

Civil society's recommendations for overcoming the crisis in the judiciary

The signatory civil society organizations regrettably witness a difficult situation in the justice sector, which is caused by several factors:

1. Provision of the Commission for Exceptional Situations no. 64 of 31 March 2023

On 31 March 2023, the Commission for Exceptional Situations of the Republic of Moldova (CES) ordered (1) to prohibit the resignations of Supreme Court of Justice (SCJ) judges and (2) to suspend any pending resignations of SCJ judges, both for 30 days. According to preliminary information, the provision would block the resignation of seven SCJ judges¹ whose resignation was supposed to take effect from the beginning of April.

According to [Law no. 212/2004](#) regarding the state of emergency, siege, and war regime, the CES can issue provisions to apply measures [...] *to defend the rule of law and to maintain or restore the state of legality*. According to [the consolidated report on the need to extend the state of emergency](#), it is believed that the functionality of institutions in the field of justice is affected by the attempts to block the SCJ and the SCM, including 'external forces', without providing detailed information in this regard.

Invoking the emergency state to compel judges not to resign raises questions, if the CES or other competent authorities do not objectively justify the proportionality of the measure and the legitimate aim that is pursued. The signatory organizations believe that the state of emergency should not be used as a means to pursue other goals than those for which the state of emergency was established. To prevent biased interpretations in the future, but also the extensive interpretation of this precedent, civil society organizations request that all the factual circumstances and concrete arguments that were the basis of the CES's decision be mentioned in the adopted decisions.

2. Resignations of judges of the Supreme Court of Justice

On the eve of Parliament's approval of the [new law on the Supreme Court of Justice \(SCJ\)](#), 20 out of 25 judges of the Court resigned, including all the judges of the special board called to examine the appeals against the Pre-Vetting Commission. Towards the middle of April 2023, the activity of the SCJ will be practically blocked. Of the five remaining judges of the SCJ², two have not yet been vetted to be a member of the SCM and cannot examine appeals against the Pre-Vetting Commission.

The signatory organizations believe that the process of recruiting new SCJ judges must be accelerated. A temporary solution in this sense (alternative to the CES decision) would be the SCM to temporary transfer judges who meet the eligibility criteria according to the new SCJ Law.

¹ Maria Ghervas, Galina Stratulat, Iurie Bejenaru, Luiza Gafton, Liliana Catan, Ghenadie Plămădeală and Nadejda Toma. Information was taken from the monitored SCM meetings in February and March 2023, where resignations and respective dates were announced.

² Judges Tamara Chișca-Doneva, Aliona Miron, Mariana Pitic, Anatolie Țurcan, Ion Guzun.

The temporary judges would be selected from among the representatives of the judiciary (judges in office) from the lower-level courts – district courts and courts of appeal. The temporarily seconded judges would be remunerated at the level of SCJ judges and would examine the cases that cannot be postponed until new SCJ judges are appointed. In the meantime, we consider it imperative for the Parliament to push the implementation of the [Law on the evaluation of SCJ judges](#) in the part related to the appointment of a new independent Commission for the evaluation of candidates for the SCJ.

3. Postponement of the election of judges evaluated in the SCM by the General Assembly of Judges

After an approximately four-year break, the General Assembly of Judges (GAJ) [was convened](#) on 17 March 2023 to elect four of the five vetted judicial candidates to be members of the Superior Council of Magistracy (SCM). About 330 judges (2/3 of the total of 425 judges in office) took part in the assembly. With a majority vote, the GAJ decided to postpone the elections until 28 April 2023 on the grounds that the SCJ did not yet resolve the appeals against the decisions of the Pre-vetting Commission.

The last decision of the Independent Evaluation Commission regarding the 28 evaluated judges was issued on 6 February 2023. According to [Law no. 26/2022](#), the decisions of the Commission can be appealed to a special board of the SCJ. According to the law, these appeals must be resolved within 10 days, and these appeals must not interfere with the process of electing members to the SCM. At this stage, about 20 appeals are still pending before the SCJ.

The signatory organizations note that at the GAJ assembly, no attention was paid to the fact that the legal term of 10 days for examining appeals by the SCJ had expired. Such a long postponement was accepted without discussion and despite the resignations of March 2023, including the resignations of the majority of SCM members. Also, several important decisions regarding the career and discipline of judges, as well as the management of the system, remained generally undiscussed at the GAJ assembly of 17 March 2023.

Civil society organizations urge the judges to ensure that the voting of eligible candidates for SCM membership among the judges to take part in the GAJ assembly scheduled for 28 April 2023 and to ensure compliance with the Constitution and the legislation, human rights and freedoms, which calls for the fulfilment of their duties with honour, conscientiously and impartiality, according to the Law on the status of the judge and to the judge's oath. At the same time, considering the results of the Pre-Vetting exercise, we call on the Parliament and the SCM to re-initiate the selection of SCM members to fill all vacancies within the Council.

4. Statements by the president of the GAJ, Anatolie Țurcan, regarding the real reasons for the interruption of the GAJ

On 31 March 2023, during a [broadcast](#) on the JurnalTV television station, judge Anatolie Țurcan, appointed by the GAJ to preside over the GAJ assembly, revealed several actions aimed at discouraging the voting of candidates for the positions of members in the SCM. In particular, Țurcan stated the following:

"[...] Even of the five candidates, two refused to run on that particular day. Moreover, I will personally tell you that, it is really good that the GAJ did this and did not put these candidates to a vote, that is why the Secretary of the General Assembly [Gheorghe Balan, a.n.] is empowered and until the next GAJ will hold an investigation – how eligible, how appropriate are at least two of these candidates ... what skeletons do they have hidden in their closets? It will be the right time and you will find out...it is being investigated..." (minutes 17:20 – 18:17).

