

Date: 11 March 2020

Subject: Opinion on the organisation of the selection process for the appointment of 4 members of the SCM from the side of law professors

Addressed to: Legal, appointments and immunities Standing Committee of the Parliament of the Republic of Moldova, e-mail: cji@parlament.md
Ministry of Justice, e-mail: secretariat@justice.gov.md

Presented by: Legal Resources Centre (CRJM, www.crjm.org), contact person: Vladislav Gribincea (vladislav.gribincea@crjm.org)
Institute for European Policies and Reforms (IPRE, www.ipre.md), contact person: Iulian Rusu (iulian.rusu@ipre.md)

SENT VIA E-MAIL

The current opinion is based on the amendments made to the [Law no. 947/1996](#) on the Supreme Council of Magistrates (SCM) via [Law no. 193/2019](#), which entered into force on the 31st of January 2020 and the Opinion of the Venice Commission [no. 976/2019](#), published on the 22nd of January 2020.

I. Context

1. Approval of the amendments to the Law no. 947/1996 on the SCM

On December 20, 2019, the Parliament of the Republic of Moldova adopted Law no. 193/2019 amending the Law no. 947/1996 regarding the Superior Council of Magistracy. Following the modifications made, the composition, the formation of the Superior Council of Magistracy and some provisions related to the challenge of the SCM decisions have been modified. Thus, 5 members are appointed by the Parliament from among the law professors, 7 members are elected from the judges by the General Assembly of Judges, and three other members - the Chairman of the Supreme Court of Justice, the Minister of Justice and the Prosecutor General – are ex officio members, by virtue of the provisions of article 122 (2) of the Constitution. The amendment entered into force on January 31, 2020.

Before the modifications operated by Law no. 193/2019, the SCM was composed of 6 judges, 3 law professors and 3 ex officio members. Thus, the composition of the SCM has been extended from 12 to 15 members, with additional two positions to be filled-in by law professors and one position from among the judges.

2. The opinion of the Venice Commission

The opinion of the Venice Commission no. 976/2019, published on January 22, 2020 requested in an emergency regime referred to the provisions of Law no. 193/2019. Among other things, the Venice Commission dealt with the mechanism of appointment of the members of the SCM from the law professors, emphasizing the following:

- a. The mechanism for appointing the members of the SCM from the law professors could include the formation of an apolitical commission instead of the current Legal, appointments and immunities Standing Committee (para. 27);
- b. Other authorities could be involved in the process of nominating candidates - the Lawyers' Union or the Law Faculties of Universities (para. 27);
- c. The vote of the majority of the MPs for the appointment of the SCM members by the law professors is not sufficient. The appointment of the members of the SCM by the MPs is to take place on the basis of a broad political consensus, providing for a qualified majority (2/3 of the number of votes) in the Parliament, with the establishment of provisions to avoid blocking the appointment of these members (para. 26).

3. Launch of the process of appointment of 4 members from the law professors

On February 5, 2020, the Legal, appointments and immunities Standing Committee of the Parliament [launched](#) the stage of call for submission of candidacies and approved a [Regulation](#) on the organisation of the competition.

On February 20, 2020, the list of 18 candidates who submitted their applications and files for the competition was made public. Within 5 days of the publication of the files, any person had the opportunity to present his/her position regarding the candidates, including to provide relevant information to the Legal, appointments and immunities Standing Committee of the Parliament.

In the meantime, Legal, appointments and immunities Standing Committee has extended the deadline of submission of interest until March 3, 2020.

4. The next stages of the process of appointing 4 members from the law professors

Based on the Regulation approved by the Legal, appointments and immunities Standing Committee, the selection of the members of the SCM takes place on the basis of the score offered by the members of the Legal Commission, the following scoring positions being established and the minimum and maximum value:

Nr.	Evaluation criterion	Minimum and maximum value
1.	File (studies)	PhD – 2 points, Habilitated doctor – 3 points
2.	File (competence)	Teaching experience – from 5 to 10 points
3.	File (reputation)	From 1 to 5 points

4.	Priorities set as member of the SCM	From 1 to 10 points
5.	Interview (4 questions)	From 1 to 3 points for each question answer

The evaluation of the candidates takes place based on the data from the file, the objectives proposed by the candidate as a member of the SCM and the answers from the interview.

Currently, the Legal, appointments and immunities Standing Committee is in the stage of preparing the candidates' files for interviews. It seems that the interview will take place on March 13, 2020.

