaluation by the Board for Selection and Career of Judges	2	Evaluation by the Board for Selection and Career of Judges
Interview and proposal on appointment by the SCM	3	Interview and proposal on appointment by the SCM
Appointment by the President of the country ²⁰	4	Appointment by the President of the country ²¹ /Parliament

Thus, both in the appointment and promotion procedures the candidates/judges pass through four filters. The purpose of each filter, under Law no. 154, is to ensure an objective, impartial and transparent process that guarantees the selection of the best candidates as judges²². Each stage is important and necessary to ensure checks and balances between the

¹⁶ Art. 6 para. 3 of Law No. 544 on the status of the judge.

¹⁷ Art. 5 para. (2) of Law no. 154.

¹⁸ Candidates who graduated NIJ.

¹⁹ Candidates with tenure in law.

²⁰ The President has the right to refuse the candidacy proposed by the SCM only once, giving reasons for that. The SCM may repeatedly propose the same candidacy by a vote of 2/3 of the members, a mandatory proposal for the President.

²¹ Similar to the appointment, the President/Parliament has the right to refuse the candidacy proposed by the SCM for promotion only once, giving reasons for that. The SCM may repeatedly propose the same candidacy by a vote of 2/3 of the members, a mandatory proposal for the President/Parliament.

²² See Art. 2 of Law no. 154 as of 5 July 2012 on selection, performance evaluation and career of judges.

institutions involved in this process. At the same time, although the verification of specific skills and qualities can take place in several stages of the selection process, it is crucial that the responsible institutions avoid as much as possible the duplication of powers between them.

In this document we refer to the role of the institutions involved in the second and third stages – the Board for Selection and the SCM, as well as to the weighting of the first stage in the appointment and career of judges in the context of the appointment and promotion criteria.

As regards the role of the Board for Selection, the national legislation provides that it consists of four judges and three civil society representatives, being established „subordinated to the Superior Council of Magistracy“ and aimed at ensuring the selection of candidates for the office of judge, the promotion of judges to the higher courts, the appointment of judges to the office of the chairperson or deputy chairperson of the first level district courts and the transfer of judges to courts of the same level or lower courts²³. Exercising its powers, the Board for Selection adopts reasoned decisions on the acceptance or rejection of candidates for the office of judge, on the promotion of judges to a higher court, on the appointment of judges to the office of the chairperson or deputy chairperson of the court, and on the transfer of judges to a court of the same level or a lower court and submit them to the SCM for examination²⁴. ***As the Board for Selection is subordinate to the SCM and the evaluation procedure of the candidates is stipulated in detail in the regulations adopted by the SCM decisions, it implicitly means that the SCM has delegated to the Board for Selection the powers on the evaluation of candidates for appointment and promotion, preserving the power to examine appeals against the decisions by the Board for Selection.***

The Board for Selection evaluates the candidates on the basis of the criteria provided by the Regulations drafted and approved by the SCM. The evaluation by the Board for Selection includes the analysis of documents submitted by the candidate and the interview with the candidate²⁵.

Upon adoption of the reasoned decision by the Board for Selection regarding the candidate for the position of the judge, it is submitted to the SCM the day after the expiration of the appeal period.²⁶ ***The legislation does not provide for a detailed procedure of candidates examination by the SCM. Law no. 947 provides only for the procedure of examination of appeals against the decisions by the Board for Selection.*** This is probably due to the fact that the legislator’s logic while drafting of Law no. 154 and establishing of the Board for Selection, respectively, was that it is the only authority empowered to examine the candidates for the position of judge, the SCM having only the powers to accept the decisions or send them for review in case of appeals. However, p. 18 of the SCM Regulations on the organization of the contest for the position of judge provides for the interviewing of candidates by the SCM and the law does not expressly oblige the SCM to follow the score awarded by the Board for Selection unconditionally.

Once the candidates are evaluated, their list and evaluation results are examined at the SCM meeting. A member of the SCM makes a presentation of the candidates based on their personal file. Any member of the SCM may ask questions to the candidate. Following the monitoring of the SCM meetings, the LRCM found that questions to candidates usually refer

²³ Art. 3 para. (1) of Law no. 154.

²⁴ Art. 5 para. (1) letter h) of Law no. 154. The decisions of the BSCJ are submitted to the SCM the day after the expiration of the appeal period.

²⁵ For details see the Monitoring Report on the Board for Selection and Career of Judges and the Board for Performance Evaluation of Judges (September 2016 – May 2017), drafted by the Centre for Analysis and Prevention of Corruption (CAPC), 2017, available at: http://capc.md/files/Raport%20de%20monitorizare%20CAPC_30.05.17.pdf.

²⁶ Art. 5 para. (1) letter h) of Law no. 154.

to the grade point average obtained by the candidate at the faculty or the NIJ, and sometimes whether they would accept a similar position in a different first level district court other than the one they applied for. Furthermore, questions are not addressed in a similar way to all candidates and a systemic approach to the way of addressing them can not be observed.

Having analysed the above-mentioned legislation, the LRCM considers that ***the SCM should follow the score offered by the Board for Selection and give priority to the candidates with the highest score. This principle results from the spirit of Laws no. 154 and no. 544 and from p. 19 of the Regulations on the organization and conduct of the contest for holding the position of the judge approved by SCM decision no. 741/31***²⁷. P. 19 of the Regulations on the organization and conduct of the contest for holding the position of the judge provides that „within the framework of discussions on the appointment of a particular candidate to the position announced for the contest, the SCM will issue a reasoned decision that can not be contradictory to the conclusion regarding the score given by the Board for Selection“. However, ***the provisions of p.19 and 20 of the Regulations on the organization and conduct of the contest for holding the position of the judge stipulate that the SCM has the opportunity to give a new evaluation of the criteria on the basis of which the candidates were evaluated by the Board for Selection in the following circumstances:***



- 1) giving priority to the candidate who has tenure as compared with another candidate, or to the candidate who is supposed to have a better work organization, better self-motivation or a higher level of integrity and irreproachable reputation (p. 19);
- 2) derogation from the general rule of appointment of a candidate according to art. 2 of Law no. 544, having regard to the powers and competence of the designated judge (military court, commercial court), seniority in magistracy in case of returning to the justice system (p. 20);
- 3) if two or more candidates in the same contest have an equal score obtained from the Board for Selection, the SCM will decide on a case-by-case basis, by reasoned decision, whom it will give priority to be proposed for the appointment as judge (p. 19).

C. Criteria and given score



Selection criteria for judges:

Pursuant to p. 10 of the Regulations on selection criteria, the candidates for the position of judge are evaluated on the basis of the following criteria and are given the following score for each criterion:

Table 4: *Criteria for the selection of candidates to the position of the judge*

 CRITERION	 MAXIMUM SCORE
the results of the initial training at the NIJ and the results of the exam taken before the Final Examination Board of the NIJ	maximum 30 points and minimum 5 points for grade 10 – 30 points; for grade 9 – 25 points; for grade 8 – 20 points; for grade 7 – 15 points; for grade 6 – 10 points; for grade 5 – 5 points;



²⁷ The SCM decision no. 741/31 as of 15 October 2013, available at: http://csm.md/files/Hotaririle/2013/31/741_31.pdf.



 CRITERION	 MAXIMUM SCORE
tenure in legal speciality positions	maximum 10 points each year of tenure is equivalent to 1 point, but the total score can not exceed 10 points
the nature of activity in legal speciality positions	maximum 10 points The activity in the position of a judge is evaluated with 2 points for each year of activity and for the positions provided for in paragraph (2) of Article 6 of the Law on the status of judge with 1 point for each year of activity. The activity in other legal speciality positions gives candidates 0.5 points per year.
knowledge in the field of information technologies (MS WORD, Excel, ability to browse the Internet and e-mail use)	maximum 5 points
knowledge of the working languages of the European Court of Human Rights	maximum 5 points
scientific degree, teaching experience, publications and thematic articles	maximum 5 points
personal characteristics and abilities appropriate to the position of a judge (integrity, fairness, ability to manage stress, analytical capacity, etc.)	maximum 5 points
written motivation letter and interview of the candidate for the position of judge, verbally delivered to the Board for Selection	maximum 20 points

Criteria for promotion to a higher court:

Pursuant to p. 12 of the Regulations on the criteria for the selection, promotion and transfer of judges, approved by the SCM decision no. 211/8 as of 05.03.2013 (in force on 12.04.2013), amended by the SCM decision no. 739/31 as of 15.10.2013, judges who apply for promotion to a higher court are evaluated on the basis of the following criteria, with the following score for each criterion:

Table 5: Criteria for promotion to a higher court



 CRITERION	 MAXIMUM SCORE
tenure in the position of judge, confirmed by the work book	maximum 20 points For each year of tenure that exceeds the minimum threshold stipulated by law, 2 points will be given, but the total score can not exceed 20 points
quality, efficiency and integrity in the position of judge. It is evaluated according to the qualifier provided by the decision of the Board for Evaluation	maximum 40 points Evaluation qualifiers and promotion score: „excellent” – 40 points, „very good” – 30 points, „good” – 20 points,

 CRITERION	 MAXIMUM SCORE
knowledge of the working languages of the European Court of Human Rights	maximum 5 points
scientific degree, teaching experience, publications and thematic articles, participation in the drafting of normative acts, commentaries on normative acts as an expert or consultant within national or international working groups	maximum 10 points
written motivation of the candidate to be promoted to an hierarchically superior court, delivered verbally before the Board for Selection	maximum 25 points

Criteria for promotion to the position of the chairperson or deputy chairperson of the court:

Pursuant to p. 15 of the Regulations on the criteria for the selection, promotion and transfer of judges, judges who are candidates for the position of the chairperson or deputy chairperson of the court are evaluated in terms of managerial capacities on the basis of the following criteria, with the following score for each criterion:

Table 6: Criteria for promotion to the administrative position

 CRITERION	 MAXIMUM SCORE
elaboration by the candidate of a plan or setting up of a strategy of the court activity for the next 4 years	maximum 10 points
participation in activities related to the administration of courts (commissions, decision-making activity, contests, committees for staff performance evaluation, working groups on procurement, working groups within the court, etc.)	maximum 5 points
presentation of proposals for improving the organizational and administrative activity of the courts within the last 3 years	maximum 5 points
(previous) activity in administrative positions (including interim administrative positions)	maximum 5 points

D. Procedure of contest organization

Under art. 9 para. (3) of Law no. 544, the contest for the selection of candidates for filling of the vacant positions of judge is organized three months before the vacancy. Persons enrolled

in the Register of competitors will be able to opt for any of the contests announced by the SCM by submitting a request to confirm their willingness to participate in a particular contest²⁸.

The SCM announces the contest and indicates the deadline for the submission of documents, which is usually 15 or 30 days since the date of publication of the decision in the Official Gazette²⁹. The SCM decision on the contest announcement is published on its website. Until 2013, the SCM had a practice to announce the contest for filling of the vacant positions of judge in Chisinau or districts near Chisinau by transfer as a priority, afterwards announcing a contest for the INJ graduates, after which a general contest for candidates with tenure in law speciality being announced³⁰. After the change in the composition of the SCM in 2013, contests are announced for the last two categories of candidates at the same time, and contests by transfer are practically not announced for Chisinau municipality.

Art. 6² of Law no. 544 provides for the enrolment of candidates in the Register of competitors, regardless of whether the contest was announced or not. The procedure for enrolment of candidates in the register is regulated by the SCM Decision no. 87/4 as of 29 January 2013³¹. The Register of competitors in fact consists of four lists of candidates: (1) that of candidates for the position of judge, (2) that of judges requesting promotion to a court of the same or higher level, (3) that of judges requesting transfer to a lower level court, and (4) that of the judges who are candidates for the position of the president or the vice-president of the court. These lists contain the name and surname of the candidate, the position held, the level of the court s/he is applying for and the date of application for the enrolment to the register. Neither Law no. 544 nor the SCM Regulation provide for the principle of enrolling candidates in the register according to the score given by the Board for Selection. Initially, the lists were compiled in alphabetical order. **Currently, candidates are enrolled in the descending order of their score obtained based on the evaluation by the Board for Selection. This is an important improvement in keeping of the register, and a useful step due to the change in the appointment and promotion procedure by giving priority to choose to those having the highest score.**

Contests for appointment as a judge, promotion to a higher court, and appointment as the president or the vice-president of the court are organized separately for each position, and are not predictable for potential candidates. Organizing of a large number of contests requires considerable logistical efforts from the SCM and does not allow potential candidates to plan their career appropriately. On the other hand, not all vacancies or shortly being available vacancies become subjects of the contest simultaneously. This creates the impression that certain vacant positions are not deliberately made public.

²⁸ P. 16 of the SCM Regulation on the organization of the contest for the position of judge.

²⁹ For example, [the SCM decision no. 433/15](#) as of 15 May 2014, [the SCM decision no. 461/16](#) as of 27 May 2014 (subsequently amended by [the SCM decision no. 600/19](#)), [the SCM decision no. 462/16](#) as of 27 May 2014, [the SCM decision no. 498/17](#) as of 3 June 2014, and so on.

³⁰ For example, announcements for the INJ 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 the candidates with tenure in law speciality, available at: <http://csm.md/files/Hotaririle/2012/8/96-8.pdf>.

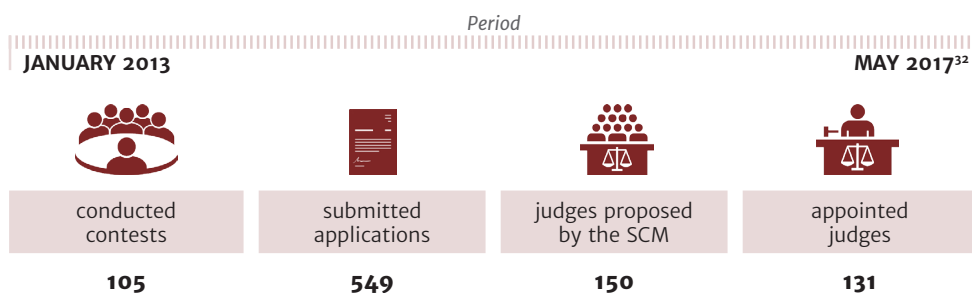
³¹ Procedure for the enrolment to the Register of competitors for filling of the vacant position of judge, the chairperson or the deputy chairperson of the court, approved by the SCM Decision no. 87/4 29 as of January, 2013, available at: http://csm.md/files/Acte_normative/Registru_procedura.pdf.

