



Strasbourg, 13 December 2021

**CDL-AD(2021)046**

**Opinion No. 1069 / 2021**

Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REPUBLIC OF MOLDOVA**

**JOINT OPINION**  
**OF THE VENICE COMMISSION AND THE DIRECTORATE GENERAL**  
**OF HUMAN RIGHTS AND RULE OF LAW (DGI) OF THE COUNCIL**  
**OF EUROPE**

**ON SOME MEASURES RELATED TO THE SELECTION OF**  
**CANDIDATES FOR ADMINISTRATIVE POSITIONS IN BODIES OF**  
**SELF-ADMINISTRATION OF JUDGES AND PROSECUTORS**  
**AND THE AMENDMENT OF SOME NORMATIVE ACTS**

**Adopted by the Venice Commission**  
**at its 129<sup>th</sup> Plenary Session**  
**(Venice, 10-11 December 2021)**

**on the basis of comments by**

**Mr Alexander BARAMIDZE (Expert, Former Substitute Member,**  
**Georgia)**

**Mr Richard BARRETT (Member, Ireland)**

**Ms Nina BETETTO (DGI Expert, President of the CCJE)**

**Mr António Henriques GASPAR (Member, Portugal)**

**Contents**

I.	Introduction .....	3
II.	Background and procedure .....	3
III.	Analysis.....	4
A.	General remarks.....	4
B.	The evaluation of candidates.....	5
IV.	Conclusion .....	10

## I. Introduction

1. By letter of 17 November 2021, the Minister of Justice of the Republic of Moldova requested an opinion of the Venice Commission on the draft law “on Some Measures related to the Selection of Candidates for Administrative Positions in Bodies of Self-Administration of Judges and Prosecutors and the Amendment of some Normative Acts” (CDL-REF(2021)095, “the draft law”). On 2 December 2021, the Ministry of Justice sent a revised version of this draft law (CDL-REF(2021)097, “the revised draft law”).
2. This opinion was prepared jointly with the Directorate General on Human Rights and the Rule of Law of the Council of Europe. Mr Alexander Baramidze (Expert, former substitute member, Georgia), Mr Richard Barrett (member, Ireland), and Mr António Henriques Gaspar (member, Portugal) acted as rapporteurs on behalf of the Venice Commission. Ms Nina Betetto analysed the draft law on behalf of the Directorate of Human Rights (“the Directorate”).
3. Given the health situation, it was not possible to travel to Chisinau. On 2-3 December 2021, the rapporteurs and experts, together with Ms Simona Granata-Menghini (Secretary of the Commission) and Mr Grigory Dikov (Administrator) held online meetings with representatives of the Supreme Council of Magistracy, the Supreme Council of Prosecutors, parliamentary majority, parliamentary opposition and with the Minister of Justice, as well as with representatives of civil society. The Commission is grateful to the Moldovan authorities and to the Council of Europe Office in the Republic of Moldova for the excellent organisation of these meetings.
4. This opinion was prepared in reliance on the English translation of the draft law and revised draft law. The translation may not accurately reflect the original version on all points.
5. Given the extremely limited time available for the preparation of this opinion, the Venice Commission has focussed on the most essential features of the revised draft law; this opinion therefore does not represent an exhaustive analysis of such law.
6. This joint opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 2-3 December 2021. The present Joint opinion was examined by the joint hybrid meeting of the Sub-Commissions on the Rule of Law and on the Judiciary 9 December 2021. Following an exchange of views with Mr Iulian Rusu, State Secretary, Ministry of Justice of the Republic of Moldova, it was adopted by the Venice Commission at its 129<sup>th</sup> Plenary Session (Venice and online, 10-11 December 2021).

## II. Background and procedure

7. The authorities of the Republic of Moldova intend to carry out an extraordinary evaluation of judges, prosecutors and other officials in the field of justice and integrity. Such evaluation is planned to be carried out by ad hoc bodies but the competence to decide on the appointment, transfer, removal from office, upgrading and imposing of the disciplinary sentences against judges and prosecutors rests with the Superior Council of Magistracy (“SCM”) (Article 123 of the Constitution) and with the Superior Council of Prosecutors (“SCP”) (Article 125 of the Constitution) respectively. Any extraordinary evaluation process therefore needs to start with these two institutions.
8. The mandate of the SCM and of the SCP is about to expire. The elections of the judge and prosecutor members of these bodies by the general assemblies of judges and prosecutors were to be held on 19 November 2021 and 3 December 2021 respectively, but were postponed due to the Covid-19 crisis. The authorities aim to put in place a system of integrity assessment of the *candidates* to these positions *before the elections take place*, presumably at the beginning of 2022. This filtering of candidates would render the extraordinary evaluation of the members of the SCM and SCP, to be carried out under the general scheme, redundant. This explains why

the preparation, adoption and implementation of this law are considered of the utmost priority by the Moldovan authorities.

