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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 THE DRAFT LAW ON THE SUPREME COURT OF JUSTICE

Adopted by the Venice Commission
At its 132nd Plenary Session
(Venice, 21-22 October 2022)

On the basis of comments by

Mr Philip DIMITROV (Member, Bulgaria)
Mr António HENRIQUES GASPAR (Member, Portugal)
Mr Alexander BARAMIDZE (Expert, Former Substitute Member, Georgia)
Ms Nina BETETTO (DGI Expert)

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I. Introduction

1. On 22 August 2022, the Minister of Justice of the Republic of Moldova requested an opinion of the Venice Commission on the Draft Law on the Supreme Court of Justice (hereafter, the Draft Law).

2. Mr Alexander Baramidze (Expert), Mr Philip Dimitrov (Member, Bulgaria), Mr Antonio Gaspar (Member, Portugal), and Ms Nina Betetto (DGI Expert) acted as rapporteurs for this opinion.

3. Due to tight deadlines, it was not possible to travel to Chisinau. On 22-23 September, the rapporteurs as well as Ms Martina Silvestri and Ms Clémence Faure of the Secretariat held online meetings with representatives of the Ministry of Justice, of the Parliamentary Legal Commission on Appointments and Immunities, with the Supreme Court of Justice, with the Association of Judges of the Republic of Moldova, with representatives of the parliamentary majority and of the opposition, as well as with the members of the pre-vetting Commission. The Venice Commission expresses its gratitude to the Moldovan authorities for their excellent co-operation.

4. The Draft Law provided by the Minister of Justice at the end of August (hereafter, the first draft) was undergoing public consultation. Subsequently, on 19 September 2022, the revised draft law, including an Information Note, was submitted to the Commission (CDL-REF(2022)033). The Venice Commission welcomes the public consultation process and will analyse only this new version in its opinion. On 7 October 2022, the Minister of Justice submitted a note containing additional information and explanations on the revised draft law. On 18 October, the Minister of Justice also provided its comments to the draft opinion, which are taken into consideration in this text.

5. This joint opinion was prepared in reliance on the English translation of the draft law on the SCJ. The translation may not accurately reflect the original version on all points.

6. This opinion was drafted on the basis of comments by the rapporteurs, the results of the online meetings on 22-23 September 2022, and the written observations submitted by the various interlocutors, including those submitted by the Moldovan authorities on 7 and 18 October 2022. Following an exchange of views with Ms Veronica Mihailov-Moraru, Secretary of State in the Ministry of Justice, it was adopted by the Venice Commission at its 132nd Plenary Session (Venice, 21-22 October 2022).

II. Scope of the opinion

7. The request of the Minister of Justice does not address specific issues regarding the content of the Draft Law, although it emphasises that the proposal represents an essential step of the justice sector reforming process and envisages remodelling the Supreme Court of Justice (hereafter, the SCJ) to focus on ensuring uniform interpretation and application of legislation in the judicial system.

8. The proposed amendments refer to: the reduction of the number of judges in the SCJ; the adjustment of the composition of the SCJ by ensuring access to the offices of SCJ judge for representatives of other legal professionals such as lawyers, prosecutors, university professors of law; the establishment of a new mandatory condition for candidates to serve as SCJ judges (a positive evaluation by the Evaluation Commission - pre-vetting); the creation of a mechanism for the extraordinary evaluation of the integrity of the current judges of the SCJ (vetting).

9. Some proposals included in the original draft, such as the evaluation of professionalism of candidates and sitting judges of the SCJ, as well as the financial motivation for candidates who pass the extraordinary evaluation to continue working in the SCJ have been abandoned. The

Venice Commission welcomes these modifications and will not carry out an analysis of these points.

10. The present joint opinion will therefore address the following issues: the uniformisation of the application of the law; the restructuring of the SCJ (number and composition of judges); and the evaluation of judges (pre-vetting and vetting).

III. Analysis

A. Uniformisation of the application of the law and the independence of judges

11. The Draft Law sets forth a reform of the SCJ with the declared intent to transform it into a Court of cassation in order to ensure the consistent interpretation and application of the law by courts and to achieve uniformity in the case-law.