2. Practice in 2013 – May 2017

A. Selection of judges

I. Number of contests

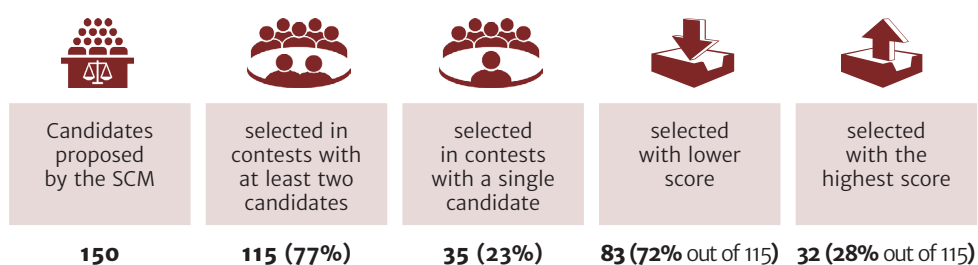
Table 7: Number of contests conducted within the reference period



For the purpose of this research, there were analysed 105 contests for the position of judge conducted within the period January 2013 – May 2017³³. A total of 549 candidates have submitted applications to participate in these contests³⁴. Subsequently, following the selection procedures, the SCM proposed to appoint 150 judges. According to official data, within the reference period, a total of 131 judges were appointed by the President of the Republic of Moldova, i.e. about 87% of the total number proposed by the SCM³⁵. On average, during the reference period, there were organized two contests per month for the selection of candidates for the position of judge (105 contests in 53 months).

II. Contests results and main findings

Table 8: Candidates proposed for the position of judge: number and score



Out of 150 candidates proposed for appointment by the SCM, 115 (77%) were selected based on contests where more than one candidate participated, and 35 (23%) were selected based on contests with a single candidate (without competition). Out of 115 judges selected following a contest involving more than one candidate, at least 83 (72%)

³² According to the data available on 31 May 2017.

³³ The total number does not include contests for filling the position by transfer.

³⁴ The number of candidates is calculated on the basis of the applications submitted by one candidate for a single contest.

³⁵ See Activity Reports of the SCM for the years 2013–2016, available at: <http://www.csm.md/activitatea/rapoarte-anuale.html>, as well as the information available in the Official Monitor of the Republic of Moldova.

candidates got a lower score given by the Board for Selection and only 32 (28%) are candidates with the highest score.

The main identified gaps are that the SCM disregarded the score given by the Board for Selection without sufficient justification (72% of 115 judges who participated in contests with more than one candidate), the high rate of contests in which only one candidate participated (23%) and lack of reasoning for qualifying some of the contests as failed. Below are several examples describing each of the listed gaps.

A. Disregard by the SCM of the score given by the Board for Selection and lack of reasoning

Although the selection procedure requires judges to go through a two-tier evaluation system (examinations held at the National Institute of Justice (NIJ) and evaluation by the Board for Selection), the SCM does not take into account the decisions and score given by the Board for Selection regarding the vast majority of candidates. Thus, out of 115 judges proposed by the SCM for appointment following the contests in which more than one candidate participated, 83 or 72% were candidates with a lower score given by the Board for Selection, without a reasoning provided by the SCM for disregarding the score. Some examples of the contest results for this period are shown in tables 9-14 below³⁶.

Table 9: The results of the contest as of 19 November 2013, for holding the position of judge at Botanica District Court (Chisinau)

 Date	 Candidates	 BSCJ score
28 January 14	Victoria HADIRCA	Withdrawn
	Angela FURDUI	90
	Tatiana VASILICA	86
	Svetlana VISCU	78
	Sergiu BULARU	77
	Alexandru NEGRU	76
	Eduard GALUSCEAC	75
	Natalia PATRASCU	75
	Violeta CHISILITA	75
	Violeta GIRLEANU	75
	Inga VESTIMAN	75
	Irina MAXIM	70
	Vasilisa MUNTEAN	70
	Ruslan BERZOI	64

By the SCM Decision no. 82/3 as of 28 January 2014³⁷, candidates Angela FURDUI and Eduard GALUSCEAC were proposed for the appointment to the position of judge. The other four candidates who participated in the contest had a higher score given by the Board for Selection than the candidate Eduard GALUSCEAC. Score disparity – **11 points**.

³⁶ The results of all analysed contests are available online on the official website of the LRCM www.crjm.org.

³⁷ The SCM decision no. 82/3 as of 28 January 2014, available at: <http://www.csm.md/files/Hotaririle/2014/03/82-3.pdf>.

Table 10: The results of the contest as of 11 August 2015, for holding the position of judge at Centru District Court (Chisinau)

 Date	 Candidates	 BSCJ score
13 October 2015	Lucia BAGRIN	93
	Silvia SLOBODZEAN	79
	Speranta CLIMA	75
	Grigore MANOLE	73
	Veniamin CHIHAI	73
	Olga IONASCU	73
	Marcel GANDRABUR	72.5
	Taisia POIANA	72.5
	Victoria RAILEAN	71
	Petru HARMANIUC	70
Oxana MIRONOV	35	

By the SCM Decision no. 740/29 as of 13 October 2015³⁸, candidate Grigore MANOLE was proposed for the appointment to the position of judge. The other three candidates who participated in the contest had a higher score given by the Board for Selection than the candidate Grigore MANOLE. Score disparity – **20 points**.

Table 11: The results of the contest as of 2 September 2015, for holding the position of judge at Rascani District Court (Chisinau)




 Date	 Candidates	 BSCJ score
20 October 2015	Lucia BAGRIN	93
	Cristina PANFIL	81
	Silvia SLOBODZEAN	79
	Speranța CLIMA	75
	Veniamin CHIHAI	73
	Olga IONASCU	73
	Marcel GANDRABUR	72.5
	Taisia POIANA	72.5
	Mihail TURCANU	71.5
	Alexei PANIS	71.5
	Alina PLAMADEALA	70
Petru HARMANIUC	70	

By the SCM Decision no. 771/30 as of 13 October 2015³⁹, candidate Veniamin CHIHAI was proposed for the appointment to the position of judge. The other four candidates who participated in the contest had a higher score given by the Board for Selection than the candidate Veniamin CHIHAI. Score disparity – **20 points**.

³⁸ The SCM decision no. 740/29 as of 13 October 2015, available at: <http://www.csm.md/files/Hotaririle/2015/29/740-29.pdf>.




³⁹ The SCM decision no. 771/30 as of 20 October 2015, available at: <http://www.csm.md/files/Hotaririle/2015/30/771-30.pdf>

Table 12: The results of the contest as of 8 December 2015, for holding the position of judge at Ialoveni Court

 Date	 Candidates	 BSCJ score
26 January 2016	Rodica BERDILO	82
	Taisia POIANA	81.5
	Cristina PANFIL	81
	Maria FRUNZE	78
	Victor OLARESCU	76
	Speranta CLIMA	75
	Mihail CHILARI	73.5
	Olga IONASCU	73
	Elena BOLOCAN	72.5
	Marcel GANDRABUR	72.5
	Veaceslav NICULA	72.5
	Mihail TURCANU	71.5
	Alexei PANIS	71.5
	Victoria RAILEAN	71
Svetlana BICU	70	
Ana COSTIUC	70	

By the SCM Decision no. 15/2 as of 26 January 2016⁴⁰, candidate Victor OLARESCU was proposed for the appointment to the position of judge. The other four candidates who participated in the contest had a higher score given by the Board for Selection than the candidate Victor OLARESCU. Score disparity – **6 points**.

Table 13: The results of the contest as of 24 January 2017, for holding the position of judge at Hancesti Court (Ialoveni)



 Date	 Candidates	 BSCJ score
14 March 2017	Igor BALMUS	93
	Ion COJOCARU	82
	Corneliu CRETU	79
	Sergiu BRIGAI	77
	Natalia DOROFTEI	76.5
	Natalia BRAILA	72

By the SCM Decision no. 201/10 as of 14 March 2017⁴¹, candidate Natalia DOROFTEI was proposed for the appointment to the position of judge. The other four candidates who participated in the contest had a higher score given by the Board for Selection than the candidate Natalia DOROFTEI. Score disparity – **16.5 points**.

⁴⁰ The SCM decision no. 15/2 as of 26 January 2016, available at: http://www.csm.md/file_s/Hotaririle/2016/02/15-2.pdf.

⁴¹ The SCM decision no. 201/10 as of 14 March 2017, available at: <http://www.csm.md/files/Hotaririle/2017/10/201-10.pdf>.

Table 14: The results of the contest as of 7 March 2017, for holding the position of judge at Chisinau Court

 Date	 Candidates	 BSCJ score
2 May 2017	Igor BALMUS	93
	Radion BORDIAN	92
	Andrei MATCO	91
	Livia MITROFAN	85
	Sergiu CIOBANU	withdrawn
	Igor MOZGOVOI	83
	Ion COJOCARI	82
	Petru HARMANIUC	81
	Vladislav SCHIBIN	77.5
	Natalia LUPASCU	77
	Sergiu BRIGAI	77
	Alina BRAGARU	73
	Mihai TURCANU	71.5
	Cristina TROIANOVSCI	70.5
	Petru PAUN	70
Ana COSTIUC	70	
Victor STRATU	70	

By the SCM Decision no. 292/15 as of 2 May 2017⁴², candidates Livia MITROFAN, Petru HARMANIUC and Alina BRAGARU were proposed for the appointment to the position of judge. The other eight candidates who participated in the contest had a higher score given by the Board for Selection than the candidate Alina BRAGARU, six candidates had a higher score than the candidate Petru HARMANIUC and three had a higher score than the candidate Livia MITROFAN. Score disparity – **20 points**.

The results suggest that each fourth judge (35 out of 150) was proposed for appointment on the basis of a contest in which only one candidate participated. Thus, 115 out of 150 judges proposed by the SCM were selected based on contests involving two and more candidates. Of these, seven out of ten were candidates with a lower score than their opposing candidates (83 out of 115). Only 3 out of 10 candidates proposed by the SCM were candidates with the highest score given by the Board for Selection (35 out of 115).

The SCM members argue that exams at the NIJ or evaluations by the Board for Selection are often not objective, or some evaluation criteria are vague or inaccurate⁴³. However, there are very few cases where the SCM provides a reasoning/justification in its decisions when it disregards the score given by the Board for Selection. At the same time, there are no SCM requests addressed to the Board for Selection to re-examine the candidates in cases it disagrees with the score given to a particular candidate. The scoring gap between the selected candidate and the highest score constitutes even up to 20 points difference.

The LRCM considers it necessary to clarify the powers of the SCM in the part related to the selection of candidates for the position of a judge. Going on with the practice of selecting

⁴² The SCM decision no. 292/15 as of 2 May 2017, available at: <http://www.csm.md/files/Hotaririle/2017/15/292-15.pdf>.

⁴³ See, for example, the speech by the SCM member Violeta COJOCARU at the round table „Enhancing the transparency of the SCM and its bodies“ organized by the Centre for the Analysis and Prevention of Corruption (CAPC) on 30 May 2017; the interview with Mr. Dumitru VISTERNICIAN, Interim Chairperson of the SCM in February 2014, available at: <http://www.moldovacurata.md/interview/interviu-visternicean-text>; interview with Mr. Victor MICU, the SCM Chairperson, October 2014, available at: <http://www.moldovacurata.md/interview/n-sistemul-judectoresc-exist-corie-dar-trebuie-demonstrat-fiecare-caz-n-parte>.

candidates with a lower score in the absence of clear reasoning diminishes the transparency, quality and predictability of the selection procedure. This is likely to discourage judges from obtaining the best results at the exam to meet the selection criteria. On the other hand, if such practice continues, it creates the perception of subjectivity in making decisions regarding the appointment of candidates for the position of a judge. This seriously affects trust in the SCM, both in the eyes of society and those who want to join the profession.

One of the reasons why it may be justified to disregard the score given to the candidate by the Board for Selection would be poor performance of the candidate at the stage of the interview before the members of the SCM. At the same time, the monitoring carried out by the LRCM during the years 2010–2017 confirms that the SCM does not organize interviews, as such, by addressing a set of specific questions and evaluating all the candidates on the basis of common evaluation criteria/evaluation sheets, but these are rather short interviews, usually three to five minutes, during which the SCM members are asking candidates very different questions, starting with the grade point average obtained by the candidate at the faculty or the NIJ, and sometimes whether they would choose a court other than the one they applied for. Furthermore, questions are not addressed in a similar way to all candidates and a systemic approach to the way of addressing them can not be observed.

Taking into consideration that until the stage of examination by the SCM the candidates have already gone through the interview stage before the Board for Selection, in the absence of clear criteria for evaluating the candidates' performance before the SCM, the interview stage is justified only in cases where the SCM is to choose between two or more candidates with equal score offered by the Board for Selection, or when new information about the candidate appeared since the moment of evaluation by the Board for Selection. Interviews should be specialised and standardized to exclude subjectivity and differential treatment of candidates.

Thus, the greatest deficiency of the selection system is related to the lack of the strong reasoning of the SCM decisions regarding the selection procedures of the candidates. Although, under art. 19 para. 2 of the Law on the SCM, the Council decides on the competitors by a reasoned decision, by the open vote of the majority of its members, in fact, the reasoning practically does not exist. The final solution in favour of a particular candidate is based on the conviction expressed by the SCM member through „exclusive vote“. Consequently, the overwhelming majority of the SCM decisions do not explain why top-ranked candidates are not appointed. Several examples are given in figure 1 and 2 below:

„Expression of the vote in favour of one or the other candidate is an exclusive right of the SCM member, but it must be kept in mind that the SCM member also has the obligation to express his or her vote for or against with the view to solve the issues examined at the SCM meeting ...”