9. The urgency of the matter does not justify, however, the lack of consultation of the stakeholders, notably the crucial ones such as the SCM and the SCP. The Venice Commission recalls that meaningful consultation of the opposition and of the stakeholders is a key element in democratic law-making. Appropriate consultations should take place prior to the final adoption of this law.

### **III. Analysis**

#### **A. General remarks**

10. The proposed law aims to establish an ad-hoc evaluation committee which will be responsible for checking the integrity of the candidates for administrative positions in the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies (Article 1). In the Information Note it is pointed out that this “is an essential condition for increasing the confidence of society in the judicial system, as well as for the proper functioning of these institutions.”

11. The Venice Commission and the Directorate General observe that the personal integrity of the members that constitute the Superior Councils (of judges and prosecutors) is an essential element to the nature of such bodies; it ensures the confidence of citizens in justice institutions – trust in magistrates and in their integrity. In a society that respects the fundamental values of democracy, the trust of citizens in the action of the Superior Councils depends very much, or essentially, on the personal integrity and competence and credibility of its membership. In a normally functioning regime, the integrity of magistrates to be elected by their peers should, by nature, result from the qualities, personal conditions, integrity and professional competence that allowed for the appointment as judges or prosecutors. Once the status of magistrate has been acquired, the qualities of integrity and competence must be presumed until proven otherwise, which can only result from disciplinary or functional performance assessment through appropriate legal procedures.

12. The creation of ad hoc bodies to assess the integrity of judges and prosecutors is based on the assumption that the justice system has extremely serious deficiencies and that there are systemic doubts about the integrity of magistrates. However, based on this assumption, the establishment of the proposed model of ad hoc committees for assessing integrity entails, in itself, a double risk. On the one hand, it assumes, even if it is only in terms of appearances (which in this very sensitive area do matter) that the system is generally affected, which can be extraordinarily unfair for many of its competent and upstanding elements, that are consequently tainted by a general suspicion; on the other hand, such method may prove ineffective, as far as judges and prosecutors are concerned, to remove and eliminate the fatal doubt that the model itself creates or may generate.

13. The Venice Commission and the Directorate General have previously expressed the view, in other contexts, that critical situations in the field of the judiciary, as extremely high levels of corruption, may justify equally radical solutions, such as a vetting process of the sitting judges. At the end, it falls ultimately within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary creates sufficient basis for subjecting all judges and prosecutors, as well as members of the SCM and SCP, to extraordinary integrity assessments.<sup>1</sup>

---

<sup>1</sup> Venice Commission, Interim Joint Opinion Of The Venice Commission And The Directorate Of Human Rights (DHR) of the Directorate General of Human Rights and Rule Of Law (DGI) of the Council of

14. In its recent Opinion No. 24(2021) on the Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems,<sup>2</sup> the CCJE recalls (para. 34) that the selection process of members of a Council including possible campaigns by candidates should be transparent and ensure that the candidates' qualifications, especially their impartiality and integrity are ascertained. In the opinion of the Venice Commission and of the Directorate General, a distinction should be made between the *vetting of serving members* and the "*pre-vetting*" of candidates to a position on these bodies. As a matter of principle, the security of the fixed term of the mandates of members of (constitutional) bodies serves the purpose of ensuring their independence from external pressure. Measures which would jeopardise the continuity in membership and interfere with the security of tenure of the members of this authority (vetting) would raise a suspicion that the intention behind those measures was to influence its decisions, and should therefore be seen as a measure of last resort.<sup>3</sup> Integrity checks targeted at the candidates to the position of SCM, SCP and their specialized bodies represent a filtering process and not a judicial vetting process, and as such may be considered, if implemented properly, as striking a balance between the benefits of the measure, in terms of contributing to the confidence of judiciary, and its possible negative effects.