12. Article 2 of the Draft Law defines the role and the powers of the SCJ. It stipulates that the SCJ will be the main authority responsible for ensuring "*uniform interpretation and application of legislation in the justice system*".[1]

13. As a matter of principle, the uniform interpretation and application of the law is not only a legitimate right, but also a duty of the judicial system.[2] According to the Consultative Council of European Judges (CCJE), it is primarily a role of a supreme court to ensure the uniform interpretation and application of the law and, in particular, to resolve contradictions in the case law and to rectify inconsistencies, and this maintain public confidence in the judicial system.[3] The Venice Commission, in turn, has confirmed that the unification of jurisprudence is a very common competence of supreme courts and that the effect of uniformity procedures pursues general interests of certainty and security.[4]

14. However, in the course of exercising the judiciary's function of ensuring uniformity of the application of the law, the internal independence of judges must be respected.[5] Notably, the uniform application of the law should neither lead to rigidity and unduly restrict the proper development of law, nor should it jeopardise the principle of judicial independence.[6] Furthermore, while binding interpretations of the law *in abstracto* by a supreme court can have a positive impact on the uniformity of the case law, concerns would raise from the viewpoint of the proper role of the judiciary in the system of separation of state powers.[7] The CCJE has insisted that the public role of a supreme court in providing guidance *pro futuro,* ensuring thereby the uniformity of the case law and the development of law, should be achieved through

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[1] CDL-REF(2022)033, Draft Law on the Supreme Court of Justice, Article 2 (2)(a).
[2] CCJE(2017)4, Opinion No. 20 (2017), para. 5. The CCJE has stressed that "[t]he uniform application of the law is essential for the principle of the equality before the law. Moreover, considerations of legal certainty and predictability are an inherent part of the rule of law. In a state governed by the rule of law, citizens justifiably expect to be treated as others and can rely on the previous decisions in comparable cases so that they can predict the legal effects of their acts or omissions." This approach is reiterated in the CCJE conclusions and recommendations.
[3] CCJE(2017)4, Opinion No. 20 (2017), Ibid., para. 20.
[4] Venice Commission, CDL-AD(2021)036, Opinion on the Amendments to the Act on the Organization and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges Adopted by the Hungarian Parliament in December 2020, para. 35.
[5] Council of Europe Committee of Ministers, Recommendation No. R (94) 12, On the Independence, Efficiency and Role of Judges, I(2)(a)(i). The Committee of Ministers of the Council of Europe has indicated that "decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law." The CCJE's reiterates the fundamental principle that "a judge is in the performance of his or her functions no-one's employees; he or she is holder of a State office; he or she is thus servant of, and answerable only to, the law." Venice Commission, CDL-AD(2010)004, Report on the Independence of the Judicial System, Part I: The Independence of Judges, paras 65-67/
[6] CCJE(2017)4, Opinion No. 20 (2017), para 30.
[7] CCJE(2017)4, Opinion No. 20 (2017), Ibid., VIII.g (Conclusions and Recommendations).

a proper filtering system of appeals. This should be preferred over making law *in abstracto* in the form of binding interpretative statements or general opinions.[8]

15. Likewise, the Venice Commission has always upheld the principle of the independence of each individual judge.[9] According to the Commission, "[w]hile the Supreme Court must have the authority to set aside, or to modify, the judgments of lower courts, it should not supervise them."[10] The higher courts should ensure the consistency of case law through their decisions in the individual cases. The lower courts, which in the Civil Law jurisdictions are not bound by judicial precedents, tend to follow the decisions of the higher courts in order to avoid the quashing of their decisions on appeal.[11] The Venice Commission has criticised a law which proposed to give the Supreme Court the possibility to address to the lower court "recommendations/explanations" on matters of application of legislation.[12] In the Commission's view, such a system was not likely to foster the emergence of a truly independent judiciary but entailed the risk that judges would behave like civil servants who would be subject to orders from their superiors.[13] As a general observation, the Commission noted that the practice of guidelines adopted by the Supreme Court or another higher court and binding on lower courts existing in certain post-Soviet countries was problematic.[14]

16. There are several mechanisms (formal, semi-formal and informal) with regard to the role of courts in achieving consistent case-law.[15] It belongs to the Moldovan authorities to establish the functioning model of the Supreme Court in line with the principles described above.