5. Recent initiatives to amend the Law no. 947/1996

On 21 February 2020, the President of the Republic of Moldova submitted a [legislative initiative](#) to amend article 5 of Law no. 947/1996, by which it is proposed to exclude the restrictions related to the possibility for the members of the SCM who are not judges to hold the position of Chairman of the SCM, referring to the Opinion of the Venice Commission no. 976/2019, mentioned above. This restriction was introduced by Law 193/2019. The basic argument lies with the adjustment of Law no. 947/1996 to the recommendations of the Venice Commission. Unfortunately, the President's legislative initiative does not take into account other Commission recommendations, including those mentioned in this opinion. On March 10, 2020, Parliament approved the draft law in [first reading](#).

II. Deficiencies detected in the process of organisation of the competition by the Legal, appointments and immunities Standing Committee

1. The body which proposes to the Parliament the appointment of the members of the SCM from law professors

The process of appointing the members of the SCM among law professors does not correspond to the recommendations of the Venice Commission regarding the selection mechanism (para. 27), in particular the fact that the members of the SCM among law professors are selected and proposed by a Parliament Commission, **which is a political body**. It seems that most of the members of the Legal Commission are from the Government majority. On the other hand, although the selection process takes place on the basis of a score offered on the criteria mentioned above, there are no restrictions on the **disproportionate score** for some candidates in relation to others. An obvious discrepancy between the score offered by different members of the Legal Commission in the current composition was found both in the appointment of the Director of the NAC and in the contest of selection the judges of the Constitutional Court. On the other hand, the proposal of the Legal Commission is voted in the Parliament plenary with the vote of at least 51 MPs. This fact ensures total political control over the process of appointing the members of the SCM by the Parliament.

2. Verification of the integrity of the candidates for the position of member of the SCM among the law professors

Although the Regulations provide for the submission of the candidacy file and the declaration of assets and interests, and the requirement for an irreproachable reputation is included for the candidates, the mechanism to verify the integrity and reputation **is weak**. The members of the Commission consult the declaration of wealth and interests and establish on the basis of their own assessment what is the level of reputation of the candidates based on their own score. **The Regulation does not provide for a mechanism to consult or verify the data submitted by the candidates**, except via the notifications for which a period of 5 days has been allocated (para. 10 of the Regulation). The review of the notifications is made under closed session and the results of the examination of the notifications are not made public (para. 11 of the Regulation).

These tools are insufficient to be able to evaluate in detail the irreproachable reputation and integrity of the candidates. Moreover, based on the amendments operated to the Law no. 947/1996 no requirements for verification of integrity and lack of conflict of interests were established, including the prohibition of party membership or involvement in political activity. The provisions of article 8 of Law no. 544/1995 regarding the status of the judge applies to the already existing members of the SCM from the law professors, and not a priori, as the case should be.

3. Access to other information concerning candidates

The Legal, appointments and immunities Standing Committee do not access data other than that available to it based on the files received (para. 7 of the Regulation) and the information received from any interested person regarding the candidates (para. 10 of the Regulation). Sensitive information pertaining to integrity, irreproachable reputation and lack of conflicts of interest **are not verified based on any additional data**.

4. Involvement of other actors in the selection process

Law no. 947/1996 offers a broad mandate to the Legal, appointments and immunities Standing Committee to organise the selection contest of the members of the SCM among the law professors. Instead, the Commission limited itself to including civil society representatives and specialists in the selection process, which the Commission **only consults** on each candidate.

III. Conclusions

1. The amendments made to the Law no. 947/1996 by Law no. 193/2019 took place without initially consulting the opinion of the Venice Commission, establishing a broad mandate for the selection of the members of the SCM from the law professors by the Legal, appointments and immunities Standing Committee. They did not envisage an apolitical mechanism of

selection and / or establishment of a qualified majority (2/3 of the number of votes in the Parliament) to ensure a broad political consensus for 1/3 of the SCM members.

2. The appointment of the members of the SCM from the law professors by the Parliament does not provide for a rigorous mechanism of verification of integrity, the irreproachable reputation, the lack of conflict of interests, being limited to the information received from the candidates and the opinions from the citizens and the civil society with a set deadline of only 5 days to formulate their opinions. The opinions do not ensure continuity as they are examined at a closed meeting by the Commission.

IV. Recommendations:

1. Suspension of the current process of selection and appointment of the SCM members from the law professors, organised by the Legal appointments and immunities Standing Committee of the Parliament. Continuing with the current process of selection of the members of the SCM from the law professors could compromise the goals that were the basis for approving the amendments to the Law no. 947/1996, namely the selection and promotion of integral and merit-based members as members of the SCM.