„As a result of the analysis of the candidatures that applied to participate in the contest for the position of judge at Anenii Noi Court, and at the same time, evaluating the candidates taking into consideration the nature of the activities in the position of legal speciality, following the voting procedure, with the open vote of the majority of the members present at the SCM meeting, the Plenary of the Superior Council of Magistracy considers it necessary to propose”

Figure 1: Extract from the SCM decision no. 210/10 as of 14 March 2017, regarding the conduct of the contest for holding the vacant position of the judge at Hancesti (Ialoveni) Court and

Figure 2: Extract from the SCM Decision no. 26/2 as of 17 January 2017, regarding the conduct of the contest for holding the vacant position at Anenii Noi Court.

The first example reflects the wording present in the overwhelming majority of decisions motivating the selection of a particular candidate. In this case, the evaluation criteria underlying the choice are missing. In the second example, although it should be appreciated that members of the SCM enumerated the sources that helped them to form an opinion on a particular candidate, the application of the specific sources for distinguishing of the selected candidate is again missing. In both cases, the SCM has failed to provide sufficient motivation for the reasons behind the selection of a candidate with a lower score.

At the same time, motivation of the SCM decision by simple distribution of votes in a confidential way is not a sufficient and sound reasoning. The arguments of the majority for the selection of such a candidate should be reproduced in the decision.

Positive examples:

Lack of reasoning is not necessarily a constant practice of the SCM. The research also identified isolated examples in which the SCM motivated the choice of one or another candidate, both in case of choosing one with the highest score and in choosing one with a lower score. Several examples are given in figures 3–4 below:

„Thus, following the analysis of the candidates Niculcea Andrei, Bagrin Lucia, Budeci Vitalie, Bivol Tatiana, Tanase Oleg, Clima Speranta, Manoli Grigore, Turcanu Mihail and Mocanu Andrei, who applied for participation in the contest for the office of judge at Buiucani District Court, mun. Chisinau, the Superior Council of Magistracy, shall take into account the results obtained by the candidate Niculcea Andrei at the capacity examination held before the NIJ commission, being assessed with the grade 9.50; the highest score among all candidates, given by the Board for Selection and Career of Judges, namely 90.50 points, the nature of activity in legal speciality positions, as well as favourable letter of reference of the mentioned candidate for the position of judge“

„Although the Board for Selection and Career of Judges gave to the candidate for the position of judge, Balmus Igor, a higher score than to the candidate Berdilo Rodica, taking into account the results obtained following the graduation of the National Institute of Justice, the nature of activity in legal speciality positions, the Council concludes that the candidate for the position of judge, Berdilo Rodica, prevails over the candidate Balmus Igor. Moreover, the Council takes into account that Berdilo Rodica, in addition to her experience in the judiciary, for more than ten years, has also graduated the National Institute of Justice with the average grade 9.70“

Figure 3: Extract from the SCM decision no. 454/19 as of 23 June 2015 regarding the conduct of the contest for holding the vacant position of the judge at Buiucani District Court.

Figure 4: Extract from the SCM decision no. 232/11 as of 12 April 2016 regarding the conduct of the contest for holding the vacant position of the judge at Centru District Court.

In the first case, the SCM members took into account the highest score obtained by the candidate. In the second case, even if the SCM members did not choose the candidate with the highest score, instead they provided a reasonable and sufficient explanation for their considerations, appreciating the work experience of the candidate in the judiciary and the graduation mark at the NIJ. Such reasoned decisions should be the rule, not the exception.

The number of appointed candidates with the lower score and the above examples suggest an inconsistent approach of the SCM. In a very few cases, the SCM motivated its decision, but it did not put forward any argument regarding the disregard of the Board for Selection score, reasoning them by the „exclusive vote“ of its members. Such an approach denotes either the SCM

dissatisfaction with the quality of the evaluation and the score given by the Board for Selection, or the SCM interpretation of the Board for Selection evaluations as mere recommendations without any mandatory implication for the SCM. This inconsistent practice of reasoning is at least a dangerous one, or it fuels the suspicion that selection in the judiciary is based on the criteria other than those stipulated in the SCM Regulations. In the long run, candidates for the position of a judge may lose any interest in the studies/examination at NIJ, evaluation by the Board for Selection, which could become purely formal and irrelevant instruments. This can also lead to a decrease in the quality of candidates who want to join the profession of judge.

If the SCM is not satisfied with the quality of evaluations by the Board for Selection, we recommend reviewing the evaluation criteria and methodology. If the SCM considers that the Board for Selection evaluations do not have a decisive role for the selection of candidates, then it should come up with a reasoning to amend the legal framework. If the evaluations by the Board for Selection do not matter, then it is not clear why there should be such a body in place.

We reiterate the recommendations based on the analysis drafted in 2015, and namely that the SCM should take into consideration the score given by the Board for Selection and give priority to the appointment of candidates with the highest score. Only in cases when the candidates have a similar score or if new information appears, the SCM should reassess the candidates on the basis of a structured interview and motivate the decision taken. In any case, the SCM should exclude the practice of reasoning the decisions on selection simply by referring to the right and the obligation to vote or the „exclusive vote“ of the SCM members. The SCM members can not simply vote without having a sound argument for their vote. Otherwise, the SCM gives the impression that it is voting subjectively and arbitrarily.

B. A single candidate for the contest and procedure of contest organization

There are constantly several vacancies in the judiciary. This situation is not necessarily caused by the lack of willingness to join the profession, but by the way in which contests are organized. The SCM continues to organize contests for each vacancy that appears. Contests for the position of a judge are more attractive in some courts. For example, in Chisinau, there are on average 12.2 candidates per position. On the other hand, there is an acute lack of interest of candidates for vacancies outside Chisinau. On average, for these positions only 2.2 candidates per contest apply. ***Furthermore, 35 candidates (23% of the total number) were proposed for appointment by the SCM following a contest with a single candidate. Most of them competed for vacant positions outside Chisinau.***

The practice of organizing a contest for each vacant position is to the detriment of both the SCM and the candidates applying to be judges. For the SCM – because it involves considerable administrative resources without certainty of filling all the positions, as candidates will always be waiting for „more attractive“ positions, such as those in Chisinau. For candidates – because it generates uncertainty and fails to provide a predictability in career planning. Moreover, the unplanned organization of contests disfavours members of the SCM and/or its apparatus, as there may be suspicions that they may use their position to inform some of the candidates about „more attractive“ contests. Given such a low level of confidence in the judiciary, any situation that creates additional risks of corruption should be excluded.

The LRCM still sees as a solution the opportunity to modify the selection procedure for the SCM according to the model used in Romania and the one recently implemented for the selection

of prosecutors. According to this model, contests should be organized periodically, for example, twice a year for all vacant positions within the system. The candidate is required to express his/her choice for all vacancies announced for the contest. Candidates choose the positions open for the contest in the descending order of the score given to them by the Board for Selection.

This procedure will help ensure that all vacancies are filled, at the same time being based on the principle of meritocracy. In this case, the best candidates according to the score obtained will be able to choose the most „desirable“ positions, as are those in Chisinau. The mechanism will be advantageous for the system, including for the institutions involved in the selection procedure. For example, the Board for Selection could plan their procedures in advance, which will streamline the flow of materials examined and the workload of the Board members. Last but not least, this procedure will also be beneficial to candidates because it will bring more predictability into career planning and will give them enough time to prepare for contests.

Considering the contribution of the state insuring the costs of training of the students at the NIJ from the state budget, requiring candidates to occupy any vacant position in the system on the basis of the merits obtained, is justified.

Upon the implementation of the reorganization of the judicial map and deployment of all judges in the new offices, the problem of shortage of candidates in regions other than Chisinau could be improved, as the new courts would be organized in district centres. However, given that the optimization of the map implies a long process of at least 10 years, this solution is rather complementary. Until then, the SCM needs to approach this situation strategically and focus on the merit-based filling of all positions of the judge, regardless of their location.

C. „Failed“ contests

During the reference period, the judiciary system experienced a massive wave of resignations/dismissals from the position of the judge. These were caused mainly by the change in the retirement system⁴⁴, but also by the alleged involvement of several judges in money laundering schemes, which led to resignations or dismissals⁴⁵. Detailed information on the ratio between appointments and resignations/dismissals from the system within the period of 2013–2017 is presented in figure no. 5 below.

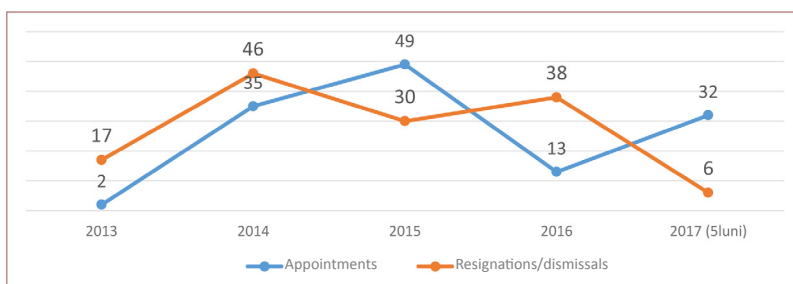


Figure 5: Dynamics of appointments and resignations/dismissals from the position of judge within the period 2013 – 2017 (5 months)

⁴⁴ LRCM, Report „Achievements and faults in reforming the justice sector of the Republic of Moldova: 2012 – July 2014“ (2015), p. 62, available at: <http://crjm.org/wp-content/uploads/2014/09/Studiu-reforma-justitiei-web.pdf>.

⁴⁵ See the journalistic investigation „Russian Laundromat: Moscow – Riga via Chisinau“, conducted by Rise Moldova, available at: <https://www.rise.md/articol/operatiunea-ruseasca-the-laundromat/>.

Although the number of those leaving the judiciary should generate greater need to recruit new judges, 9.5% of all contests (105) were qualified by the SCM as failed. Additional information is provided in table no. 15.

Table 15: Failed contests (judges)

No.	Contest date	Court	Candidate	BSCJ score	Dec. SCM	SCM Decision
1	5-Aug-14	Straseni	Mihaela GROSU	75	670/21 ⁴⁶	failed
			Grigore BOTNARU	76		
2	11-Nov-14	Chisinau Centre district	Vitalie-SILVIU MIDRIGAN	72	879/29 ⁴⁷	failed
			Olga BEJENARU	72.5		
3	24-Jan-17	Edinet (Donduseni)	Liliana MORARU	72	55/3 ⁴⁸	failed
4	24-Jan-17	Drochia (Glodeni)	Cristina BOTNARU	72	56/3 ⁴⁹	failed
5	28-Feb-17	Cahul (Cantemir)	Veaceslav DANDES	80	146/8 ⁵⁰	failed
6	7-Mar-17	Anenii Noi	Vitalie PISLARIUC	74.5	178/9 ⁵¹	failed
			Ana COSTIUC	70		
7	21-Mar-17	Orhei	Mihai TURCANU	71.5	219/11 ⁵²	failed
8	2-May-17	Orhei (Rezina)	Mihai TURCANU	71.5	295/15 ⁵³	failed
9	30-May-17	Orhei (Rezina)	Mihai TURCANU	71.5	354/17 ⁵⁴	failed

The SCM decisions fails to provide any explanations or arguments why the above contests were considered to have failed. The SCM decision is simply reasoned by the insufficient number of votes obtained by the candidates. In the absence of clear arguments, the practice of conducting such contests raises doubts about the impartiality of the SCM members. Supporting or not supporting a candidate without any arguments gives the impression of a least arbitrary approach based on personal and subjective preferences. This perception is reinforced in the context in which some candidates who participated in the contests declared failed, shortly afterwards are still voted and also proposed by the SCM to other positions. Thus, it is not clear what determines the members of the SCM to consider a candidate inappropriate for the position of a judge in a particular court and then shortly afterwards consider him fit for another court. Additional information on the situation described above is given in tables 17 – 19.

⁴⁶ The SCM decision no. 670/21 as of 5 August 2014, available at: <http://www.csm.md/files/Hotaririle/2014/21/670-21.pdf>.

⁴⁷ The SCM decision no. 879/29 as of 11 November 2014, available at: <http://www.csm.md/files/Hotaririle/2014/29/879-29.pdf>.

⁴⁸ The SCM decision no. 55/3 as of 24 January 2017, available at: <http://www.csm.md/files/Hotaririle/2017/03/55-3.pdf>.

⁴⁹ The SCM decision no. 56/3 as of 24 January 2017, available at: <http://www.csm.md/files/Hotaririle/2017/03/56-3.pdf>.

⁵⁰ The SCM decision no. 146/8 as of 28 February 2017, available at: <http://www.csm.md/files/Hotaririle/2017/08/146-8.pdf>.




⁵¹ The SCM decision no. 178/9 as of 7 March 2017, available at: <http://www.csm.md/files/Hotaririle/2017/09/174-9.pdf>.

⁵² The SCM decision no. 219/11 as of 21 March 2017, available at: <http://www.csm.md/files/Hotaririle/2017/11/219-11.pdf>.

⁵³ The SCM decision no. 295/11 as of 21 March 2017, available at: <http://www.csm.md/files/Hotaririle/2017/15/295-15.pdf>.




⁵⁴ The SCM decision no. 354/17 as of 30 May 2017, available at: <http://www.csm.md/files/Hotaririle/2017/17/354-17.pdf>.

Table 16: The results of the contest as of 5 August 2015, for holding the position of judge at Straseni Court

 Date	 Candidates	 BSCJ score
5-Aug-14	Grigore BOTNARU Mihaela GROSU	76 75




By the SCM decision no. 670/21 as of 5 August 2014⁵⁵, the contest for the position of judge at Straseni Court was considered failed. Within less than a month, the SCM held a new contest for the same position, with the same candidates.

Table 17: The results of the contest as of 9 September 2015, for holding the position of judge at Straseni Court

 Date	 Candidates	 BSCJ score
9-Sep-14	Grigore Botnaru Mihaela Grosu	76 75

By the SCM decision no. 708/23⁵⁶, the SCM proposed the appointment of Mr. Grigore BOTNARU to the position of judge at Straseni Court. The SCM reasoned its decision by the exclusive vote given to the candidates by the members of the SCM.