15. The integrity test is not being applied to judges or prosecutors in respect to their roles as such judges or prosecutors and is thus not engaging the independence of their role. However, it is a crucial part of the Moldovan structure of governing the justice system that judges and prosecutors serve from time to time on the eight legal bodies concerned by the revised draft law. These are more than administrative positions; they are crucial roles in ensuring the good governance of these bodies in the justice system. Those bodies are designed to have a wide range of members from specific backgrounds, with judges and prosecutors being central. Serving on such bodies is, in the justice system of Moldova, part of the judicial or prosecutorial career although not a formal judicial function. It must be viewed as a temporary and exceptional situation that the makeup of these bodies will be interfered with for a period. In addition, any vetting process interferes with privacy rights, affects the relationship between the candidate and his or her 'close persons', and will have an effect on the candidate's reputation. For these reasons, it is an essential step that this preliminary filtering process be put on a statutory basis with narrow criteria and an appeal facility.

16. Furthermore, the fact that the integrity checks will be carried out not by the self-governing bodies of the judiciary and procuracy themselves, but rather by an external body to be constituted by Moldova's "development partners" and parliamentary majority and minority requires that the utmost consideration be given to respecting the constitutional principles of separation of powers and checks and balances.

## **B. The evaluation of candidates**

17. The assessment of the integrity of the candidates is carried out by the "Independent Committee assessing the integrity of candidates for administrative positions in the self-administration bodies of judges and prosecutors" (the Evaluation Committee). The issue of independence/accountability (*quis custodiet ipsos custodiet*) is a central question of the draft law, which provides that "[t]he Evaluation Committee shall have functional independence and

---

Europe on the Draft Law On The Reform Of The Supreme Court Of Justice And The Prosecutor's Office, § 84, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)020-e)

<sup>2</sup> CCJE Opinion No. 24 (2021), Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, <https://rm.coe.int/opinion-no-24-2021-of-the-ccje/1680a47604>

<sup>3</sup> The CCJE has repeatedly shown its reluctance towards the vetting of judges. See the CCJE Opinion No. 21 (2018) on preventing corruption among judges (para. 28). As to the vetting of the Council of the Judiciary see Opinion No. 24 (2021) on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems (para. 23).

decision-making autonomy vis-à-vis any natural or legal person, regardless of the form of organization.” The revised draft law provides (Article 5) for a mixed composition: three members appointed by the Ministry of Justice at the proposal of the parliamentary factions based on the proportionality principle, as well as one alternate member in the same order, and three members and two alternates proposed by the development partners and approved with the vote of 3/5 by the deputies of the parliament.

18. It is commendable that the revised draft law provides for two ineligibility criteria which aim at excluding political affiliation (Article 2 d) and e)). It is also positive that the opposition is involved in both the proposal of the members to be appointed by the Minister of Justice and in the election of the members selected by the development partners; this will not totally exclude the politicisation of the process but should guarantee more inclusiveness and cross-party support for the exercise.

19. There is no indication in the draft revised law of who the “development partners” are. The Ministry of Justice explained that this formula refers to the international partners who are present in the Republic of Moldova and active in the field of the judiciary. For the sake of clarity, the law should provide a clear definition of the term “development partners” or at least refer to a relevant legal act where such a definition is to be found.

20. The draft law falls short of laying down the procedure as regards the selection of members of the evaluation committee among the “development partners”.

21. Article 5 § 2 lists several requirements for the members of the Committee. These criteria do not specify whether the members have to be Moldovan nationals or may be foreigners, which might be relevant for those selected by the International donors. If that is the case, the criteria should be adjusted.

22. It is positive that the revised draft law provides several guarantees for the members of the evaluation committee, in order to ensure their independence and impartiality (Article 5 §2). However, while the requirements that members of the evaluation committee must meet as regards their competence, experience, integrity, and non-affiliation to the Parliament or a political party are reasonable (Art. 6(2)), the requirement that the member “*has not held the position of judge or prosecutor in the Republic of Moldova for the last 3 years*” seems to lack of reasonable justification. The Information Note does not give any reasons for the creation of such extra-judicial mechanism, nor does it indicate the ratio for the period of three years. The international standards on this matter are well-established and rather clear: judicial members of the Councils for the Judiciary should be elected by their peers. Given that integrity checks are *de facto* a consisting part of the selection process of members of the SCM, SCP and other specialized bodies, the proposed requirement implying that judges and/or judiciary *per se* cannot be trusted is arbitrary and should be rejected. It should be recalled that the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law, in their Interim joint report No. 966/2019 (adopted 11-12 October 2019) on the draft Law on the reform of the Supreme Court of Justice and the Prosecutor’s Office (hereinafter »Opinion 2019«) in the Republic Moldova recommended (para. 55) that the number of members of the evaluation committee (a specialized committee entrusted with the evaluation of integrity, lifestyle and professionalism of sitting Supreme Court judges) with a judicial background (i.e. former judges or former constitutional court judges) *should be increased to the extent that a substantial number of members (if not half) has judicial background*.