2. Amendment of Law no. 947/1996 on the Superior Council of Magistracy, which will ensure the implementation of the recommendations of the Venice Commission related to the apolitical appointment and based on a wide consensus of the members of the SCM among the law professors. The legislative changes would include the following:

a. Formation of an apolitical selection committee, composed of representatives of civil society, proposed by the National Platform of the Civil Society Forum of the Eastern Partnership (5 members) and other 4 members, one from the National Integrity Authority, the Bar Association of the Republic of Moldova, The Ombudsman and the Council for the Prevention and Elimination of Discrimination and Ensuring Equality. The empowerment of an apolitical commission is part of the recommendations offered by the Venice Commission in its opinion no. 976/2019, particularly the provisions of para. 27, and ensures an uninfluenced process of selecting the members of the SCM from the law professors.

b. Guaranteeing access to information pertaining to the assets, interests, professional activity of the candidates for the position of member of the SCM from the law professors. Access to information about the assets, interests and compliance with the tax regime of the candidates is essential to determine whether they meet one of the essential conditions of the competition - ensuring the integrity and irreproachable reputation of the candidate.

c. Empowering the Commission with the power to approve its own Regulation and to submit candidates for appointment to the Parliament. The Commission's procedural autonomy will ensure that no restrictive requirements will be set for the selection process, which in turn will limit the effectiveness of the Commission.

d. The Commission Regulation should include a clear procedure for evaluating candidates, with the initial establishment of qualification conditions, including the requirement of integrity. Failure to comply with the integrity requirement will be considered as a disqualification criterion for the next stages of the selection process. However, defining elements such as the evaluation stages and the minimum conditions that need to be respected, such as integrity and impeccable reputation are necessary to provide clarity for the Commission's mandate.

e. The empowerment of the Selection Commission with the function of selecting 6 candidates for the position of member of the SCM among the law professors who are subsequently to be transmitted to the Legal, appointments and immunities Standing Committee of the Parliament to approve the final list of candidates. The proposed pre-selection mechanism allows the Parliament to choose from the list of persons considered by the Selection Commission as integer, with an irreproachable reputation and competence.

f. The Legal, appointments and immunities Standing Committee will submit to the Parliament the required number of candidates for approval, based on a selection process of the candidates from the list of 6 persons proposed by the Selection Commission.

g. Approval of each candidate submitted by the Legal, appointments and immunities Standing Committee by the Parliament by the vote of the majority of the elected Members.

The opinion was prepared by:

Iulian Rusu, Deputy Executive Director, IPRE. Email: iulian.rusu@ipre.md

Vlad Gribincea, Chairman, CRJM. Email: vladislav.gribincea@crjm.org

About the organisations:



The Legal Resources Centre of Moldova (CRJM) is a non-commercial organisation that contributes to strengthening democracy and the rule of law in the Republic of Moldova, with an emphasis on justice and human rights. CRJM is an independent and apolitical analytical centre (think-tank) with rich experience in: analysing the activity and reforming the justice system; human rights reporting; strategic standing at the European Court of Human Rights (ECtHR); equality and non-discrimination; promoting reforms for a favourable environment for civil society organizations.

The mission of the CRJM is to promote independent, efficient and responsible justice, respect for human rights, a favourable environment for civil society and democracy. In these areas problems with systemic impact are analysed, brought to the public agenda, solutions are proposed, abuses are tackled and partners are mobilised systemic changes.

Contact details:

Address: MD-2001, str. A. Șciusev nr. 33
mun. Chișinău, Republica Moldova

Tel.: +373 22 843 601

E-mail: E-mail: contact@crjm.org

Web: www.crjm.org



The Institute for European Policies and Reforms (IPRE) was established in March 2015 as an independent, non-profit and apolitical analysis and research centre. It was created by a team of national and international experts, former government officials and career diplomats.

IPRE is a member of the National Platform of the Civil Society Forum of the Eastern Partnership (www.eap-csf.eu), co-initiator of the Eastern Partnership Forum of the Research Centres (EaP Think-Tank Forum) launched in 2017 in Chisinau.

The mission of IPRE is to accelerate the European integration of the Republic of Moldova by promoting systemic reforms, enhancing participatory democracy and strengthening the role of citizens in national and local decision-making processes.

Address: str. București 90, of. 20
mun. Chișinău, MD-2001
Republica Moldova

Tel.: + 373 22 788 989

E-mail: info@ipre.md

Web: www.ipre.md