Table 18: The results of the contest as of 24 January 2017, for holding the position of judge at Drochia (Glodeni) Court

 Date	 Candidates	 BSCJ score
24-Jan-2017	Cristina BOTNARU	72

By the SCM decision no. 56/3 as of 24 January 2017⁵⁷, the contest for the position of judge at Drochia Court was considered failed. Within less than one month, the SCM, by decision no. 147/8 as of 28 February 2017⁵⁸, proposed the appointment of Mrs. Cristina BOTNARU as judge at Soroca Court. She participated in the contest with the same score and having no opposing candidates.

Table 19: The results of the contest as of 28 February, for holding the position of judge at Soroca Court

 Date	 Candidates	 BSCJ score
28-Feb-2017	Cristina BOTNARU	72

In both cases, it is not clear what determined the SCM members to reconsider their position. This inconsistent practice is dangerous, or it raises the suspicions that there are also other criteria in the judiciary system to select candidates for the position of judge. At

⁵⁵ The SCM decision no. 670/21 as of 5 August 2014, available at: <http://www.csm.md/files/Hotaririle/2014/23/708-23.pdf>.

⁵⁶ The SCM decision no. 708/23 as of 9 September 2014, available at: <http://www.csm.md/files/Hotaririle/2014/23/708-23.pdf>.

⁵⁷ The SCM decision no. 56/3 as of 24 January 2017, available at: <http://www.csm.md/files/Hotaririle/2017/03/56-3.pdf>.

⁵⁸ The SCM decision no. 147/8 as of 28 January 2017, available at: <http://www.csm.md/files/Hotaririle/2017/08/147-8.pdf>.

the presentation of this draft document and in the discussion with the SCM in July 2017, the SCM members explained verbally that, usually in the absence of the quorum or the necessary number of competitors in a contest, the contest is considered failed. However, it is not clear why in such cases the SCM decision is not postponed until the meeting meets sufficient quorum, or why at least reasons are provided to explain the reasons for the failed contest .

III. Conclusions

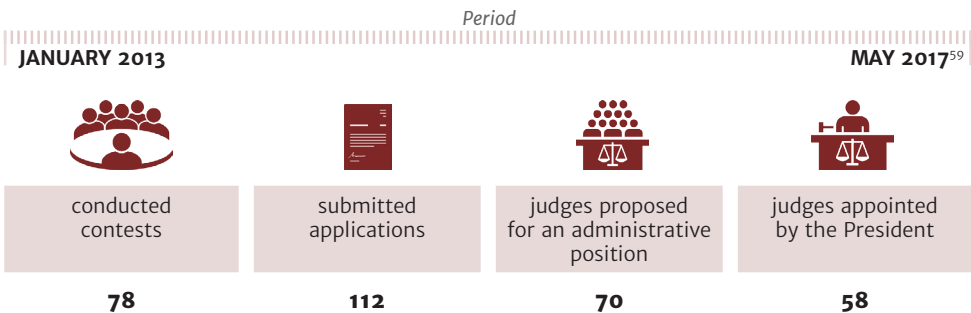
The analysis of the practice within the period of January 2013 – May 2017 shows that the selection mechanism still needs significant improvements. In spite of all the efforts to improve the system in 2013, the element of duplicating responsibilities by the institutions involved in the selection process, namely of the SCM and the Board for Selection, still persists.

Nowadays the SCM is still failing to provide reasoning in its decisions regarding the career of judges, especially when it disregards the score given by the Board for Selection. The practice of insufficient reasoning of the SCM decisions involves major risks to the judiciary and society. Firstly, a clear message is sent to candidates that examinations at the NIJ (performance evaluation for promotions) do not really matter, and the individual beliefs of the SCM members matter more than transparent and merit-based appointments. Finally, insufficient reasoning of some decisions fuels suspicions that selection in the judiciary is based on the criteria other than those stipulated in the SCM Regulations. This negatively affects the trust in the judiciary, discourages judges from coming to the profession and, in the long run, can affect the sustainability of the system before new admissions.

B. Promotion to administrative positions at the district courts

I. Number of contests

Table 20: Number of contests conducted during the reference period (promotion to administrative positions – district courts)



For the purpose of this research, 78 contests for holding the administrative position (chairperson and deputy chairperson) conducted within the period January 2013 – May 2017. A total of 112 judges have submitted applications to participate in these contests⁶⁰. Subsequently, following the selection procedures, the SCM proposed to appoint 70 judges to the administrative positions.

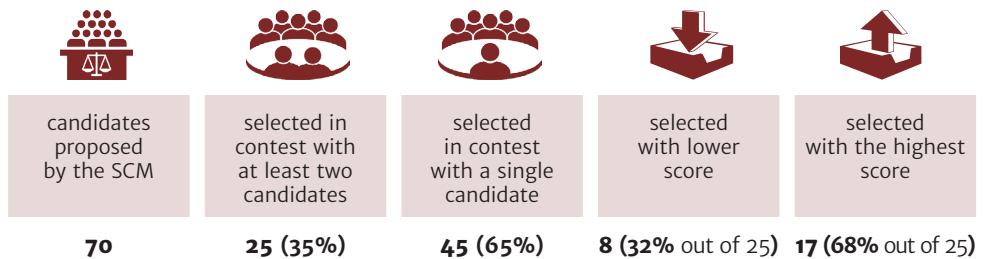
⁵⁹ According to the data available on 31 May 2017.

⁶⁰ The number of candidates is calculated on the basis of the applications submitted by one candidate for a single contest.

According to official data, during the reference period, a total of 58 judges were appointed to administrative positions by the President of the Republic of Moldova, i.e. about 83% of those proposed by the SCM. On average, during the reference period, at least one contest per month was organized for promotion to administrative positions at the courts (78 contests in 53 months).

II. Contests results and main findings

Table 21: Research results (promotion to administrative positions – courts)







During this period, the SCM proposed 70 judges to be appointed to an administrative position at the district level courts. Out of 70 candidates 25 (35%) were selected based on contests where more than one candidate participated, and 45 (65%) were selected based on contests with a single candidate (without competition). Out of 25 judges selected following a contest involving more than one candidate, at least 8 (32%) are candidates with a lower score given by the Board for Selection and 17 (68%) are candidates with the highest score.

The main shortcomings identified in the selection of candidates for the position of judge still persist in the case of promotion to administrative positions at the district level courts.

A. Disregard by the SCM of the score given by the Board for Selection and lack of reasoning

Likewise in the case of candidates for the position of judges, when deciding on the nomination of a judge, the score awarded by the Board for Selection does not seem to be decisive for the members of the SCM. In at least 32% of cases, candidates with a lower score were subsequently proposed for appointment by the SCM and appointed by the President. Some conclusive examples for this period can be found in tables 22–26 below⁶¹.

Table 22: The results of the contest as of 21 January 2014, for holding the position of the deputy chairperson at Botanica District Court

 Date	 Candidates	 BPEJ appraisal	 BSCJ score
21-Jan-14	Svetlana GARSTEA-BRIA Radu TURCANU	Good Very good	88 74

By the SCM Decision no. 47/2⁶², the SCM proposed the appointment of Mr. Radu TURCANU as deputy chairperson. Mr. Turcanu had a lower score in the contest than his opposing candidate. Score disparity – **14 points**.

⁶¹ The results of all analysed contests are available online on the official website of the LRCM (www.crjm.org).





⁶² The SCM decision no. 47/2 as of 21 January 2014, available at: <http://www.csm.md/files/Hotaririle/2014/02/47-2.pdf>.

Table 23: The results of the contest as of 13 January 2015, for holding the position of the deputy chairperson at Drochia Court

 Date	 Candidates	 BPEJ appraisal	 BSCJ score
13-Jan-15	Nelia PODLISNIC	good	80
	Ion RUSU	good	68





By the SCM Decision no. 1/1⁶³, the SCM proposed the appointment of Mr. Ion RUSU as deputy chairperson. Mr. Rusu had a lower score in the contest than his opposing candidate. Score disparity – **12 points**.

Table 24: The results of the contest as of 10 March 2015, for holding the position of the chairperson at Soldanesti Court

 Date	 Candidates	 BPEJ appraisal	 BSCJ score
10-Mar-15	Alexandru MANDRABURCA	good	85
	Elvira LAVCIUC	Very good	75





By the SCM Decision no. 175/8⁶⁴, the SCM proposed the appointment of Mrs. Elvira LAVCIUC as chairperson. Mrs. Lavciuc had a lower score in the contest than his opposing candidate. Score disparity – **10 points**.

Table 25: The results of the contest as of 26 January 2016, for holding the position of the chairperson at Causeni Court

 Date	 Candidates	 BPEJ appraisal	 BSCJ score
26-Jan-16	Veronica NICHITENCO	Very good	79
	Ion SANDU	good	75

By the SCM Decision no. 9/2⁶⁵, the SCM proposed the appointment of Mr. Ion SANDU as chairperson. Mr. Sandu had a lower score in the contest than his opposing candidate. Score disparity – **4 points**.

Table 26: The results of the contest as of 9 February, for holding the position of the chairperson at Straseni Court

 Date	 Candidates	 BPEJ appraisal	 BSCJ score
09-Feb-16	Dumitru MIRZENCO	Very good	91
	Sergiu OSOIANU	Very good	72

By the SCM Decision no. 47/3⁶⁶, the SCM proposed the appointment of Mr. Sergiu OSOIANU as chairperson. Mr. Osoianu had a lower score in the contest than his opposing candidate.

⁶³ The SCM decision no. 1/1 as of 13 January 2016, available at: <http://www.csm.md/files/Hotaririle/2015/01/1-1.pdf>.

⁶⁴ The SCM decision no. 175/8 as of 10 March 2015, available at: <http://www.csm.md/files/Hotaririle/2015/08/175-8.pdf>.

⁶⁵ The SCM decision no. 9/2 as of 26 January 2016, available at: <http://www.csm.md/files/Hotaririle/2016/02/9-2.pdf>.

⁶⁶ The SCM decision no. 47/3 as of 9 February 2016, available at: <http://www.csm.md/files/Hotaririle/2016/03/47-3.pdf>.

Score disparity – **19 points**. The scoring gap between the selected candidate and the highest score obtained within the framework of evaluation constitutes even up to 19 points.

B. A single candidate for the contest and procedure of contest organization

Similar to the contests for the appointment of a judge, contests for holding the administrative positions at the courts are not planned; they are announced for each vacancy that appears. However, if in the case of the candidates for the position of judge the major problem is the disregard by the SCM of the score given to the candidates by the Board for Selection, in the case of judges who aspire to an administrative position at the courts, the vast majority of the candidates participate in the contest having no opposing candidates. **Thus, 45 judges (65% of the total number of those promoted) did not have opposing candidates in the contest.**

Although the administrative position at the court presupposes that a judge exercises managerial duties, it also has certain advantages. The status of the chairperson or deputy chairperson involves extra payments to the salary and a reduced percentage of cases for examination. These advantages, however, do not seem to be sufficient to convince judges to participate in such contests. Last but not least, candidates may also be discouraged from taking part in the contest since the results of the performance evaluation and the score given by the Board for Selection are not sufficient to ensure the access to the position of the chairperson or deputy chairperson. In any case, the SCM should really study this issue to identify the causes that lead to a low interest of judges towards administrative positions.

C. „Failed” contests

As well as in case of contests for the position of a judge, in the case of candidates for administrative positions at the courts, about 11% of all contests (78) were qualified by the SCM as failed.

Additional information is provided in table no. 27 below.

Table 27: Failed contests (promotion to administrative positions – courts)

Contest date	Court	Candidate	BPEJ appraisal	BSCJ score	Dec. SCM
25-Nov-14	Straseni	Sergiu OSOIANU	very good	72	923/30 ⁶⁷
		Dumitru MIRZENCO	very good	91	
06-Jun-15	Ialoveni	Iurie SCIASTLIVII	good	85	387/17 ⁶⁸
		Tamara BOUBATRAN	good	55	
30-Jun-15	Soroca	Marcel SOFICIUC	very good	92	499/20 ⁶⁹
		Ghenadie MITU	good	70	
20-Oct-15	Causeni	Veronica NICHITENCO	very good	79	767/30 ⁷⁰

⁶⁷ The SCM decision no. 923/30 as of 25 November 2014, available at: <http://www.csm.md/files/Hotaririle/2014/30/923-30.pdf>

⁶⁸ The SCM decision no. 387/17 as of 6 June 2015, available at: <http://www.csm.md/files/Hotaririle/2015/17/387-17.pdf>.

⁶⁹ The SCM decision no. 499/20 as of 30 June 2015, available at: <http://www.csm.md/files/Hotaririle/2015/20/499-20.pdf>.

⁷⁰ The SCM decision no. 767/30 as of 20 October 2015, available at: <http://www.csm.md/files/Hotaririle/2015/30/767-30.pdf>.

Contest date	Court	Candidate	BPEJ appraisal	BSCJ score	Dec. SCM
24-Nov-15	Hancesti	Tamara MEREUTA	good	76	884/36 ⁷¹
29-Nov-16	Chisinau	Radu TURCANU	very good	101	855/33 ⁷²
29-Nov-16	Anenii Noi	Igor BRAI	excellent	89	811/33 ⁷³
		Arina IALANJI	very good	79	
29-Nov-16	Straseni	Valentina CRIUCICOVA	excellent	97	825/33 ⁷⁴
		Diana CRISTIAN	very good	74	
24-Jan-17	Comrat	Serghei PILIPENCO	good	62	50/3 ⁷⁵
24-Jan-17	Straseni	Valentina CRIUCICOVA	very good	97	51/3 ⁷⁶
21-Mar-17	Straseni	Valentina CRIUCICOVA	very good	97	218/11 ⁷⁷

It is unclear what determines the SCM members to consider that a particular candidate is not suitable for an administrative position even if he is assessed by the qualifier „excellent“ by the Board for Performance Evaluation and obtained high score before the BSCJ. Examples are given in table 28 below.

Table 28: Candidates who „failed“ the promotion to an administrative position (courts)

Contest date	Court	Candidate	BPEJ appraisal	BSCJ score	Dec. SCM
29-Nov-16	Straseni	Valentina CRIUCICOVA	excellent	97	825/33 ⁷⁸
24-Jan-17	Comrat	Serghei PILIPENCO	good	62	50/3 ⁷⁹
24-Jan-17	Straseni	Valentina CRIUCICOVA	very good	97	51/3 ⁸⁰
21-Mar-17	Straseni	Valentina CRIUCICOVA	very good	97	218/11 ⁸¹

III. Conclusions

The analysis of the practice within the period of January 2013 – May 2017 shows that the selection mechanism for administrative positions has the same characteristics as those identified in the procedure of selection of candidates for the position of judge. The element of duplicating responsibilities by the institutions involved in the selection process persists.

