

NEWSLETTER

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IN BRIEF

WHAT HAPPENED TO THE 40 JUDGES WHO, IN 2022, APPLIED FOR REAPPOINTMENT?

Before 1 April 2022, the Moldovan judges were appointed for a five-year term. At the expiration of this term, the Superior Council of Magistracy (SCM) and the President of the Republic of Moldova decide whether judges would be reconfirmed for office until they reached the age limit (65 years). The Venice Commission [repeatedly](#) suggested that the five-year period should be excluded because it could undermine the independence of judges (see details in [LRCM Newsletter No. 46](#)).

Under [the latest amendments to the Constitution](#), which came into force on 1 April 2022, judges are appointed from the outset until the tenure limit is reached. The President can reject the proposed nomination once, and the repeated proposal of the SCM is binding for the President. Therefore, the members of the SCM would have to examine the reasons for a possible rejection by the President and decide whether to propose a rejected judge for reconfirmation by a 2/3 vote of the members. Otherwise, the judge is dismissed.

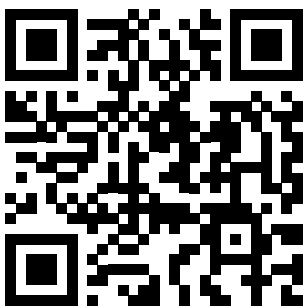
As of 31 March 2022, about [40 judges](#) had their terms expired and asked the SCM to be reappointed until the age limit. These judges were receiving salaries but could not examine cases. At the beginning of June 2022, in a request sent to the SCM, the President's Office [rejected](#) 13 judges because they "do not meet the requirements of integrity and good character, their image being affected by ethical and deontological shortcomings". Between October 2022 and July 2024, the judges explained why the 13 judges were not reconfirmed at the SCM Plenum.

Once the judges' applications for reconfirmation are accepted by the decisions of the SCM Plenum, a list of judges proposed for reconfirmation is submitted for appointment by presidential decree. Thus, by the President's decrees of [17 October 2022](#), [8 November 2022](#), [31 October 2023](#), [29 November 2023](#), [31 May 2024](#) and [3 July 2024](#) – 27 judges were confirmed for office until the age limit.

At its July 2024 meeting, the SCM [accepted](#) the applications of six more judges, but they await appointment decrees from the head of state. At the same time, the SCM rejected the applications of four judges (Irina Păduraru, Victoria Hadîrcă, Rodica Berdilo and Victoria Sanduța) and proposed to the President to dismiss them. Subsequently, on 9 July 2024, the SCM decided to discontinue the examination of the case of



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One judge resigned, another judge awaiting the SCM's decision, 33 judges accepted by the SCM, six of whom are awaiting decrees of appointment by the head of state, and four others proposed for dismissal.

Alexei Panis, pending the Constitutional Court (CC) [judgment](#) of July 18. On the basis of the CC ruling, the reconfirmation of judge Panis will be possible with at least eight "pro" votes from the SCM plenary.

At the same time, on [1 June 2023](#), the SCM examined and approved judge Olga Ionascu's resignation request, and judge Valentin Lastavetchi [passed away](#) in May 2022.

Out of all 40 applications for reconfirmation, by the end of July 2024, 37 applications were examined, and decisions were issued by the SCM. Of these 37 judges, six judges are still awaiting the President's decree. Four judges whose applications were rejected by the SCM and were proposed to be dismissed have 30 days to appeal the SCM's decisions at the Supreme Court of Justice (SCJ). One of the applications is pending before the SCJ, and the SCJ did not consider two other applications due to resignation and death.

BACK TO BASICS: CONSTITUTIONAL COURT CHANGES QUORUM FOR SCM MEETINGS

On 18 July 2024, the Constitutional Court (CC) declared unconstitutional some provisions of [the Law on the Superior Council of Magistracy \(SCM\)](#) regulating the quorum for the organization of the SCM meetings and the adoption of decisions by its members. The complaint to the CC was submitted by a Member of Parliament.

In 2022, the law was amended to establish the quorum for the meetings of the SCM based on the number of members in office rather than the total number of its members. The authorities justified this change at the time with several reasons, including the risk of blocking the SCM's activity due to an insufficient number of active members following the pre-vetting exercise and the need to ensure the continued functionality of the Council. [In the CC ruling](#), it was decided to revert to the 2022 provisions in the version before the amendments declared unconstitutional entered into force. The CC noted that, [by amending the rules](#), the legislator lowered the threshold from which the quorum for meetings of the SCM is established, from the total number of 12 members to the number of sitting members of the SCM. According to the CC, with the recent appointment of more members to the SCM, the application of these regulations has become difficult to justify.