17. Given the inherent link between considerations concerning the uniformity of the case law, on the one hand, and access to the supreme court, on the other, the intended restriction of the competences of the SCJ, mentioned in the Information note, is a step in the right direction. However, a clear distinction should be made between the distinct competences of the SCJ and, in particular, between the uniformisation function and other measures and tools.

18. Draft Article 3 empowers the SCJ (a) to generalise judicial practice, (b) to publish guides on the application of procedural law, the individualisation of criminal punishment and of contravention sanctions, (c) to issue opinions on the application of legislation, (d) to decide on applications in the interest of the law, and (e) to take other measures necessary for the uniform

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[8] CCJE(2017)4, Opinion No. 20 (2017), para. 28.
[9] Venice Commission, CDL-AD(2010)004, Report on the Independence of the Judicial System, Part I: The Independence of Judges, para. 71.
[10] Venice Commission, CDL-AD(2010)004, Ibid., para. 71 referring to CDL-INF(1997)6.
[11] Venice Commission, CDL-AD(2010)004, Ibid., para. 71 referring to CDL-INF(2000)5.
[12] Venice Commission, CDL-AD(2010)004, Ibid., para. 71 referring to CDL-INF(2000)5.
[13] Venice Commission, CDL-AD(2010)004, Ibid., para. 71 referring to CDL-INF(2000)5.
[14] Venice Commission, CDL-AD(2010)004, Ibid., para. 70.
[15] CCJE(2017)4, Opinion No. 20 (2017), paras. 15-19. Formal proceedings brought to appellate and in particular to supreme courts or courts of cassation have the most direct impact on the uniform interpretation and application of the law. Such proceedings in the supreme courts are for example (1) deciding an individual litigant's appeal (a final appeal on points of law, revision, cassation); (2) special appeals brought by a public prosecutor (or a similar public body) bringing to the supreme court (in civil cases) an important legal question with a goal of ensuring the uniform application of the law or development of law through case law, whereby such a recourse in most systems results in a declaratory judgment, not affecting the rights of the litigants in the case at hand; (3) rendering interpretational statements (which are called e.g. "uniformity decision", opinions, principled legal opinions) in a purely abstract manner, not on appeal brought in an individual case; and (4) preliminary rulings adopted in pending cases on narrowly defined points of law, upon the request of an inferior court.
Semi-formal mechanisms include e.g. regularly scheduled meetings of judges within a court, or with judges of different courts of the same level or with judges of a hierarchically senior court. Such meetings can have either a purely informal character or they might be institutionalised to a certain extent. Issuing "guidelines" (that generally leave room for individual assessments) in which attention is drawn to the applicable principles, in accordance with the established case law (such as scales for damages regarding personal injury in civil cases, sentencing in criminal cases or reimbursable lawyers' fees – where there is no lawyers' tariff applicable can have similar effects.
In the third place, there are purely informal mechanisms, such as informal consultations among judges seeking to establish consensus on several points of procedural and material law when practice shows divergent case law.

application of the law. Paragraph 2 foresees that “recommendations on the generalisation of judicial practice and guides on the application of procedural legislation and individualisation of criminal punishment and contravention sanctions shall be drawn up and published on the official website of the Supreme Court of Justice”.

19. The Venice Commission presumes that the “recommendations on the generalisation of judicial practice” referred to in paragraph 2 correspond to the competence described under the first point of paragraph 1 (to generalise judicial practice). For the sake of clarity and legal certainty, the Commission recommends ensuring the consistency of the terminology by rephrasing sub-paragraph (a) accordingly, if that is the case. In addition, the formula in Article 3(1)(a) “generalise judicial practice” is excessively broad and vague. As the law must be predictable and transparent, so as not to be used in an arbitrary manner, this mechanism should be either removed or detailed further. The Commission welcomes the willingness of the Moldovan authorities to redraft and clarify the text.[16]

20. Moreover, while the word "recommendation" may imply its non-binding nature, that is not necessarily the case for the word "guide" (Draft Article 3(1)(b)). In light of the above principles, the Commission suggests that the power of the SCJ to issue "guides" and "recommendations" under Article 3 should be limited to the extent that such instruments should be non-binding. Thus, for the avoidance of doubt, the word "non-binding" should be included both in sub-paragraph (a) and (b) of Draft Article 3.