⁷¹ The SCM decision no. 884/36 as of 24 November 2015, available at: <http://www.csm.md/files/Hotaririle/2015/36/884-36.pdf>.

⁷² The SCM decision no. 805/33 as of 29 November 2016, available at: <http://www.csm.md/files/Hotaririle/2016/33/805-33.pdf>.

⁷³ The SCM decision no. 811/33 as of 29 November 2016, available at: <http://www.csm.md/files/Hotaririle/2016/33/811-33.pdf>.

⁷⁴ The SCM decision no. 835/33 as of 29 November 2016, available at: <http://www.csm.md/files/Hotaririle/2016/33/825-33.pdf>.

⁷⁵ The SCM decision no. 50/3 as of 24 January 2017, available at: <http://www.csm.md/files/Hotaririle/2017/03/50-3.pdf>.

⁷⁶ The SCM decision no. 51/3 as of 24 January 2017, available at: <http://www.csm.md/files/Hotaririle/2017/03/51-3.pdf>.

⁷⁷ The SCM decision no. 218/11 as of 24 March 2017, available at: <http://www.csm.md/files/Hotaririle/2017/11/218-11.pdf>.

⁷⁸ The SCM decision no. 825/33 as of 29 November 2016, available at: <http://www.csm.md/files/Hotaririle/2016/33/825-33.pdf>.

⁷⁹ The SCM decision no. 50/3 as of 24 January 2017, available at: <http://www.csm.md/files/Hotaririle/2017/03/50-3.pdf>.

⁸⁰ The SCM decision no. 51/3 as of 24 January 2017, available at: <http://www.csm.md/files/Hotaririle/2017/03/51-3.pdf>.

⁸¹ The SCM decision no. 218/11 as of 21 March 2017, available at: <http://www.csm.md/files/Hotaririle/2017/11/218-11.pdf>.

32% of the judges proposed for administrative positions at the courts being appointed from among the candidates with a lower score. However, the major problem for judges aspiring to an administrative position is the absence of opposing candidates in most of the contests. The advantages of administrative positions at the district court level seem to be unable to convince judges to participate in such contests. Thus, 45 judges (65% of the total number of those promoted) are judges who did not have opposing candidates in the contest. Last but not least, candidates may also be discouraged from taking part in the contest since the results of the performance evaluation and the score given by the Board for Selection are not sufficient to ensure the access to the position of the chairperson or deputy chairperson. In any case, the SCM should really study this issue to identify the causes of a low interest of judges towards administrative positions.

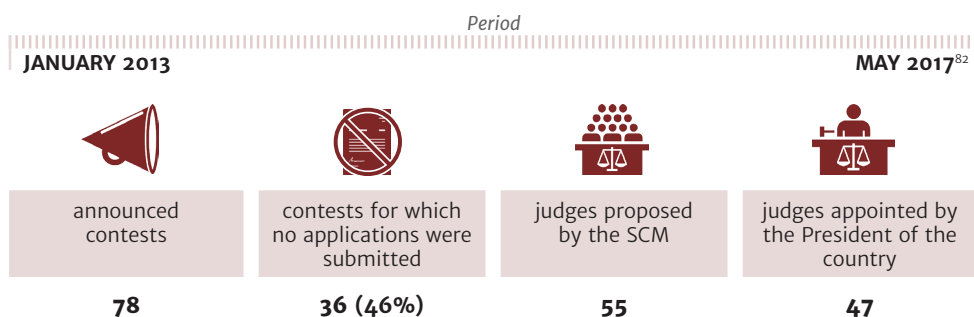
As well as in case of contests for the position of a judge the lack of sufficient reasoning of the SCM decisions involves major risks to the judiciary and society. Thus, a clear message is sent to candidates that performance evaluation does not really matter, and the individual beliefs of the SCM members matter more. Finally, insufficient reasoning of some decisions fuels suspicions that promotion to the administrative positions is based on the criteria other than those stipulated in the SCM Regulations.

C. Promotion of judges to the courts of appeal and the SCJ

a) promotion to the courts of appeal:

Number of contests

Table 29: Contests conducted during the reference period for the promotion to the courts of appeal



Within the period of 1 January 2013 and 31 May 2017 for the appointment of judges at the courts of appeal 78 contests were organized and two more contests were announced but were not yet organized by the time the analysis was drafted. On average, during the reference period, at least one contest per month was organized for promotion of judges to the courts of appeal (78 contests in 53 months). Out of 78 contests announced by the SCM, for 36 contests (representing 46% of all announced contests) either no applications were submitted or the candidates withdrew their applications before the contests was held. Another 14 contests

⁸² It reflects the situation on 31 May 2017.

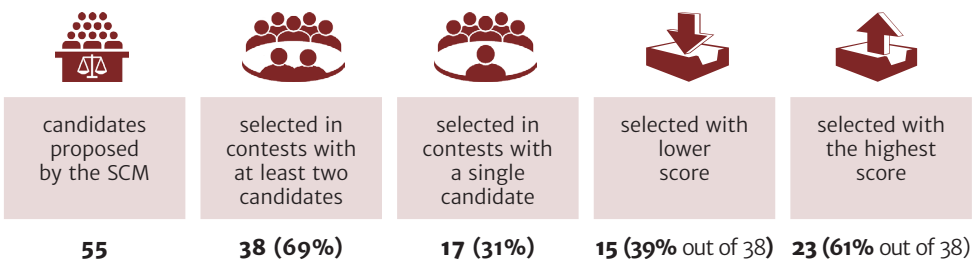
(18% of all contests) were merged, and in 6 other contests (8% of all contests) the candidates did not get the required number of votes and the contest was considered failed with the subsequent announcement of another contest.

The large number of contests, which did not take place either because no applications were submitted or the candidates withdrew their applications before the contest is also an issue of concern. This happened in 36 contests out of a total of 78, i.e. in 46% of cases. Over 4.5 years, no strategy of the SCM to combat this phenomenon has been observed. Contests for the same court of appeal are announced practically every month so that they can then be merged and later more candidates to be selected.⁸³

The large number of contests can also be explained by the fact that the SCM does not make full use of the already announced contests. For example, at the contest held on 28 October 2014, from seven candidates who submitted documents for promotion to Chisinau Court of Appeal, the SCM has chosen only two candidates⁸⁴ and on the same day announced a new contest for the selection of three judges⁸⁵, although it would have been able to choose from the candidates participating in the contest. The SCM has not made public the reasons why it did not choose the candidates who participated in the contest.

Number of candidates

Table 30: Promotion of judges to the courts of appeal – number of candidates and score



Following the contests for the promotion of judges to the courts of appeal, the SCM proposed 55 candidates. Of these, 17 (31%) were selected based on contests where only one candidate participated (without competition) and 38 (69%) were selected based on contests in which more than one candidate participated. Out of 38 candidates selected based on contests in which more than one candidate participated, 23 (61%) had a higher score than the other participants in the contest, and 15 (39%) were candidates with a lower score than their opposing candidates.

One of the causes of the large number of contests with a single candidate is the frequent announcement of contests, almost every month. Selection of candidates within contests with a single candidate is not a positive practice and in fact is not a real contest. We consider that it is necessary to have several candidates for the promotion to the courts of appeal, with a view to have bigger choice and select more qualified judges at the courts of appeal.

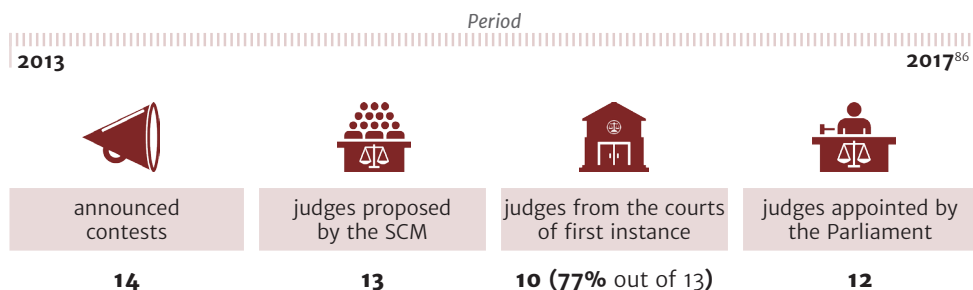
⁸³ For example, the SCM merged contests to fill the positions of a judge at Chisinau Court of Appeal announced on 30 June 2015, 7 July 2015 and 2 September 2015: <http://csm.md/files/Hotaririle/2015/30/769-30.pdf>.

⁸⁴ SCM, Decision no. 843/28 as of 28 October 2014, <http://csm.md/files/Hotaririle/2014/28/843-28.pdf>.

⁸⁵ <http://csm.md/files/Hotaririle/2014/28/876-28.pdf>.

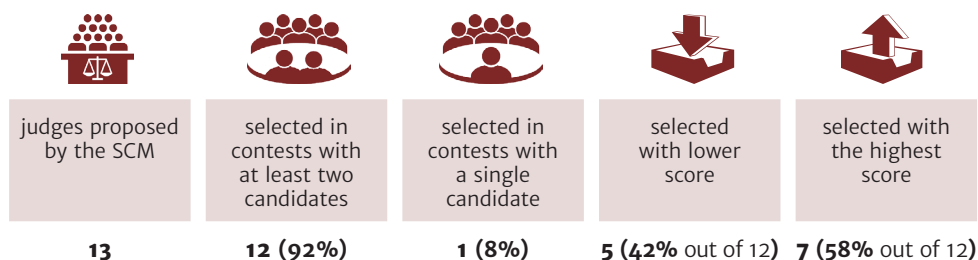
b) promotion to the SCJ

Table 31: Contests conducted during the reference period for the promotion to the SCJ



Between 1 January 2013 and 6 June 2017 in order to fill the positions of judge at the SCJ, 14 contests were organized, three of which failed (21%), as the candidates did not get the required number of votes from the SCM. Out of 13 judges proposed by the SCM for appointment, one judge was selected on the basis of a contest with a single candidate (8%). Out of 12 judges selected following the contest where more than one candidate participated, seven (58%) had a higher score than their opposing candidates and five (42%) – a lower score. Out of 13 judges proposed by the SCM to be promoted to the SCJ, 10 judges were from courts (77%).

Table 32: Promotion to the SCJ – number of candidates and score



Selection of only one candidate following the contests in which a single candidate participated is a positive sign that indicates the interest of judges to work at the highest court in the country. This is a positive practice compared with data on judges and the courts of appeal. At the same time, even a small percentage of contests with a single candidate should raise concerns, given the importance and prestige of the position.

The SCJ is the highest court in the Republic of Moldova, with the powers of verifying the correct application of the law by the lower courts and for ensuring the unification of the judicial practice. For this reason, judges of the SCJ should have the highest qualifications, practice and standards of integrity, and the promotions to the SCJ should be done with great

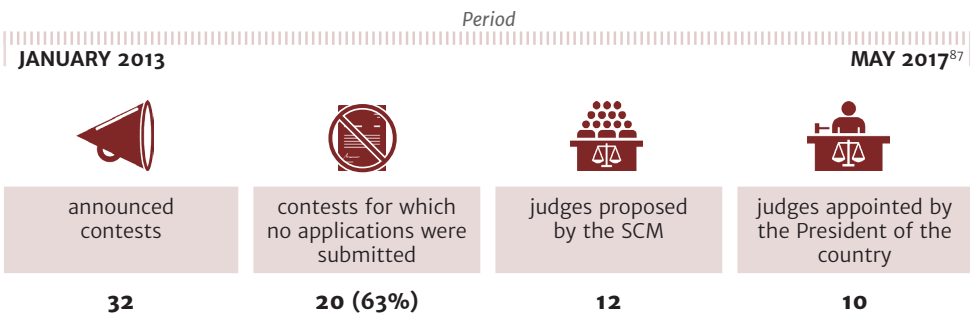
⁸⁶ It reflects the situation on 6 June 2017.

care and diligence. The high rate of promotion of judges with a lower score (42%) raises concerns, including due to the lack of reasons indicated by the SCM in its decisions. The high (77%) rate of appointment of judges at the SCJ from among the judges of the first instance, i.e. having no work experience at the court of appeal is also alarming. We do not deny in any way the skills and knowledge of judges of the first instance district courts, but we believe that the SCM should promote to the SCJ in a higher or at least equal proportion also judges from the courts of appeal who have developed for a long time the skills regarding the unification of judicial practice.

D. Promotion to administrative positions at the courts of appeal

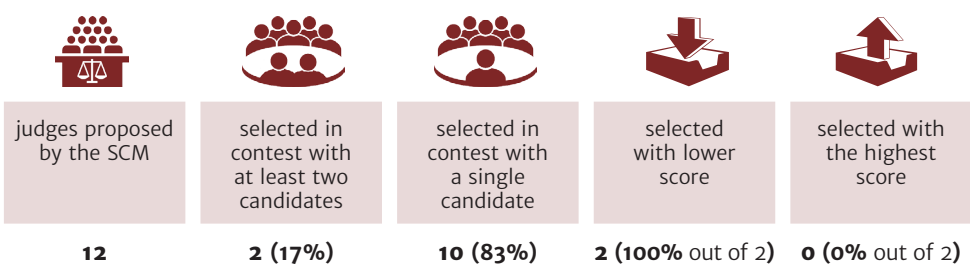
1. appointment to administrative positions at the courts of appeal

Table 33: Contests conducted during the reference period at the courts of appeal⁸⁷



During the reference period, 32 contests for promotion to the positions of the chairperson or deputy chairperson of the courts of appeal were organized. Out of these, for 20 announced contests (63%) either no applications were submitted or the candidates withdrew from contests. Out of the remaining 12 contests, 10 judges (83%) were selected following contests where only one candidate participated (without competition) and in the other two contests, with more than one candidate taking part, the SCM has chosen the candidate with a lower score given by the Board for Selection (100%). The corresponding results are given in the table below.