Moreover, a quorum calculated from the number of sitting members would allow a smaller number of SCM members to decide on matters of importance for the judiciary. In concrete situations, a small quorum would allow a category of members (judges or non-judges) to adopt decisions, which would not ensure the independence of the judiciary and the condition of avoiding corporatist self-governance. Until now, the SCM meeting was deliberative if at least two-thirds of the members in office (six out of nine) were present and decisions were adopted by a majority vote of the members present (theoretically five out of nine). Under the revamped provisions, meetings are deliberative, with at least two-thirds of the

SCM meetings will be deliberative if at least eight out of 12 members attend, and decisions can be adopted by at least seven out of 12 votes.

members present (eight out of 12), and resolutions will be adopted by at least seven votes. If the President of the Republic of Moldova rejects a candidate, the SCM will propose the same or another candidate with the vote of two-thirds of its members, i.e., at least eight votes. The CC noted that the present findings of unconstitutionality do not affect proceedings already in progress and do not apply retroactively but will apply to pending applications or future situations.

At the same time, the author of the request asked the CC to declare unconstitutional the SCM's appointment of Viorica Puica as a judge of the CC. Earlier, in November 2023, with the unanimous vote of the members present, the SCM appointed judge Puica to this position (see details in [Newsletter No. 63](#)). This claim was rejected. The CC noted that it does not have the power to review the constitutionality of the SCM's acts, regardless of their content.

HEARINGS OF CANDIDATES FOR MEMBERSHIP OF THE SCM AND SPECIALIZED BOARDS AND FOR THE POSITION OF SCJ JUDGE – JULY DIGEST

In July 2024, the Vetting Commission (Commission) issued reports on several candidates running for membership at the Superior Council of the Magistracy (SCM) and the Disciplinary Board and for judgeship at the Supreme Court of Justice (SCJ). The SCM weighed on some of the reports issued by the Commission.

On 2 July 2024, the SCM noted that lawyers [Ruslan Berzoi](#) and [Ludmila Bolocan](#), who were running for the SCJ, passed their evaluation. At the same time, the SCM accepted the Commission's reports on the failure of the external evaluation for the following candidates running for SCJ judgeship: [Andrian Ciobanu](#) (judge at the Balti Court of Appeal), [Anatolie Turcan](#) (acting judge at the SCJ) and [Alexandru Rotari](#) (lawyer). The first two candidates were dismissed following the SCM's decision that they failed the evaluation based on para. (4) of Art. 17 of [Law no. 65/2023](#), on the basis of which they were evaluated. Some of the reasons for both candidates failing would be unexplained wealth and violation of ethical rules.

At the SCM meeting on 9 July 2024, the Commission accepted that [Ion Tețcu](#), prosecutor at the Prosecutor's Office of Calarasi District, running for the SCJ, failed the evaluation.

On 22 July 2024, the Commission passed its decisions on the evaluation of some candidates for the SCM and Disciplinary Board from the civil society to the Parliament and the Ministry of Justice. In particular, it was found that Anatolie Minciună, former judge at the Chisinau Court of Appeal, and lawyers Vitalie Ciuchitu and [Ion Rusu](#) did not pass the evaluation. According to the Commission's decisions, the candidates did not meet the integrity criteria set out in Law 26/2022, based on which they were assessed. The assessment reports of Minciună and Ciuchitu were not published, as the candidates objected to their publication.

On 31 July 2024, the Commission [announced](#) that Andrei Cazacicov, judge

In July, the Vetting Commission failed three candidates to the SCJ and the Disciplinary Board of Judges. For the first time, candidates running for the SCJ from the judges' bench were dismissed from office following the SCM's decision to fail them.

of Edinet Court, Briceni district, candidate for the position of member of the Disciplinary Board, passed the external evaluation, as he meets the criteria of ethical and financial integrity.

PRE-VETTING COMMISSION ACTIVITY IN JULY: A RESUMED HEARING AND THE RESULTS OF THE APPEALS LODGED WITH THE SCJ

In July 2024, the Supreme Court of Justice (SCJ) adopted a series of decisions on the appeals filed by candidates running for membership at the Superior Council of Magistracy (SCM) from the judges who did not pass the repeated evaluation.