21. As to Draft Article 3(1)(d) and Draft Article 4 (applications in the interest of the law), which provides that the SCJ shall issue a reasoned and binding decision explaining how the law is to be interpreted in the future (Draft Article 4(5) and (6)), may raise concern from the viewpoint of (internal and individual) independence of judges and the principle of separation of powers.

22. The Information note explains that, at present, judicial practice in the Republic of Moldova is very non-uniform, with divergent decisions in similar circumstances, handed down even by the panels of the SCJ. Such unpredictable practice has been confirmed by most interlocutors during the online meetings. In addition, a similar mechanism already exists in Moldova in the context of the criminal procedure, and it has hardly been used in the last fifteen years, if not for few marginal cases where it did not seem to raise any particular concern.

23. Nevertheless, the letter of the Draft Law does not clearly define what is the “application in the interest of the law” and in what circumstances this mechanism should be used. The Venice Commission maintains that, if this is to be kept at all, the Draft Law should clearly indicate what constitutes an “application in the interest of the law”. For instance, if the Supreme Court has to decide in appeal on a matter that, due to its legal relevance, is clearly necessary for a better application of the law; or if an interest of special social relevance is at stake; or if there is at the Supreme Court level divergent case-law on the same issue of law; or if social conditions have evolved in such a way that previous established case-law has become clearly obsolete; or when there are new decisions taken by the courts, especially in appeal courts, in contrary to the previous established case-law of the Supreme Court, the need for clarification is patent and it is in the interest of the law.
The conditions of admissibility in those cases and the adequate procedure are a matter of procedure law and not to be regulate in the Supreme Court Law.

24. Therefore, considering the serious issue of contradictory case-law reported in Moldova, also between decisions of the SCJ itself, the Venice Commission invites the Moldovan authorities to revise this mechanism, by clearly defining what is the “application in the interest of the law” and in what circumstances this mechanism should be used and by specifying that a judgement

[16] Comments provided by the Moldovan authorities on 18 October 2022, point I.

adopted on the application in the interest of the law can be binding only for other (future) judgements of the SCJ, and not for lower courts.

25. It is also worrisome that "in the interest of the law procedure" is of non-contentious nature. There is no opponent who could challenge the applicant's submissions. Although the Draft Law provides that "where appropriate, other subjects directly concerned by the question of law examined shall be invited to attend the hearing",[17] it is clear that "attending the hearing" is not enabling those "concerned" to enjoy procedural rights which are normally secured for the parties to the dispute. The Venice Commission remarks that in the first draft those other subjects were entitled "to present their position at the hearing".[18] Thus, in this sense, the second draft is a step back. Moreover, it would be advisable that once the application is found admissible, the representatives of various legal professions, legal experts, academics, civil society organisations, and the ombudsperson be also invited to present their views and opinions in their capacity of expert witnesses or *amici curiae*. The involvement of the Scientific Advisory Council, as is suggested in the draft law, can also be useful. However, this Council, largely because of its accountability to and dependence on the SCJ Plenum,[19] cannot be regarded as the only professional agency in the country which can provide fair, impartial and competent opinions on legal issues which may be of vital importance for the whole Moldovan society.

26. Finally, the SCJ's responsibility to ensure uniform case law or to prevent the risk of excessive divergences, is likely to require the establishment of adequate selection criteria for admitting cases to the supreme court. The CCJE recommends to those countries which permit unfettered right to appeal to consider introducing a *requirement for seeking leave* or other appropriate filtering mechanism.[20] The criteria for granting leave should facilitate the supreme court in fulfilling its role in promoting the uniform interpretation of the law. In that context, it should be recalled that "appeals to the third court should be used in particular in cases which merit a third judicial review, for example cases which would develop the law or which would contribute to the uniform interpretation of the law. They might also be limited to appeals where the case concerns a point of law of general public importance. The appellant should be required to state his reasons why the case would contribute to such aims".[21]