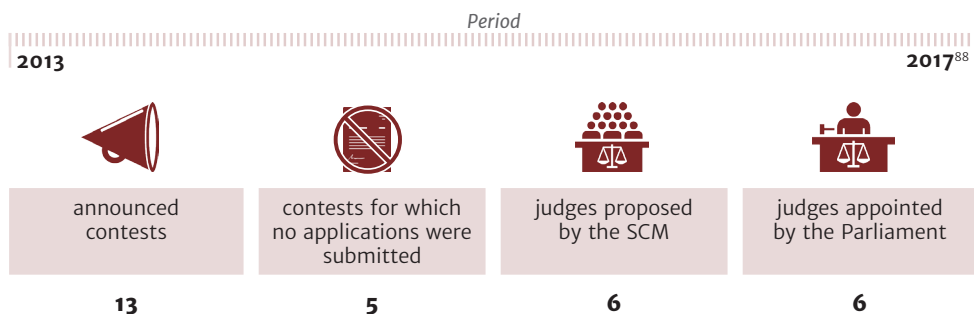
Table 34: Promotion to the courts of appeal – number of candidates and score



⁸⁷ It reflects the situation on 31 May 2017.

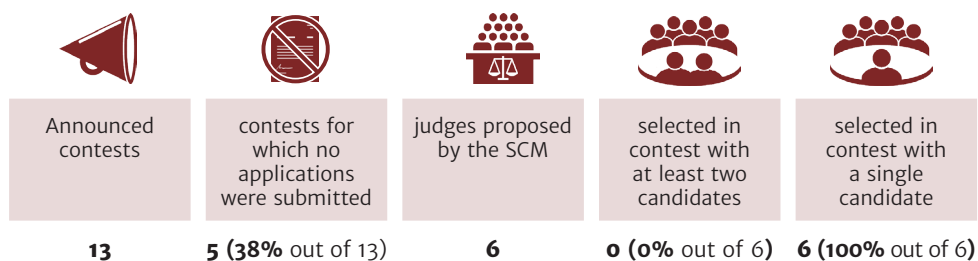
II. appointment to leadership positions at the SCJ

Table 35: Contests conducted during the reference period at the SCJ and the number of candidates



13 contests were organized in order to promote for the positions of the chairperson and deputy chairperson of the SCJ, as well as of the Criminal and Civil Boards within the period of 13 January and 20 May 2017. Of these, no applications were submitted in five contests (38%), and in two contests (15%) the candidates did not get the necessary number of votes of the SCM. In the rest – six the contests, only one candidate participated, which makes up 46% of all organized contests or 100% of the contests that resulted in the promotion to leadership positions at the SCJ. The corresponding results are given in the table below.

Table 36: Promotion to leadership positions at the SCJ within the period of 1 January 2013 and 31 May 2017



The absence of candidates for contests regarding the appointment to leadership positions at the highest court of the country should raise concerns. The absence of competition neither stimulate the rise of quality, nor motivate the judiciary staff.

III. Contests results and main findings

In this section, we will present the SCM decisions on the promotion of judges to a higher court (the courts of appeal and the SCJ) and the appointment to the leadership positions at the courts of appeal and the SCJ in terms of taking into account the score offered by the Board for Selection and reasoning of the appointments.

⁸⁸ It reflects the situation on 31 May 2017.




A. Disregard by the SCM of the score given by the Board for Selection when promoting to a higher court and lack of reasoning

Results of contests for promotion to the courts of appeal

Following the contests for the promotion of judges to the courts of appeal, the SCM proposed 55 candidates. Of these, 17 (31%) were selected based on contests where only one candidate participated (without competition) and 38 (69%) were selected based on contests in which more than one candidate participated. Out of 38 candidates selected based on contests in which more than one candidate participated, 23 (61%) had a higher score than the other participants in the contest, and 15 (39%) were candidates with a lower score than their opposing candidates.

Out of all 42 contests that resulted in promotions to the courts of appeal⁸⁹, just in one contest all candidates proposed by the SCM had a higher score given by the Board for Selection than their opposing candidates. This contest is a good example to be followed by the SCM in the future. Given that it is the only example in which candidates with a higher score were selected for promotion to the courts of appeal, this is not a stable practice of the SCM and we can not conclude that a higher score given by the Board for Selection is the main criterion taken into account by the SCM when promoting someone to a higher court.

Table 37: Positive example – contest for promotion to Chisinau Court of Appeal on 20 October 2015⁹⁰

 Candidates	 BSCJ score	 Results
Stefan NITA	80	accepted
Grigore DASCHEVICI	75	accepted
Liubovi BRINZA	74	accepted
Valeriu EFROS	70	accepted
Ludmila URSU	63	failed
Olga COJOCARU	57	failed
Vitalie COTOROBAI	48	failed




In all other cases where there were several candidates, the SCM has chosen candidates with a lower score as well.

At the contest held on 27 December 2016 to fill six positions of judges at Chisinau Court of Appeal, the first three selected candidates had the highest score given by the Board for Selection. Two other selected candidates had 72 points, scoring equal to two other candidates that were not selected, and the SCM did not explain why it had chosen namely those two candidates. The last candidate had the score of 66 points, i.e. **by 6 points lower** than those two candidates with 72 points who were not selected by the SCM.

⁸⁹ There were announced 78 contests, but 36 of them did not take place because there were either no candidates or they withdrew their applications before the SCM members voted.




⁹⁰ SCM, Decision no. 769/30 as of 20 October 2015, <http://csm.md/files/Hotaririle/2015/30/769-30.pdf>.

Table 38: Contest at Chisinau Court of Appeal as of 27 December 2016⁹¹

 Candidates	 BSCJ score	 Results
Vladislav CLIMA	88	accepted
Aliona DANILOV	85	accepted
Igor MINASCURTA	75	accepted
Ghenadie PAVLIUC	72	failed
Alexandru SPOIALA	72	failed
Ludmila URSU	72	accepted
Alexandru GAFTON	72	accepted
Ion BULHAC	66	accepted
Nicolae COSTIN	65	failed
Vitalie COTOROBAI	48	failed

At the contest organized on 11 April 2017 for filling of four positions of judges at Chisinau Court of Appeal, the first two selected candidates had the highest score. The next two candidates had a **lower score than their opposing candidates - by 6 and 10 points, respectively**. The SCM did not explain in its decision which criteria served as the basis for choosing candidates with a lower score.

Table 39: Contest at Chisinau Court of Appeal as of 11 April 2017⁹²

 Candidates	 BSCJ score	 Results
Liuba PRUTEANU	83	accepted
Ion TURCAN	81	accepted
Nicolae COSTIN	75	failed
Virgiliu BUHNACI	75	failed
Silvia GIRBU	69	accepted
Iurie OBADA	67	failed
Victoria SIRBU	65	accepted
Viorica URSU	63	failed
Lilia LUPASCO	62	failed
Diana CRISTIAN	51	failed
Tudor ANDRONIC	38	failed

Results of contests for the promotion to the SCJ




Out of 13 judges proposed by the SCM for promotion to the SCJ, one judge was selected on the basis of a contest with a single candidate (8%). Out of 12 judges selected

⁹¹ SCM, Decision no. 929/38 as of 27 December 2016, <http://csm.md/files/Hotaririle/2016/38/929-38.pdf>.

⁹² SCM, Decision no. 257/13 as of 11 April 2017, <http://csm.md/files/Hotaririle/2017/13/257-13.pdf>.

following the contest where more than one candidate participated, seven had a higher score than their opposing candidates (58%) and five – a lower score (42%). For the promotion to the SCJ, out of 10 contests involving more than one competitor, in four contests the SCM proposed all candidates with a higher score. This is a better result as compared to the practice of promoting to the courts of appeal.




Table 40: Positive example – contest for the promotion to the SCJ as of 3 July 2013⁹³

 Candidates	 BSCJ score	 Results
Ion DRUTA	82	accepted
Liliana CATAN	77	accepted
Aliona DANILOV	75.5	failed
Viorica PUICA	74.5	failed

However, this is not a trustworthy result, as five out of 12 candidates who have been proposed following the contest involving more than one candidate (42%) had a lower score than the other participants in the contest.

At the contest for the promotion to the SCJ held on 28 January 2014, the SCM voted for a candidate who, after the score given by the Board for Selection, ranks fifth of all six candidates. The SCM disregarded the candidate with the highest score, Mrs. Dina ROTARCIUC, and has chosen Mr. Sternioala, **with the score disparity of 35 points**. The candidates also had a big difference in experience as a judge, making up 17 years. In addition, Mrs. Rotarciuc worked at Chisinau Court of Appeal and was a member of the SCM. In the text of its decision, the SCM indicated that it also took into account professional training and activity within the judiciary, although these criteria appear to favour the candidate for whom the SCM has not voted.

Table 41: Contest for the promotion to the SCJ as of 28 January 2014⁹⁴

 Candidates	 BSCJ score	 Results
Dina ROTARCIUC	94	failed
Dumitru MARDARI	91	accepted
Aliona DANILOV	75.5	failed
Viorica PUICA	74.5	failed
Oleg STERNIOALA	59	accepted
Ion GUZUN	69	failed




Following the contest held on 26 January 2016 regarding the promotion to the SCJ, the SCM has chosen the candidate who had a score lower by 18 and 14 points, respectively, than the first two opposing candidates. In addition, Mrs. Mariana PITIC (judge at Centru District Court, Chisinau municipality) had the smallest experience in the position of judge of all the

⁹³ SCM, Decision no. 522/21 as of 3 July 2013, <http://csm.md/files/Hotaririle/2013/21/522-21.pdf>.

⁹⁴ SCM, Decision no. 81/3 as of 28 January 2014, <http://csm.md/files/Hotaririle/2014/03/81-3.pdf>.

candidates, the last three years of work experience being at the NIJ. Mrs. Tatiana RĂDUCANU, a member of the SCM, had a dissenting opinion⁹⁵, stating that „the decision taken by the Superior Council of Magistracy at the Plenary meeting regarding the proposal of Mrs. Mariana Pitic as a judge at the Supreme Court of Justice, being based only on the number of votes cast „pro“ for this candidature can not be considered as objective and fair“. Also, in the dissenting opinion it is stated that „the adoption of the decisions by the Superior Council of Magistracy regarding the promotion of judges to hierarchically superior courts only on the basis of the number of „pro“votes without any justification undermines the trust of judges in the Superior Council of Magistracy as a self-administrated body and discourages judges from participation in the contest again.“

Table 42: Contest at the SCJ as of 26 January 2016⁹⁶

 Candidates	 BSCJ score	 Results
Domnica MANOLE	100	failed
Grigore SISCANU	86	failed
Mariana PITIC	82	accepted
Zinaida TALPALARU	80	failed
Viorica PUICA	80	failed
Mihail DIACONU	70	failed

B. Appointment to the leadership positions at the courts of appeal and the SCJ – a single candidate in the contest

There was a significant rate of contests for the appointment to the leadership positions at the courts of appeal and the SCJ in which only one candidate participated: 83% of judges proposed by the SCM for leadership positions at the courts of appeal (10 out of 12 proposed candidates) and 100% of judges proposed for promotion to leadership positions at the SCJ (6 out of 6 candidates

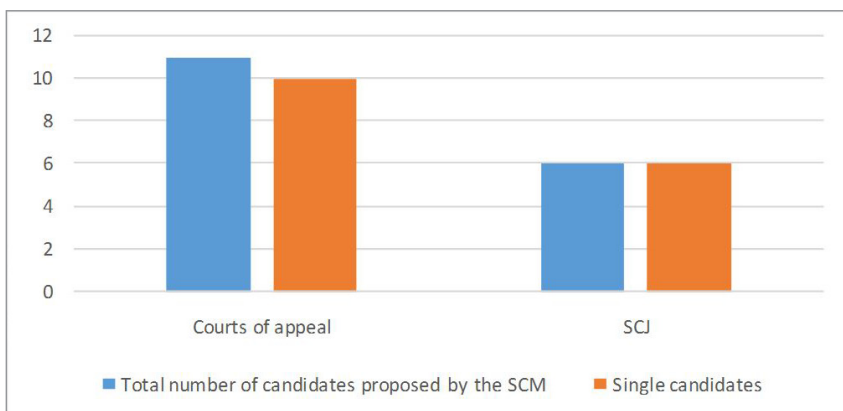


Figure 6: Single candidates proposed by the SCM to administrative positions at the courts of appeal and the SCJ

⁹⁵ Dissenting opinion regarding the SCM decision no. 7/2 as of 26 January 2016, <http://csm.md/files/Hotaririle/2016/02/7-2-opinia.pdf>.

⁹⁶ SCM, Decision no. 7/2 as of 26 January 2016, <http://csm.md/files/Hotaririle/2016/02/7-2.pdf>.

proposed by the SCM). Such data create the impression that judges do not want to run for leadership positions at the courts of appeal and the SCJ. This may be due to the fact that the SCM selects candidates without a minimum explanation of the selection criteria, which creates a state of uncertainty for judges and discourages them from participating in the contest. On the other hand, judges may not have enough time to develop managerial and communication skills, which discourages them from competing for these positions. However, regardless of the reasons, contests for leadership positions with several participants would demonstrate a true state of openness of the judiciary to quality and democracy within the system.

C. „Failed“ contests and procedure of contest organization

Most of the contests fail because the SCM does not choose any candidate. This is of particular concern, especially when several contests are announced in a row, and candidates who have high scores given by the Board for Selection are rejected by the SCM without any reasoning.

Examples of „failed“ contests regarding the promotion to the courts of appeal. On 7 July 2015, the SCM announced a contest for filling of the position of a judge at Cahul Court of Appeal, where none of the judges participated⁹⁷. It was followed by two contests where the SCM did not vote for the candidates participating in the contest – the contest announced on 2 September 2015, where the only candidate was rejected⁹⁸, and the one announced on 26 January 2016, where the SCM rejected both candidates⁹⁹. After these two failed contests, the SCM announced three contests, where none of the judges applied – 31 May 2016¹⁰⁰, 24 January 2017¹⁰¹ and 14 March 2017¹⁰². The last contest for two positions of judges was announced on 23 May 2017¹⁰³, for which, at the time the analysis was finalized, there was still no data on its progress. It is not clear why the SCM did not vote any candidate in those two contests, where they existed, even if a candidate had 70 points given by the Board for Selection. Previously, the SCM promoted judges with a lower score to the courts of appeal¹⁰⁴. The SCM failed to provide any explanation in its decisions regarding the rejection of candidates. We believe that, by failing to provide adequate reasoning, the SCM discourages judges from applying to the contests for promotion. This may also lead to the absence of candidatures and the impossibility of filling the positions of judges at the courts of appeal. Thus, at Cahul Court of Appeal it was impossible to appoint a judge since 7 July 2015 until mid-2017, that is about two years.