On 4 July 2024, for the first time, the SCJ repeatedly annulled the decision of the Pre-Vetting Commission (Commission) on the failure of Ecaterina Buzu to pass the evaluation. The SCJ concluded that the members of the Commission did not analyse "in full the entirety of the income obtained by Ecaterina Buzu and her family members", noting that from the salary received in 2011-2012 alone, she "would not have been able to make bank deposits in the amount of 60,030 MDL and to support herself and two adult daughters". The SCJ noted that although the candidate did not present new information on her income to the Commission, only in court, the Commission drew an erroneous conclusion as to the sources of the candidate's financial means.

On the same day, the SCJ **upheld** the Commission's decision to fail Vitalie Stratan's repeated assessment. One of the main arguments of the SCJ was that serious doubts were not removed regarding "the purchase of an apartment at a favourable price – undervaluation of the sale price, which includes the aspect of the sale of the apartment in 2018 and failure to pay the capital increase; the purchase of an apartment at a favourable price in 2014 – the source of financial means, which includes two aspects: a 200,000 MDL load from the candidate's mother-in-law and the savings of the candidate's family; and the failure to declare a loan of 200,000 MDL in the manner required by law".

On 15 July 2024, Angela Bostan's **appeal against the decision not to pass the assessment was rejected**. The SCJ's decision states that the candidate did not remove the Commission's doubts as to the sources of the funds used to purchase an apartment in Chisinau municipality in her mother's name.

On 17 July 2024, the Commission repeatedly interviewed judges Marina Rusu (see details in [Newsletter No. 70](#)) and [Victor Sandu](#) (more on the initial assessment in [Newsletter No. 52](#)). The repeated interview took place after the SCJ on 1 August 2023 **upheld** the candidate's appeal against the Commission's decision to fail him and ordered a repeated evaluation.

At the beginning of the hearing, Commission President Herman von Hebel said that on 12 July 2024, the candidate filed two requests: a request to recuse Commission President Hebel and a request asking him to step down as a member of the

In July, the Pre-Vetting Commission repeatedly interviewed two SCM candidates. The SCJ upheld the Commission's decisions on the repeated assessment of two SCM candidates and ordered a repeated evaluation for one candidate.

Commission. Both applications were rejected because they were filed out of time and were unfounded. Victor Sandu said that the principle of not being a judge in one's own case had been breached after he learned that the President of the Commission was considering the applications in question. The latter explained that the Commission would have been without quorum without his participation.

During the hearing, the members of the Commission expressed serious doubts about the ethical and financial integrity of the candidate on several issues: failing to pay capital gains tax from the sale of a motorcycle and a car that was not subject to the initial assessment and the importation in his name of 20 motorcycles and 10 cars between 2008 and 2015 and their sale without declaring any income, the importation of six vehicles in 2019 in the name of the candidate's mother and the purchase in 2021 of a car previously owned by a prosecutor. Likewise, the candidate was asked about the judgment in a case that led to a violation by the Republic of Moldova at the European Court of Human Rights ([Cosovan v. Moldova](#) case). Judge Sandu instead asked for the list of the members of the Commission Secretariat to be made public in order to find out who had access to the personal data of the candidate and his family.

THE ACTIVITY OF THE PROSECUTORS EVALUATION COMMISSION – JULY DIGEST

On 10 July 2024, the Prosecutors' Evaluation Commission (the Commission) [announced](#) the initiation of the procedure for the evaluation of Prosecutor [Sergiu Russu](#), Head of the Anti-Trafficking in Persons Section of the General Prosecutor's Office. He is to be assessed on a priority basis following his appointment as Deputy Prosecutor General Ion Munteanu's Deputy on his proposal. The Superior Council of Prosecutors (SCP) agreed to this at its [12 July 2024](#) meeting. Prosecutor Russu will be in charge of prosecution (see details in [Newsletter No. 70](#)).