27. To conclude this chapter, the Venice Commission recalls that, while institutional mechanisms are essential to ensure the consistency of the case-law which is required in a judicial system to serve the general interest of legal certainty, there exist several other semi-formal or informal mechanisms which can be applied besides the proposed instruments which are designed to ensure the uniform application of the law in Moldova. For example, these may include regularly scheduled meetings of judges within a court or with judges of different courts of the same level or with judges of a hierarchically senior court. Such meetings might even be institutionalised.[22] The Commission welcomes the willingness of the Moldovan authorities to further develop and facilitate the establishment of these mechanisms.[23]

B. Restructuring of the SCJ (composition and organisation)

a. Reduction of the number of judges in the SCJ

28. Article 5(1) of the Draft Law stipulates that the SCJ shall have 20 judges. As explained in the Information note, the reduction of the number of judges to 20 (currently 33 judge offices are

[17] Article 4(4) of the second draft.
[18] Article 5(4) of the first draft.
[19] Second draft, Articles 7(4)(g) and 7(4)(j).
[20] CCJE(2017)4, Opinion No. 20 (2017), para. 21.
[21] Committee of Ministers, Recommendation No. R (95)5 to member states concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases (Article 7 (c)).
[22] CCJE(2017)4, Opinion No. 20 (2017), para. 17.
[23] Comments provided by the Moldovan authorities on 18 October 2022, point VII.

foreseen for the SCJ, but only 24 are filled) follows the Government Action Plan for 2021-2022 aiming "*to strengthen the powers of the SCJ and transform it into a court of cassation which would ensure the qualitative uniformity of judicial practice*".

29. As the Venice Commission has previously noted, the justification for reducing the number of judges should be properly grounded, and it should take into account the workload of the SCJ with regard to the requirement that cases should be dealt with within a reasonable time.[24] Also, and more importantly, current judges cannot be dismissed from the office as part of a reform plan unless there is a scheme to transfer such judges to equivalent judicial posts with their consent.[25] It is essential to ensure the respect of the principle of irremovability of judges.

30. In the written observations submitted by the Moldovan authorities on 7 October 2022, reference is made to a draft law that is being prepared for a "complex amendment to the procedure for the examination of cases by the SCJ. As a result, the SCJ will be given narrower powers to act as a new court of appeal". The Venice Commission appreciates the declared effort to reduce the number of decisions issued by the SCJ and make the procedure less bureaucratic.

31. The Venice Commission recognises that the experience in other countries confirms that supreme courts with a large number of judges are not effective in ensuring the uniformisation of judicial practice. Nevertheless, it is not clear from the Information note what criteria (apart from the statistical data extracted from the CEPEJ Study No. 26 in terms of the ratio of supreme court judges compared to all judges in the country) were used to propose the new number of judges at the SCJ, nor does the Information note mention any analysis carried out in this respect. During the online meetings and in the written observations submitted by the Moldovan authorities on 7 and 18 October, the authorities referred to a comparative assessment carried out by the World Bank; however, none of the other stakeholders (including the Supreme Court of Justice itself) seemed to be acquainted with the study.

32. While admitting that 20 may be an appropriate number for a supreme court in a country of the size of Moldova, the Venice Commission recommends that an analysis of the workload, the categories of cases examined by the SCJ, and its procedural powers be carried out. Such an analysis could show whether the remaining judges will be able to resolve cases (including currently pending cases) within a reasonable time and thus avoid any detrimental and long-lasting consequences for the citizens. In this respect, the Venice Commission highlights that several interlocutors, during the online meetings, have pointed to the high number of current pending cases and the consequent risk of an increased backlog.