In some cases, the SCM rejects the candidates with a higher score, and in the next competition they are accepted without any explanation of the circumstances that persuaded

⁹⁷ <http://csm.md/files/Hotaririle/2015/21/528-21.pdf>.

⁹⁸ SCM, Decision no. 13/2 as of 26 January 2016, <http://csm.md/files/Hotaririle/2016/02/13-2.pdf>.

⁹⁹ SCM, Decision no. 347/17 as of 31 May 2016, <http://csm.md/files/Hotaririle/2016/17/374-17.pdf>.

¹⁰⁰ <http://csm.md/files/Hotaririle/2016/17/374-17.pdf>.

¹⁰¹ <http://csm.md/files/Hotaririle/2017/03/65-3.pdf>.

¹⁰² <http://csm.md/files/Hotaririle/2017/10/214-10.pdf>.




¹⁰³ <http://csm.md/files/Hotaririle/2017/16/345-16.pdf>.

¹⁰⁴ At the contest organized on 14 April 2015, the SCJ proposed to promote the judge Ruslan PETROV, who had 45 points, and the judge Nina VELEVA with 40 points to Cahul Court of Appeal, <http://csm.md/files/Hotaririle/2015/13/277-13.pdf>.

the SCM to change its position. For example, in the contest organized on 1 July 2014¹⁰⁵ for the promotion to Chisinau Court of Appeal, the judge Stelian TELEUCA was rejected¹⁰⁶ and in the contest of 28 October 2014 he was accepted.

Examples of „failed“ contests for the promotion to the SCJ, including for leadership positions at the SCJ. Even in the case of rejection of candidates for promotion to the SCJ, the SCM does not provide a clear explanation or the criteria it took into account while taking decisions. For example, in three consecutive contests, the SCM rejected all candidates for the position of a judge at the SCJ, and namely: the first contest was announced on 21 January 2016¹⁰⁷ and took place on 31 May 2016¹⁰⁸, the second contest was announced on 31 May 2016¹⁰⁹ and held on 1 November 2016¹¹⁰, and the third contest was announced on 1 November 2016¹¹¹ and took place on 31 January 2017¹¹². The SCM rejected all the candidates who participated in these contests, referring to the analysis of the personal files submitted by the candidates and to the voting procedure, as a result of which the candidates did not get the necessary number of votes. However, the SCM did not explain what materials in the personal files or any other criterion motivated them not to vote for those candidates. As a result, for a year and two months¹¹³, the process of appointing judges to the SCJ was blocked.

Table 43: Conclusive example regarding the organization of contests for the SCJ

 Candidates	 BSCJ score	 Results
Contest as of 31 May 2016		
Domnica MANOLE	100	Failed
Eduard ABABEI	97	Failed
Viorica PUICA	80	Failed
Zinaida TALPALARU	80	Failed
Contest as of 1 November 2016		
Viorica PUICA	80	Failed
Zinaida TALPALARU	80	Failed
Contest as of 31 January 2017		
Viorica PUICA	80	Failed

Blocking of contests for the leadership positions at the SCJ, invoking the exclusive right to vote of the SCM members is also an issue of concern. For example, after Mrs. Svetlana FILINCOVA resigned from the position of the deputy chairperson of the SCJ and the chairperson of the Civil Board of the SCJ, this position was opened to the contest. No candidates submitted their

¹⁰⁵ SCM, Decision no. 551/19 as of 1 July 2014, <http://csm.md/files/Hotaririle/2014/19/551-19.pdf>.

¹⁰⁶ SCM, Decision no. 843/28 as of 28 October 2014, <http://csm.md/files/Hotaririle/2014/28/843-28.pdf>.

¹⁰⁷ <http://csm.md/files/Hotaririle/2016/02/39-2.pdf>.

¹⁰⁸ SCM, Decision no. 371/17 as of 31 May 2016, <http://csm.md/files/Hotaririle/2016/17/371-17.pdf>.

¹⁰⁹ <http://csm.md/files/Hotaririle/2016/17/371-17.pdf>.

¹¹⁰ SCM, Decision no. 711/30 as of 1 November 2016, <http://csm.md/files/Hotaririle/2016/30/711-30.pdf>.

¹¹¹ <http://csm.md/files/Hotaririle/2016/30/711-30.pdf>.

¹¹² SCM, Decision no. 78/4 as of 31 January 2017, <http://csm.md/files/Hotaririle/2017/04/78-4.pdf>.

¹¹³ The next candidate for the SCJ was appointed on 28 March 2017, <http://csm.md/files/Hotaririle/2017/12/235-12.pdf>.

files for the first two contests announced by the SCM. At the next two contests, Mrs Tatiana RADUCANU who submitted her file did not get the required number of votes¹¹⁴. There was another contest in which no candidates participated. At the sixth contest Mrs. Tatiana VIERU, the only candidate, was selected, although she had a lower score given by the Board for Selection than Mrs. Raducanu. **Such circumstances suggest that the score given by the Board for Selection is not a defining criterion for the SCM, but still no other criteria are indicated, usually the reference is made to the right of exclusive vote of the SCM members. However, when for an important leadership position at the SCJ either no applications are filed, or the candidate is rejected several times, and more than one year and eight months later a single candidate in the contest is voted, without a genuine reasoning of the SCM decision, there arise reasonable questions regarding the fairness of these contests.**

Table 44: Contests for filling of the vacant position of the deputy chairperson at the SCJ

Contest no.	Contest date	Candidates	BSCJ score	Results
1	28.04.2015	-	-	-
2	23.06.2015	-	-	-
3	11.08.2015	Tatiana RADUCANU	115	failed
4	26.01.2016	Tatiana RADUCANU	115	failed
5	31.05.2016	-	-	-
6	18.10.2016	Tatiana VIERU	110	accepted

IV. Conclusions

Organization of contests

The analysis of the SCM practice of organizing contests for the promotion of judges to a higher court (the courts of appeal and the SCJ) and the appointment to leadership positions at the courts of appeal and the SCJ showed that the unplanned announcement of the contests, which leads to the organization of a great number of contests is not effective. The 30-day deadline indicated by the SCM for the submission of dossiers may be too short for judges to collect all the necessary documents.

Many contests fail because no candidate submits their application or the candidates withdraw from the contest (for example, 46% of contests for promotion to the courts of appeal, 63% of contests for promotion to the leadership positions at the courts of appeal and 38% of contests for promotion to the leadership positions at the SCJ), or because the candidates do not get the required number of votes of the SCM members (for example, 8% of the contests for promotion to the courts of appeal, 21% for promotion to the SCJ, and 15% for promotion to the leadership positions at the SCJ). This also leads to the multiple repetitions of contests. The strategic planning of the contests, with their organization once every half year and announcement sufficiently prior to the contest, would bring certainty for the candidates and for the system, ensure that enough candidates participate in the contests and lead to the selection of the best candidates.

¹¹⁴ SCM, Decision no. 6/2 as of 26 January 2016, <http://csm.md/files/Hotaririle/2016/02/6-2.pdf> and Decision no. 370/17 as of 31 May 2016, <http://csm.md/files/Hotaririle/2016/17/370-17.pdf>.

It is also an issue of concern that a single candidate participates in the majority of the contests for the leadership positions at both courts of appeal and the SCJ (83% of the candidates proposed for the promotion to the courts of appeal and 100% of the candidates proposed for the promotion to leadership positions at the SCJ were selected by the SCM within contests in which only one candidate participated). This reduces the benefits of a genuine contest with many candidates and more competition, which could lead to a greater choice and selection of better candidates, respectively. On the other hand, it leaves the impression that the results of the contests are known in advance and that they are carried as a formality, discouraging judges from applying to these positions, which damages the confidence in justice. It would be useful to organize some events to encourage judges to take part in the contests for the promotion to the leadership positions.

Score given by the Board for Selection and reasoning of the SCM decisions

Within the reference period, 42% of judges promoted to the SCJ and 39% of judges promoted to the courts of appeal following contests in which more than one candidate participated are judges with a lower score than their opposing candidates. We consider that the SCM practice of selecting candidates disregarding the score given by the Board for Selection and without any explanation for this is not useful to the judiciary and is damaging it much. It is likely that in the closed debates the SCM members discuss the reasons for the selection and rejection of the candidates, but this is not reflected in the decisions by the SCM. The only reasoning provided in the SCM decisions is that voting in favour of or against candidates is an exclusive right of the SCM members. The SCM members do not have exclusive rights to promote judges. On the contrary, they have an obligation to explain to judges and the society their decisions to vote for or against a candidate in order to create uniformity and unitary practice regarding the criteria for promotion and to increase confidence in the judiciary. Otherwise, it creates the impression of arbitrary selection and leads to the lack of confidence both of the judges-candidates and general public. Selecting judges based on the score obtained, explaining the situations in which it is disregarded, would create the premises of a merit-based promotion system and increase trust in the judiciary.

In the reasoning part of the decisions, in most cases, the SCM indicates general provisions, such as examining the personal file and relevant materials of the candidates, not indicating the specific materials they refer to, as well as the voting procedure where the voting for one candidate or another is an exclusive right of the member of the SCM. We consider that reasoning the selection of candidates only by an exclusive right of the SCM members gives impression that the SCM has assumed a right which is not provided by the Constitution and the legislation in force to decide on appointments and promotions having no clear criteria and rules and without providing a minimum explanation for the decisions taken. This creates the impression of the possible arbitrariness at any stage of decision-making by the SCM and such practice should be avoided. A solution would be, as indicated above in the part regarding the selection of judges, that the SCM promotes as a matter of priority the candidates with the highest score, giving them the possibility to choose their seat on the basis of their score. This would be possible if contests were organized periodically for all vacancies and not for each vacant position separately. The SCM should additionally evaluate only the candidates who have an equal score given by the Board for Selection, or if, after the evaluation by the Board for Selection, new relevant information about the candidate appears.

E. Promotion of the SCM members within the judiciary

Between 2014 and 2017, several SCM members were proposed by the SCM to be promoted either to a higher court, to a leadership position or were transferred to Chisinau district court. They were:

- Nichifor COROCHII, former chairperson of the SCM, proposed to be promoted to Chisinau Court of Appeal on 21 January 2014, about four months later after the expiry of his term of office as a member of the SCM¹¹⁵;
- Anatolie TURCAN, member of the SCM, proposed for promotion to the SCJ on 23 June 2015¹¹⁶;
- Dorel MUSTEATA, member of the SCM, transferred on 29 September 2016 from Anenii Noi Court to Centru District Court following the reorganisation of the judicial map, without a contest¹¹⁷;
- Victor MICU, the chairperson of the SCM, proposed for promotion to the SCJ on 6 June 2017¹¹⁸;

We believe that such a practice is undesirable for many reasons. First of all, promotion or transfer to a more prestigious court of the SCM member obviously raises suspicions that s/ he is favoured by the SCM colleagues. These suspicions also apply to the SCM members in the period immediately following the end of their term of office. Although theoretically these doubts may not correspond to reality, they weaken the confidence in the judiciary that is already low. The SCM members shall show the utmost diligence and provide an example for all the judges and the entire society, that the SCM is equidistant and that its primary concern is to defend and promote the independence and quality of justice rather than personal interests.

Secondly, the SCM members are elected as the representatives of different levels of courts. When promoted to a higher court, they no longer represent the courts that have chosen them. It would be logical that, once promoted they cease to be members of the SCM. For example, Mr. Victor MICU was elected a member of the SCM while being the representative of the first instance district courts and Mr. Anatolie TURCAN – as the representative of the courts of appeal. After their promotion to the SCJ, they no longer represent the courts which elected them in the first place as members of the SCM. It would be proper for them to choose whether to remain members of the SCM, or be promoted to the higher courts and terminate the term of office as SCM members. However, this situation could turn the SCM into a bridge for career growth for judges–members, changing the focus and their role in the SCM. Given that the public interest in having a functional SCM is greater than in the promotion of its members, it is recommended that members of the SCM should not participate in promotions within the judiciary during the term of the SCM member’s mandate and immediately after its expiry.

The Superior Council of Prosecutors has resolved this situation by including a restriction in its Regulations, according to which „*members of the Council can not take part in the contests for the appointment or promotion to the position of prosecutors, including for the position of the Prosecutor*

¹¹⁵ SCM, Decision no. 41/2 as of 21 January 2014, <http://csm.md/files/Hotaririle/2014/02/41-2.pdf>.

¹¹⁶ SCM, Decision no. 492/19 as of 23 June 2015, <http://csm.md/files/Hotaririle/2015/19/492-19.pdf>.

¹¹⁷ SCM, Decision no. 625/26 as of 29 September 2016, <http://csm.md/files/Hotaririle/2016/26/625-26.pdf>.

¹¹⁸ SCM, Decision no. 380/18 as of 6 June 2017, <http://csm.md/files/Hotaririle/2017/18/380-18.pdf>.

*General, during their term of office and six months after its expiry*¹¹⁹. We consider it necessary to include such a rule in the Regulations on the organization and operation of the SCM¹²⁰ or in the Law on the SCM.

¹¹⁹ SCP, Regulations of the Superior Council of Prosecutors, approved by Decision no. 12-225/16 as of 14 September 2016, [p. 2.20, http://www.procuratura.md/file/2017-06-24_Regulamentul%20CSP%20final.pdf](http://www.procuratura.md/file/2017-06-24_Regulamentul%20CSP%20final.pdf).

¹²⁰ SCM, Regulations on the organization and operation of the SCM, approved by Decision no. 668/26 as of 15 September 2015, http://csm.md/files/Acte_normative/Legislatia/Interne/REGULAMENT668.pdf.