On [12 June 2024](#), the Commission approved the first assessment report on former anti-corruption prosecutor Irina Toncoglaz (Murguleț). The Commission found the assessment not to be approved due to failure to submit statements and the questionnaire on ethical integrity. Prosecutor Toncoglaz [was seconded](#) to the Anti-Corruption Prosecutor's Office for the periods of 2 January 2019 – 3 February 2020 and 17 February 2020 – 11 October 2021. According to the [law](#), prosecutors of specialized prosecutor's offices, including those delegated to them since 2017 for a term of more than one year, are subject to evaluation. The SCP considered the Commission's evaluation report at its meetings on [24 July 2024](#) and [1 August 2024](#). Prosecutor Toncoglaz pleaded that she was unable to access the questionnaire and statement forms because she was abroad and did not have access to her work email. However, the SCP accepted the report and found that the assessment had not been upgraded. The SCP proposed to the Prosecutor General to dismiss her from the position of prosecutor in the Nisporeni District Prosecutor's Office, depriving her of the right to hold public office for five years, as well as of the right to the one-off dismissal allowance from the position of

The evaluation procedure for one of the deputy Prosecutors General has started. Three other candidates for the specialized boards of the PSC passed the external evaluation.

prosecutor. [The SCP judgment](#) can be appealed to the Supreme Court of Justice (SCJ).

In July, the Commission announced that three candidates running for the specialized board of the SCP passed the evaluation. [Constantin Șușu](#), a former SCP member from November 2017 to December 2023, [currently](#) a prosecutor at the Prosecutor's Office for Combating Organized Crime and Special Cases (PCCOCS), applied for both colleges. [Tatiana Gulea](#), acting chief prosecutor of the Criminal Prosecution Section of the General Prosecutor's Office, and [Vasile Buzu](#), prosecutor of the Balti Municipal Prosecutor's Office, applied for the Board for the Selection and Evaluation of Prosecutors. The Commission unanimously decided that all three candidates meet the criteria of ethical and financial integrity. The Commission's decisions on candidates [Șușu](#) and [Gulea](#) are public. The decision on Prosecutor Buzu has not been published because the candidate did not consent.

The LRCM wrote about the hearings of the prosecutors mentioned in [Newsletter No. 69](#). Constantin Șușu was questioned about the conditions of obtaining a free plot of land for the construction of a house, about bank transfers received from his mother-in-law in the amount of 20 000 USD, as well as about a disciplinary case against him. Tatiana Gulea was questioned about two complaints concerning her activity and a loan of 220,000 MDL. Vasile Buzu was questioned about his income during the four years he lived in Romania, the reason for not declaring a car purchased and donated by his father, as well as about a violation of the Road Traffic Regulations.

LRCM STUDY – HOW DO WE PROTECT THE MEDIA FROM ABUSIVE ATTACKS IN THE COURTS?

On 3 July 2024, the LRCM presented the analytical paper [Media Freedom of Expression in the Face of Justice: How We Fight Judicial Processes Designed to Silence Journalists \("SLAPP"\)](#) at a [public event](#). Legal professionals, including judges involved in reviewing actions against the media, attended the event.

The LRCM analysed how evenly national courts examine cases involving media freedom of expression and whether the SLAPP (Strategic Lawsuits Against Public Participation) phenomenon is present in Moldova. The authors of the study identified and analysed 37 court cases irrevocably resolved by the Supreme Court of Justice (SCJ) in the last five years (2019 – 2023). Judgments of lower courts were also studied. In the study, the authors did not assess the correctness of the given solutions but only analysed whether the law was applied in an uniform manner.

The results of the study conclude that more than half of the plaintiffs in cases related to journalists' activities were politicians or state officials. Online news portals and TV stations were most often attacked. The average duration of cases stretched to more than three years, which is three times longer than the average for all civil cases. First instance judges were more likely to allow actions against

The legislation protecting journalists' freedom of expression is uniformly applied, and 2/3 of the court cases on this issue have been dismissed in the last five years.

the media. Courts of Appeal and the SCJs overturned half of the substantive admission decisions. In the end, 70% of actions were dismissed, suggesting that these were attempts to intimidate the media. The average amount of moral damages claimed to be cashed was 95,500 MDL. The average amount of moral damages actually attributed was 15,000 MDL.

Overall, the judges applied the law uniformly, and no inexplicable judgments were found. The status of the plaintiffs as public persons was properly assessed, and the citizens' right to information was taken into account. Facts were correctly distinguished from value judgments. However, SLAPP actions were identified. The media incurred legal costs, uncertainty, time and energy consumption even if they were dismissed. This underlined the need to adjust national legislation to reduce the harmful impact of this phenomenon.