33. In the light of the reasons described above, the reduction does not seem an immediate necessity.

34. The Venice Commission therefore suggests to adopt a gradual approach in the reduction of the number of judges, by introducing some transitional provisions that would set forth an interim period of a few years during which the actual number of judges may variate between 33 and 20. This would allow to adjust to the other changes introduced by the draft law (appointment of non-career judges, evaluation of judges), while granting some time for settling the backlog of pending cases and the natural departure of judges (e.g. retirement or resignation), so as to ensure the respect of the principle of irremovability of judges (see more in the section on the evaluation below). The Commission welcomes the positive attitude of the Moldovan authorities to foresee a gradual change in the composition of the SCJ judges.[26]

[24] Venice Commission, CDL-AD(2019)020, Joint Interim Opinion of the Venice Commission and the Directorate of Human Rights (DHR) and Rule of Law (DGI) of the Council of Europe on the draft law on the reform of the Supreme Court of Justice and the Prosecutor's Office, footnote (3).
[25] Venice Commission, CDL-AD(2019)020, para. 41
[26] Comments provided by the Moldovan authorities on 18 October 2022, point X.

b. Change in the composition of the SCJ

35. The constitutional amendments, which entered into force on 1 April 2022, removed the requirement for judges of the SCJ to be career judges. Draft article 6 provides for a mixed composition of the SCJ, inasmuch as judges of the SCJ shall be appointed from among judges and "*from among lawyers, prosecutors or university professors in the field of law*".

36. The ratio between judges and non-judges within the SCJ has been reviewed in the second version of the Draft Law. Prior to the latest amendment, the text provided that at least 13 magistrates would be selected from among career judges, and not more than seven others - among non-judge lawyers - would be selected from the ranks of judges. The current draft provides that in the composition of the SCJ, none of the mentioned categories will be able to hold less than 9 and more than 11 judge positions.

37. With the aim of greater diversity, recruitment among legal practitioners, if applied properly, may have some merits. This follows the trend of differences in appointment practices between civil and common law becoming smaller, as each system adopted elements from the opposite model. While it does not seem possible to impose such a model everywhere, the CCJE, too, appears to have a preference for the adoption of a system combining various types of recruitment as it may have the advantage of diversifying judges' backgrounds.[27]

38. The composition of the Supreme Court by judges with extensive experience in the judicial function, and by judges from other backgrounds (eminent lawyers; law professors; senior members of the Prosecutor General) is a very common solution that has the advantage of mixing cultures, experiences and skills. However, given the nature of judicial functions, trial and decision-making experiences are essential. The composition must be balanced and proportionate in view of the competences of the Supreme Court. A significant part of the judges must therefore be appointed from among the judges of the other courts. To achieve this balance, and taking into account the future dimension of the Supreme Court, the proportion 7-13 seems much more adequate.

39. However, the provision introducing a mixed composition of the SCJ should only be applied gradually and *pro futuro* without affecting the SCJ sitting judges by diminishing the number of career judges to 11 – in this respect the draft provision in the final draft law is a step back compared to the previous draft. The Commission welcomes the openness of the Moldovan authorities to revise the ratio of the composition of the SCJ judges.[28]

40. The Venice Commission observes that eight years working experience as a judge to become a SCJ judge seems at the lower end of the scale as compared with Council of Europe member states and a higher threshold may be considered.

41. Finally, the introduction of the so-called direct appointment system where SCJ judges are appointed by the President of the Republic of Moldova upon the proposal of the SCM is a valid model and a clear step forward. Following the Moldovan authorities' comments on 18 October 2022, the Venice Commission acknowledges that, as the draft law does not regulate the procedure for taking on the position of a SCJ judge, the relevant provisions of the Law on the status of judges shall *mutatis mutandis* apply. This is all the more important because decisions in relation to judges' career affect rights protected by ECHR, which implies, among others, that decisions of the SCM on nominations for appointment must be reasoned, and judges are entitled to a right to judicial review.

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[27] CCJE, Opinion No. 4(2003) on appropriate initial and in-service training, para. 30.
[28] Comments provided by the Moldovan authorities on 18 October 2022, point XI.

C. Extraordinary evaluation of judges of the SCJ

42. Draft Article 14(4)(f)[29] of the Draft Law amends Law N. 26/2022 by expanding Chapter II with provisions on the evaluation of Supreme Court judges. Draft Article 14[1] foresees that both sitting judges and candidates for vacant judicial offices of the Supreme Court of Justice shall be evaluated in accordance with the provisions of this chapter.

43. As mentioned in the Information Note, "the reform aims at strengthening the independence and individual accountability of judges and the judicial system as a whole". The Moldovan authorities intend to introduce the evaluation in response to the urgent need, as assessed by the national legislature, to combat widespread levels of corruption in the justice system.