Main conclusions and recommendations

In 2012, within the context of the implementation of the Justice Sector Reform Strategy for 2011–2016 several legislative amendments were developed and introduced, which established the legal framework for a transparent and merit-based system of appointments and promotions in the judiciary. In particular, there were developed criteria for the selection, promotion and transfer of judges, a special body – the Board for Selection and Career of Judges – was created and empowered to evaluate each candidate according to the conditions established by the law and the criteria established by the Superior Council of Magistracy. The procedure of performance evaluation of judges and the Board for Performance Evaluation of Judges was created and empowered to carry out periodic evaluation of professional performance of judges. The way of joining the profession for two categories of candidates – the graduates of the National Institute of Justice and the candidates having tenure – was unified by introducing the obligation of the latter to take the examination before the Final Examination Board at the National Institute of Justice. A Register of competitors was created and maintained by the Superior Council of Magistracy and available on its website for public.

The analysis of the practice within the period of January 2013 – May 2017 reveals a number of issues that still require improvement in practice to achieve the main purpose of the legislative amendments of 2012, and namely the creation of a transparent and merit-based system of selection and promotion of judges. The main issues analysed in the document refer to the following main gaps that need to be addressed as soon as possible:

- 1) The duplication of powers between the Board for Selection and Career of Judges and the Superior Council of Magistracy through disregarding by the latter of the score given by the Board for Selection providing no reasoning for the decisions on selection and promotion. Although the SCM has improved the way of keeping the register of competitors by including candidates in the descending order after the score they obtained from the Board for Selection, it seems that the registry is not very much used. It was noticed that in a significant number of cases the SCM proposed to appoint or promote candidates with a lower score than other candidates, as concerns both the selection and promotion to the courts of appeal and to the SCJ, and the promotion to the leadership positions at the first level courts. For example, out of 150 candidates proposed by the SCM for appointment, only 115 were appointed following a contest in which more than one candidate participated. Out of these, 83 or 72% had a lower score given by the Board for Selection. Out of 55 judges proposed by the SCM for promotion

to the courts of appeal, only 38 were appointed following a contest in which more than one candidate participated. Out of these, 15 or 39% of the candidates were promoted with a lower score. Out of 13 judges proposed by the SCM to be promoted to the SCJ, 12 were appointed following a contest in which more than one candidate participated, and of them five or 42% had a lower score. The reasoning was provided by the SCM in a very few cases. Positive examples when the reasoning for the selection made was provided or when candidates with a higher score were promoted are given in the report.

The practice of insufficient reasoning of the SCM decisions involves major risks to the judiciary and society. Firstly, a clear message is sent to candidates that examinations at the NIJ and performance evaluation do not really matter. This suggests that individual beliefs of the SCM members matter more than transparent and merit-based appointments. Finally, insufficient reasoning of some decisions fuels suspicions that selection in the judiciary is based on other criteria than stipulated in the SCM Regulations. This negatively affects trust in the judiciary, discourages judges from joining the profession and, in the long run, can affect the sustainability of the system before new admissions.

2) Absence of opposing candidates in the majority of contests for promotion to administrative positions at the first level district courts. Thus, out of 70 candidates proposed for promotion to the leadership positions in the judiciary, 45 (65%) are judges who participated in the contest with a single candidate and only 25 judges (35%) were selected on the basis of contests with two and more competitors. Out of 32 contests organized for the promotion to administrative positions at the courts of appeal, in 20 announced contests (63%) either no applications were submitted, or the candidates withdrew. Out of 12 contests that took place, in 10 contests (83%) only one candidate participated. Out of 13 contests organized for promotion to the leadership positions at the SCJ, no applications were submitted in five contests (38%). In two contests (15%) the candidates did not get the necessary number of votes of the SCM. In the remaining six contests (46%), there was only one candidate. The SCM proposed six candidates in all six contests that took place and in all these contests a single candidate participated.

It is also an issue of concern that a single candidate participates in the majority of the contests for the leadership positions at both courts of appeal and the SCJ (83% of the candidates proposed for the promotion to the courts of appeal and 100% of the candidates proposed for the promotion to leadership positions at the SCJ were selected by the SCM within contests in which only one candidate participated). This reduces the benefits of a genuine contest with many candidates and more competition, which could lead to a greater choice and selection of better candidates, respectively. On the other hand, it creates an impression that the results of the contests are known in advance and that they are held formally, discouraging judges from applying to these positions, which damages the confidence in the judiciary. It would be useful to organize some events to encourage judges to take part in the contests for the promotion to the leadership positions. Last but not least, candidates may also be discouraged from taking part in the contest if the results of the performance evaluation and the score given by the Board for Selection are not sufficient to ensure the access to the position

of the chairperson or deputy chairperson of a court. In any case, the SCM should study this issue to identify the causes that lead to a low interest of judges towards administrative positions.

3) Procedure of contest organization. The analysis of the SCM practice of organizing contests for appointment and promotion has shown that the SCM announces contests for each vacancy since it becomes vacant without a timely planning of the vacancy announcement. This leads to a large number of ongoing contests on the agenda of the SCM and its Boards. For example, during the reference period, on average, two contests per month were organized for the selection of candidates for the position of a judge (105 contests in 53 months), one contest per month for the promotion to administrative positions at the courts (78 contests in 53 months) and by one contest a month to promote judges to the courts of appeal (78 contests in 53 months). In addition, there were held contests for the promotion to the SCJ and promotion to the leadership positions at the courts of appeal and the SCJ.

Such practice is not efficient, as demonstrated both by the number of contests declared as failed and by the lack of candidates in a large number of contests. The 30-day deadline provided by the SCM for the submission of dossiers may be too short for judges to collect all necessary documents. Many contests fail because no candidate submits their application or the candidates withdraw (46% of contests for promotion to the courts of appeal, 63% of contests for promotion to the leadership positions at the courts of appeal and 38% of contests for promotion to the leadership positions at the SCJ). This also leads to the multiple repetitions of contests. The strategic planning of the contests, with their organization once every half year, with their announcement sufficiently prior to the contest, would bring certainty for the candidates and for the system, ensure that enough candidates apply for in the contests and lead to the selection of the best candidates.

4) Reasoning of the SCM decisions. We consider that the SCM practice of selecting candidates with the disregard of the score given by the Board for Selection and without any explanation for this is not useful to the judiciary and is damaging it much. It is likely that in the closed debates the SCM members discuss the reasons for the selection and rejection of the candidates, but this is not reflected in the decisions by the SCM. The only reasoning provided in the SCM decisions is that voting in favour of or against candidates is an exclusive right of the SCM members. The SCM members do not have exclusive rights to promote judges. On the contrary, they have an obligation to explain to judges and the society their decisions to vote for or against a candidate in order to create uniformity and unitary practice regarding the criteria for promotion and to increase confidence in justice. Otherwise, it leaves the impression of arbitrary selection and leads to the lack of confidence both of the judges-candidates and general public. Selecting judges based on the score obtained, explaining the situations in which it is disregarded, shall create the premises of a merit-based promotion system and increase trust in the judiciary. If the SCM has to choose between two or more candidates with similar score or when it has received new information since the time of evaluation

by the Board for Selection, the SCM could carry out an additional evaluation by interviewing the candidate and, thus, can explain why it did not take into account the high score given by the Board for Selection.

The analysis has shown that in the reasoning part of the decisions regarding the career of judges, in most cases, the SCM indicates general provisions, such as examining the personal file and relevant materials of the candidates, not indicating the specific materials they refer to. Such an approach does not provide sufficient clarity. The most problematic issue in the reasoning of the SCM decisions is, however, the reference to the „exclusive vote“ of the SCM members. This phrase is basically used instead of arguments. Such reasoning raises the biggest questions in cases when only one candidate participates in the contest and the SCM decides that the contest „failed“ because the candidate „did not get the necessary number of votes“. Referring to the number of votes or voting rights of members is not a justification. We consider that reasoning the selection of candidates only by an exclusive right of the SCM members creates the impression that the SCM has assumed a right not provided by the Constitution and the legislation in force to decide on appointments and promotions having no clear criteria and rules and without providing a minimum explanation for the decisions taken. This leaves the impression of the possible arbitrariness at any stage of decision-making by the SCM and such practice should be avoided.

5) Criteria for selection and promotion. The criteria for the selection, promotion and transfer of judges were analysed in the research by the LRCM in 2015. On 6 June 2015, the LRCM submitted specific recommendations for changing these criteria. To avoid repeating the analysis and findings from 2015, we only reiterate the main objections regarding the criteria. For example, with regard to the selection criteria for judges, we consider it unreasonable and inappropriate that for the studies at the NIJ lasting for 18 months or the examination before the Final Examination Board of the NIJ, candidates should be given a maximum of 30 points. On the other hand, 35 points are given for motivation, interview and personal characteristics. We do not underestimate the importance of personal qualities and motivation of the candidate for the selection process, but we do not believe that the score for them should exceed the score for studies at the NIJ. Moreover, studies at the NIJ have already evaluated the skills of the candidate for the position of a judge. On the other hand, the motivation of the candidate is less relevant given that the person has already studied at the NIJ for 18 months or applied for the contest after at least five years of activity. Appreciation of the candidate's motivation with 20 points seems unreasonable and leaves room for arbitrariness. We also do not consider it reasonable to establish two criteria with a similar content: the tenure in legal speciality and the nature of the activity in legal speciality positions, each being evaluated with a maximum of 10 points. The content of both criteria is very similar and unjustifiably favours the candidates with work experience as compared to the NIJ graduates. Last but not least, we are not sure that „scientific degree, teaching experience, publications and thematic articles“ are defining and necessary criteria for the position of a judge. It could matter for the evaluation of performance, but it should not matter for the appointment as a judge.

Similarly, for the promotion of judges, „quality, efficiency and integrity in the position of judge ... is evaluated according to the qualifier provided by the Board for Evaluation decision“ is scored with a maximum of 40 points. At the same time, „written motivation of the candidate to be promoted to an hierarchically superior court, delivered verbally before the Board for Selection“ is evaluated with 25 points and „scientific degree, teaching experience, publications and thematic articles, participation in the drafting of normative acts, commentaries on normative acts as an expert or consultant within national or international working groups“ – with 10 points. The motivation of the candidate is a very subjective aspect, both in terms of formulation and evaluation. It is not clear why so many points are given for some subjective criteria, and only 40 points are given for the results of performance evaluation. Over time, judges may lose confidence and desire to act correctly and independently, given such a low value of it for the career of a judge. Similarly, for the litigant party the scientific degree of the judge does not matter as much as the fair and transparent activity of the judge.

The criteria for the selection and promotion of judges require an urgent review to respond adequately to the real needs for which they have been established.

- 6) Promotion of the SCM members. Between 2014 and 2017, several SCM members were proposed by the SCM to be promoted either to a higher court or to the leadership position or were transferred to another court. In these situations, there are inevitable suspicions in favouring of the SCM member by his/her colleagues. At the same time, it is unclear how the SCM member who has been elected as a representative of a certain level of court can still represent it after promotion. Regulations of the Superior Council of Prosecutors contain a restriction for the members of the Council to be promoted during their term of office and 6 months after its expiry. We consider it is required to have such regulation also for the SCM. It can be introduced into the Regulations on the organization and operation of the SCM or the Law on the SCM.

Main recommendations:

- 1 It is advisable to clarify the SCM's approach to the evaluation provided by the Board for Selection, namely the appointment of candidates based on the score given by the Board for Selection. If two or more candidates with similar score participate in the contest, the SCM has to make a further evaluation, for example, through an interview, to select the best candidate. The SCM could also make an additional evaluation if new information about the candidate appears since the moment of evaluation by the Board for Selection;
- 2 It is advisable to stipulate expressly in the law the right of candidates with the highest score to choose the court in the case of appointments to the first instance court. This will ensure clarity and predictability of the appointment process, and the SCM will not be overloaded with so many contests;

- 3 In close connection with the first two recommendations, it is proposed to modify the approach to the contest organization with the view to organize the contest for all vacant positions in the system once or twice a year. This will allow candidates to plan their careers in advance and bring clarity and predictability that are important for the system. This will also help improve the perception of society, which will be able to follow the appointments and promotions in the judiciary. So far they raise a series of questions, as shown in the document;
- 4 In close connection with the first three recommendations, it is advisable to improve the quality of reasoning of the SCM decisions on the career of judges. The exclusive vote of the SCM members is not a sufficient reasoning in a system based on the rule of law. This recommendation is particularly valid for all the problematic situations stated in the report: disregarding of the score given by the Board for Selection and declaring the contest failed due to the lack of the required number of votes of the SCM members;
- 5 It is recommended to reassess the criteria for the selection, promotion and transfer of judges in order to provide greater value to professional studies at the NIJ and performance appraisal by the Board for Performance Evaluation of Judges and to include all other criteria currently examined by the SCM and which are not examined by the Board for Selection¹²¹;
- 6 It is recommended to stipulate a prohibition for the SCM members to take part in the contests on the selection of a judge and promotion during their term of office as members of the SCM as well as for 6 months after its termination, similar to the rules established by the Regulations on the Superior Council of Prosecutors. This provision shall be included into the Regulations on the organization and operation of the SCM or the Law on the SCM.

¹²¹ The recommendation on selection criteria was explained in more detail in the analysis provided by the LRCM in 2015. Recommendations regarding the criteria are also included in the Report of the Centre for the Analysis and Prevention of Corruption for 2017, available at: http://capc.md/files/Raport%20de%20monitorizare%20CAPC_30.05.17.pdf. To avoid repeating the same recommendations, we shall confine ourselves to general recommendation on the urgent need to amend the criteria. Regarding the content of the criteria as such, on 3 June 2015 the LRCM submitted detailed recommendations regarding the amendment of the Regulations on the appointment, promotion and transfer criteria to the SCM. Recommendations given by the LRCM are available at <http://www.crjm.org/wp-content/uploads/2015/06/2015-06-03-Op-RegulSelectiejud-CRJM.pdf>. We consider it is important to amend the regulations as soon as possible, possibly by setting up a working group that could analyse the criteria in detail and come up with the appropriate recommendations. We will contribute with certain proposals to amend the criteria as soon as the process is initiated and contributions are asked for.

The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chişinău, Republic of Moldova. LRCM strives to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner.

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