23. It is positive that the revised draft law provides for an exclusive list of grounds for termination of the mandate of the members of the Evaluation Committee.

24. The Evaluation Committee is granted very broad powers (Article 6):

- a) to assess the integrity of the candidates based on previous declarations of income, personal interest or wealth and personal interests, as well as based on the verifications conducted by the National Integrity Authority, Intelligence and Security Service, the State Fiscal Service and other public authorities that have information about the candidate;*
- b) verify the data and information on the property, incomes, expenses of the candidates and of the persons close to them, within the meaning of Law no. 133/2016;*
- c) to hear the candidate, persons close to him or her and other persons who have relevant information about the candidate's integrity, including lifestyle and costs of living;*
- d) to request information from natural or legal persons;*
- e) take decisions on the results of the assessment of the integrity of candidates, including their lifestyle and costs of living.*

25. These powers are further elaborated in Art. 11 (Evaluation procedure). The revised draft law sets out the criteria for the assessment of candidates' assets (Article 8) and the integrity of candidates (Article 9).

26. It is unclear whether the evaluation is a check list of previous compliance, declarations, tax status etc or an assessment of the reputation of the candidate. It is not clear what should be understood by "the correspondence of [the] standard of living with the level of incomes obtained and the expenses incurred". How much discrepancy between the "standard of living" and "expenses" can be considered as a manifestation of non-correspondence? It is commendable that Article 13(1) requires the IEC to come up with a reasoned decision, but in the absence of such specific criteria there is no guidance what can be considered reasoned or unreasoned.

27. The evaluation to assess the candidates' assets will cover persons close to the candidate within the meaning of Law 133 of 2016. The definition of close persons under that law should be examined to see if it is relevant and essential for this purpose and to see if the range of persons could realistically be covered in the narrow timeframe envisaged. Do these close persons have a veto on their cooperation with the evaluation? If the answer is yes, those persons have a powerful role in facilitating the legitimate opportunities of the candidate. An estranged family member or former business associate might use that power to frustrate the legitimate aspirations of the candidate. If the answer to the earlier question is no, the third party is being put to trouble and interference with privacy for a purpose in which they might have no interest. For these reasons the list of close persons must be narrow and essential.

28. There is no definition of "integrity". Article 11(3) refers to professional integrity, which might be different from integrity in one's private life. Perhaps integrity could be defined or explained by reference to professional or business life. Perhaps the scheme is that integrity is the wide test of the committee which includes professional integrity, lifestyle and standard of living. The criteria for assessing the integrity are rather heterogeneous especially as concerns the nature of their assessment. While the non-existence of a court decision or the absence of disciplinary sanctions are rather easily verifiable, "compliance by the candidate with the principles set out in the Code of Ethics and Professional Conduct of judges or, as the case may be, prosecutors" or "committing by the candidate of acts which infringe the honour or professional probity or the prestige of justice to such an extent that the confidence in justice is affected" are rather complex assessments.

29. As the CCJE stated in its Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality (para. 60), *it is incorrect to correlate breaches of proper professional standards with misconduct giving rise potentially to disciplinary sanctions. Professional standards represent best practice, which all judges should aim to develop and towards which all judges should aspire. It would discourage the future development of such standards and misunderstand their purpose to equate them with misconduct justifying disciplinary proceedings. In order to justify disciplinary proceedings,*

*misconduct must be serious and flagrant, in a way which cannot be posited simply because there has been a failure to observe professional standards set out in guidelines.* In this context, the implementation of a system of integrity checks should always be strictly in line with the principle of proportionality. Breaches of professional conduct cover a wide range of actions ranging from minor offences to serious misconduct giving rise (potentially) to disciplinary sanctions. This is not to say that breaches of the professional standards may not be of considerable relevance where there has been misconduct sufficient to justify and require disciplinary sanction. However, minor offences should not provide, in the opinion of the Venice Commission and of the Directorate General, a valid ground to reject a candidate.

30. The criteria used to assess the assets and the integrity of the candidates should be the same which are used for any equivalent assessment process in the Republic of Moldova.