Based on these findings, the LRCM recommended that the authorities create a mechanism for an accelerated SLAPP determination with dismissal of the case; collect and analyse data on court cases concerning freedom of expression of the media; create a national register for SLAPP actions; train legal professionals in detecting and counteracting SLAPP actions; and organize awareness raising campaigns on the importance of combating SLAPP.

I IN BRIEF

On **9 July 2024**, Sergiu Caraman [was elected](#) president of the Superior Council of Magistracy (SCM) for a two-year term after holding the interim post for almost a year. He received seven out of the nine-member votes of the SCM. Council members were choosing between Sergiu Caraman and [Aliona Miron](#), both having the opportunity to present their views and answer questions from their colleagues. During the contest, Sergiu Caraman [emphasized](#) that the work of the SCM is about the plenary and not about the President. Among his priorities, he mentioned the SCM's strategy, solving problems related to vacancies and initiating talks with the authorities on salary increases. He also emphasized the need to improve communication with the courts, increase the quality of the reports of the Judicial Inspection and increase the transparency of the SCM by improving online broadcasting and openness towards the press. Before Sergiu Caraman's appointment, the position of SCM President was vacant for more than five years.

On **15 July 2024**, the National Institute of Justice (NIJ) [launched](#) the entrance examination for the initial training course for future judges and prosecutors. The selection process includes two stages: the electronic written test, which consists of a psychological test and a specialized test, and the oral test, [to be held](#) between 30 September and 4 October 2024. This year, the admission process introduces several innovations due to amendments to [the NIJ Law](#). One of the most important changes is the assessment of candidates by two specialized committees on civil law and civil procedure, criminal law and criminal procedure, respectively, as well as additional integrity checks. Candidates must submit documents such as a declaration of assets and personal interests, a detailed criminal record and,

where applicable, a copy of their employment record or a copy of the document certifying their length of service. They must also be of good character. Those who do not meet these criteria are eliminated from the competition. In 2024, the NIJ has advertised 50 vacancies, 25 each for judges and prosecutors. In the first stage, [91 candidates](#) were admitted, of which 52 for the position of judge and 39 for the position of prosecutor.

Willem Brouwer [was appointed](#) member of the Committee for the External Evaluation of the Ethical and Financial Integrity of Judges and Candidates for the Supreme Court of Justice at the plenary session of the Parliament **on 18 July 2024**. [63 MPs](#) adopted the draft decision. Brouwer's nomination was proposed by development partners following the resignation of former Commission member Maria Giuliana Civinini. Willem Brouwer's [previous experience](#) includes the external evaluation of judges and prosecutors in Albania, serving as Vice-Chair of the EULEX Rule of Law Mission in Kosovo and as a judge at the Supreme Court in Priština, Kosovo.

On **25 July 2024**, the Parliament of the Republic of Moldova [adopted](#) the [Law on Personal Data Protection](#) in the second reading, [supported by 57 MPs](#). It aims to transpose [Regulation \(EU\) 2016/679 \(GDPR\)](#) into national law to ensure a high level of protection of personal data in line with European Union and Council of Europe standards. The new law will enter into force 24 months after the publication of the law in the Official Gazette of the Republic of Moldova. The LRCM has sent a [legal opinion](#) with recommendations to clarify certain terms, limit the excessive prerogatives of the National Centre for Personal Data Protection (CNPDCP) and restrict special categories of personal data held by information providers, the disclosure of which is strictly limited by the present law.

On **31 July 2024**, the [amendments to the laws covering external evaluation](#) were voted on in the second reading. These are intended to make the evaluation processes more efficient and correct problems that have arisen in the application of the current legislation. The draft stipulates that judges and prosecutors who will not pass the external evaluation will not be allowed to issue dispositive and procedural acts until the Supreme Court of Justice (SCJ) has examined the appeal. According to the authors, this measure will eliminate the risk of issuing subjective dispositive acts, which affects the image of justice. Likewise, in the case of resumed evaluation procedures, the amendments will allow the persons evaluated to provide additional information if it could not be submitted initially for objective reasons. To eliminate the possibility of repeated re-evaluations by the Pre-Vetting Commission and continuous appeals, the draft law provides that the SCJ will be empowered by law to decide whether or not a person should be promoted.

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This newsletter was funded by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the LRCM and do not necessarily reflect those of the United States Department of State.

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