[...] “Before 28 April, there will be information about the two candidates and on the 28th they will not even come to the Assembly of Judges. Because they are ashamed. They have such big skeletons in their closets” (minute 1.05.09).

We vehemently disapprove of Judge Anatolie Țurcan’s statements and ask those involved to immediately denounce any intimidation attempts. We ask the Superior Council of Magistracy, and if necessary, the General Prosecutor's Office to investigate ex officio, quickly, and thoroughly suspected surveillance, collection of personal data from archives and other private information of the judges concerned and to inform the public about the actions taken.

The signatory organizations urge the courts to respect the Constitution and the laws of the country, following the statute of the profession, which obliges them to act impartially, to perform their duties without bias, without personal preferences or other interests.

5. The campaign to denigrate and lynch representatives of civil society and some members of the Pre-Vetting Commission

Recently, representatives of civil society organizations, as well as some members of the Pre-Vetting Commission, have been the target of new attacks based on falsehoods and misinformation, aimed at discrediting the Pre-Vetting Commission, civil society organizations, the extraordinary evaluation exercise and, in general, the judiciary of the Republic of Moldova.

Attacks were launched on news portals or Telegram channels with a dubious reputation, using false information, insinuations or manipulating data. The attacks intensified especially after several judges running for the SCM did not pass the extraordinary evaluation.

The published articles do not respect any deontological rules of journalism, but they faithfully follow the rules of disinformation: they have no author, they present speculations and derogatory allegations without real foundation, they do not include the opinion of the person concerned, etc. Later, this information is reproduced by other pages with a dubious reputation and promoting politically biased messages. This way of disinformation has been extensively documented in the Radiography of Attacks on Non-Governmental Organizations in the Republic of Moldova. The false and unverified information is later picked up by media portals and ‘opinion makers’ and presented as true.

These articles and disinformation aim to divert the attention from serious matters of the judiciary and compromise civil society organizations, the public positions of its experts and the extraordinary evaluation. The signatory organizations condemn the behaviour of the authors of these publications and those who promote them, and we call on them to desist from such actions of intimidation and misinformation.

Recommendations addressed to the authorities involved:

Government/Ministry of Justice

- To publicly present all the factual circumstances and concrete arguments that were the basis of the CES decision No. 64 of 31 March 2023.
- To ensure pro-active communication and inclusive dialogue with all interested parties, judges, prosecutors, and civil society to operationalize the new composition of the SCM, ensuring that it is fully functional and involved in the following justice reform measures, guaranteeing the

further implementation of the SCJ reform and the extraordinary evaluation of judges and prosecutors in full compliance with the recommendations of the Venice Commission.

to the Parliament of the Republic of Moldova

- To speed up the implementation of the Law on the evaluation of SCJ judges in the part related to the appointment of a new independent Commission for the evaluation of candidates.
- To initiate again the competitions for the selection of members in the SCM among the civil society for the three vacant positions.

to the Superior Council of the Magistracy

- To initiate the temporary transfer of judges who meet the eligibility criteria according to the new SCJ Law.
- To adopt as soon as possible the regulation regarding the selection of SCJ judges and to announce competitions for these positions.
- To adjust, with the involvement of interested judges, the draft Regulation of the General Assembly of Judges before the next General Assembly is convened.
- To launch again the contests for the appointment of SCM members to fill all the vacancies.
- To investigate ex officio, quickly and thoroughly the alleged stigmatization, fraud, illegal collection of personal data from the archives, and other private information of judges candidates for the SCM and to inform the public regarding the results of these investigations.

to the General Prosecutor's Office

- To initiate ex officio, fast and thorough investigation of suspected surveillance, collection of personal data from archives, and intimidation of representatives of civil society, judges candidates for the positions of judges in the SCM and other private information of the concerned judges and to inform the public about the taken actions.

to the General Assembly of Judges and the body of judges

- To call on the GAJ to vote on eligible judge candidates for the SCM at the next assembly to be convened on 28 April 2023.
- To ensure compliance with the Constitution and laws, human rights and freedoms, the fulfilment of their duties with honour, conscience and impartiality, according to the Law on the status of the judge and the judge's oath.

to the development partners of the Republic of Moldova

- To ensure support for the national authorities to promote and implement the recently announced reforms (SCM, SCJ, extraordinary evaluation) including by incorporating the changes recommended by the Venice Commission.
- To mediate, possibly, the discussions between the authorities and judges.

to the mass media institutions

- To objectively reflect current events and not to take materials from anonymous Telegram channels, which are not in line with deontological rules of journalism and are intended to misinform.
- To carefully monitor and reflect in compliance with procedural rules the processes related to the Pre-vetting procedure, as well as other developments in the judiciary.

Signatory organizations:

1. Human Rights Embassy;
2. Independent Analytical Centre 'Expert-Group' (Expert-Group);
3. Center for Investigative Journalism of Moldova (CIJM);
4. Legal Resources Centre from Moldova (LRCM);
5. WatchDog.md Community (WatchDog.md);
6. Foundation for Education and Development (FED Moldova);
7. Institute of Public Policy (IPP);
8. Moldovan Institute for Human Rights (IDOM);
9. Institute for European Policies and Reforms (IPRE);
10. Development Initiatives Laboratory (LID Moldova);

The list of signatories remains open