31. The revised draft law stipulates that *the evaluation committee shall have access to any information it deems necessary for the performance of its tasks, except for information falling under the provisions of Law no. 245/2008 on state secret. Public authorities are obliged to make available to the Independent Evaluation Committee any information requested within 10 days. Furthermore, in the process of assessing lifestyle and costs of living and professional integrity, the Independent Evaluation Committee shall have the right to request from natural and legal persons of public or private law, including financial institutions, the documents and information necessary to carry out the assessment. The requested information shall be presented free of charge within 5 days from the date of the request.* Given the broad powers of the evaluation committee, draft articles 7 and 11 should set out that the right to private and family life of judges and third persons should be respected. Any information and documents produced in the individual integrity checking process must not be published and must only be used for the narrow purpose of the evaluation. It must be clear that such information or documents cannot be used directly in a criminal or administrative investigation, except in relation to the giving of false answers.

32. It is positive that the revised draft law provides several procedural guarantees of candidates (to be informed about the initiation of the evaluation; to be assisted by a lawyer or a trainee lawyer during the evaluation procedure; to get acquainted with the evaluation materials; to submit in written form data and additional information to those accumulated by the evaluation committee; and to challenge the evaluation committee's decision). The candidate's right to become acquainted with the 'evaluation materials' should encompass all the materials gathered by the committee and taken into account in its decision.

33. Article 11 (6) provides that *"after examining the gathered information, the Evaluation Committee invites the candidate in a meeting to conduct a hearing. The hearings are public. The Evaluation Committee may decide to hold parts of the hearing closed if interests of public order or morality could be affected. (7) As an exception from par. (6), at the request of the candidate, the Evaluation Commission may decide to hold a closed hearing, in order to avoid disclosing information relating to the private aspects of the candidate's life or of close persons, or other circumstances which could prejudice the public order or the morality"*. In the opinion of the Venice Commission and of the Directorate General, the draft should provide for *the right* of the candidate concerned to appear before the evaluation committee and to participate in the procedure before it if he/she so requests. On the other hand, if the Evaluation Committee invites the candidate to participate in a hearing and the latter refuses with no objective justification, thus waiving his or her right to appear in person, the Evaluation Committee should proceed in his or her absence. In addition, in the opinion of the Venice Commission and of the Directorate General, hearings with candidates should not be in public. Public hearings could indeed discourage candidates who have something to hide but also those who fear dealing again with allegations they may have fended off already. Open hearings may discourage those who do not wish to display in public their family's business in a forum with questions. There should be full transparency in relation to those who are allowed to proceed. If (in the public hearing proposal in the revised draft) a

candidate applies for a private hearing but it is refused, they should be able to withdraw their candidacy without any stain.

34. Article 11 provides that the Evaluation Committee shall accumulate and verify the information held within 30 days from the date of transmission of the request to verify the candidates by the competent institution. The scope of the assessment must be tailored to the time available. If it is to be conducted within 30 days, it could hardly cover an evaluation of the legitimacy of an allegedly corrupt relationship in the past.

35. According to the revised draft law, the decision shall be taken by a majority of the members and the members of the Evaluation Committee shall not have the right to abstain from voting. Considering that the IEC will consist of 6 members, there should be some instruction what will happen if the votes are divided equally between the members. In addition, the Evaluation Committee will have an equal number of members appointed by the MoJ and selected by the international donors: the rules on the quorum for the decisions to be taken by the Committee should reflect the need for a meaningful but balanced participation of the second group. One option could be that the IEC chair has a decisive vote. However, there is no mention in the law of the chair and his/her rights. While the particulars can be given in the IEC regulations referred to in Article 4(2), some basic guidance should be provided in this draft law. This is especially important to the extent that the IEC is going to be an ad-hoc body which will be dissolved after the fulfilment of a specific task.

36. The outcome of the evaluation should be a yes/no decision as to whether the candidate can be in the competition. The reasoned decision should be served to the candidate, but it is questionable that the decision to reject a candidate should be published at all (and in any case not until the remedies are exhausted). As it is foreseen that rejected candidates continue as judges or prosecutors or in other positions, they should not be prejudiced by having applied or having been rejected.

37. The right of appeal seems to extend beyond the candidate to 'any person who participated in the administrative procedure'. Who does this cover? Does it cover close persons or property owners who feel that their business history may be subject to criticism? It should be clear if the effect of initiating an appeal is to stop the competition until the appeal is disposed of.

38. It is not clear what the consequence of the Chisinau Court of Appeal decision or that of the higher court – if the appeals court's ruling is appealed – is going to be if the court quashes the IEC's decision. Will the case be remitted to the IEC for reconsideration or will the court have a final say whether a petitioner should be promoted to the next phase of selection? Will the initial selection process at the IEC be stayed until the petitioner's case is finally resolved in courts and/or at the IEC? These are the questions that need some clear answers in the draft law. In the opinion of the Venice Commission and the Directorate General, the appeal should not stop the competition. The appeal might clear the stain on the reputation but will not overcome the fact that the competition went on to a result.

39. Finally, the revised draft law makes it clear that the results of the integrity assessment will have no effect on the candidate's career as a judge or a prosecutor. This derives from the principle of inamovibility of judges and the constitutionally entrenched exclusive competence of the Supreme Councils to impose sanctions or dismiss a judge or prosecutor. However, the question remains how would the society's trust in judicial institutions be enhanced if the IEC finds that a judge or a prosecutor has failed to stand the integrity test and, nevertheless, the same judge or prosecutor retains his/her post pretending that nothing has happened. The Minister of Justice has underlined in this respect that all judges and prosecutors will be subjected to an extraordinary assessment procedure and that the results of this assessment as candidates may trigger further procedures before the anti-corruption authorities. Given that Moldova is one of the countries where actual and/or perceived corruption in the judiciary is a matter of major concern

among the public, this clarification sends out the wrong signal with regard to the political will to take all necessary steps to guarantee and foster a culture of judicial integrity concerning all levels of the court system. In the Opinion 2019 the Venice Commission and the Directorate has taken the view *that the negative report by the Evaluation Committee regarding the judge's integrity should trigger a disciplinary sanction by the Superior Council. The gravity of the sanction should depend on the gravity of the disciplinary offence.*<sup>4</sup>.

40. The duration of the mandate should however be indicated more clearly in the law.

#### **IV. Conclusion**

41. The Venice Commission and the Directorate General of Human Rights and the Rule of Law have assessed, at the request of the Minister of Justice of the Republic of Moldova, the revised draft law “on Some Measures related to the Selection of Candidates for Administrative Positions in Bodies of Self-Administration of Judges and Prosecutors and the Amendment of some Normative Acts”. This draft aims to establish an ad-hoc evaluation committee which will be responsible for checking the integrity of the candidates for administrative positions in the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies.

42. The Venice Commission and the Directorate General of Human Rights and the Rule of Law reiterate that it falls ultimately within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary creates sufficient basis for subjecting all judges and prosecutors, as well as members of the SCM and SCP, to extraordinary integrity assessments.

43. Integrity checks targeted at the candidates to the position of SCM, SCP and their specialized bodies represent a filtering process and not a judicial vetting process, and as such may be considered, if implemented properly, as striking a balance between the benefits of the measure, in terms of contributing to the confidence of judiciary, and its possible negative effects.

44. The Venice Commission and the Directorate General find that in general the revised draft law sets out a balanced procedure; they wish however to formulate the following key recommendations aimed at improving the revised draft law:

- The indication of who the “development partners” are and how they will select their candidates and the criteria for this selection (insofar as it may be different from the criteria for the other candidates, for instance as concerns the Moldovan nationality) should be added in the law; the criterion of not having been a judge or prosecutor in the past three years should be reconsidered.
- Clearer indications as to the assessment criteria are necessary; minor breaches of professional conduct should not provide a valid ground to reject a candidate.
- The law should provide adequate guarantees for the protection of the right to private and family life of judges, prosecutors and third persons involved in the procedure.
- Candidates should have the right to appear before the Evaluation Committee and to participate in the procedure before it, if they so wish. If they waive their right to be present, the Evaluation Committee should proceed in their absence. Hearings with candidates should not be in public. The decision to reject a candidate should not be made public.
- In case of negative assessment, an obligation for the Evaluation Committee to transmit its findings to the competent authorities (the future Councils, the anti-corruption authorities, the public prosecutor) could be provided in the law.
- The duration of the mandate of the Evaluation Committee should be indicated more clearly in the law.

---

<sup>4</sup> See Opinion 2019, para. 76.

45. Finally, the Venice Commission and the Directorate General underline the need for appropriate consultations of the stakeholders and the opposition prior to the final adoption of this law.

46. The Venice Commission and the Directorate remain at the disposal of the authorities of the Republic of Moldova for further assistance in this matter.