44. The Venice Commission has previously highlighted that "more recently, integrity checking and vetting procedures have taken a different form, seeking to cleanse public offices from individuals involved in large-scale corruption or in organised crime".[30] In a previous opinion on Moldova (the 2019 Opinion) [31], the Venice Commission has already expressed the view that critical and extraordinary situations, objectively demonstrated and justified in the field of the judiciary, as extremely high levels of corruption, may justify equally radical solutions, such as an examination of the sitting judges. In the end, it falls ultimately within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary creates a sufficient basis for subjecting the SCJ's judges, to extraordinary integrity assessments, provided that the conditions laid down in paragraphs 46-47 below are met. Namely, the vetting scheme must be implemented within the framework of the constitutional guarantees, notably as concerns the independence of the judiciary, and can only be justified in case of exceptional circumstances, after having considered all other methods of judicial accountability. It should be clear however that the ethical evaluation is in fact concentrated on data about possible corruption, i.e. another aspect of the same issue that is explored by the financial evaluation.

45. Draft Articles 14[1] to 14[6] describe what appears to be a pre-vetting (candidates) and a vetting (sitting judges) process of the SCJ's judges. It basically consists of an ethical and financial integrity assessment targeted at all candidates and serving judges of the SCJ. The Venice Commission positively remarks that the initial proposal to carry out an evaluation of the professionalism of the judges of the SCJ has been abandoned. Yet, the integrity evaluation clearly remains the most controversial part of the draft law, in particular as far as the vetting process is concerned.

46. While "pre-vetting" of candidates and integrity checks exercised through the evaluation of asset declarations are quite common and uncontroversial in principle, extraordinary vetting, as previously stressed by the Venice Commission, might only be justified in case of exceptional circumstances.[32]

47. As regards the vetting of sitting judges, the draft proposal is nearly a remake of a previous draft, already submitted to the Venice Commission in 2019. Considerations expressed at that time remain valid and shall be recalled here, notably: "firstly, it must be borne in mind that vetting is not a default remedy. All the other elements of the legislative framework should be taken into

[29] This seems to be an additional mistake in the numbering of the Draft Law. The correct number should probably be 14(7)(d).
[30] Venice Commission, CDL-AD(2018)034, Opinion on draft constitutional amendments enabling the vetting of politicians in Albania, para. 45, which contains references to further opinions by the Commission.
[31] Venice Commission, CDL-AD(2019)020, Joint Interim Opinion of the Venice Commission and the Directorate of Human Rights (DHR) and Rule of Law (DGI) of the Council of Europe on the draft law on the reform of the Supreme Court of Justice and the Prosecutor's Office, para 84.
[32] Venice Commission, CDL-AD(2015)045, Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania, para. 100.

account. Disciplinary procedures, regular evaluation and in extreme cases criminal investigation and prosecution are the regular methods of judicial accountability. It must be clear why those avenues are not available before the vetting option can be considered. The fact that there might be a very low level of confidence in the judiciary requires that the problems be examined but it of itself does not require considering a vetting process as a solution until all other avenues are excluded. Secondly, the current judicial reform process in the Republic of Moldova does not involve any constitutional amendments and the proposed amendments are of legislative level only. Therefore, any vetting scheme laid down by the draft law and its implementation should respect the current Constitution and in particular the constitutional provisions regarding the independence of the judiciary, including those related to the Superior Council of Magistracy".[33]

48. In the written observations submitted on 7 October 2022, the Moldovan authorities note that the Constitution "does not contain any express requirements regarding the dismissal of judges" and that these matters are "regulated by the principle of irremovability and exceptions to this principle, as provided by law". The written observations also refer to the relevant legislation providing the grounds for dismissal of judges.[34]

49. The Venice Commission notes that, as far as the Constitution is concerned, there is no direct mention of the word "removal" of a judge in the constitutional text. Article 123(1) of the Constitution vests in the SCM the power to "ensure the appointment, transfer, secondment, promotion and imposing of the disciplinary sentences against judges."[35] The Law on the Disciplinary Liability of Judges provides for the dismissal of a judge as one of the sanctions which may be imposed on him/her for the commission of a disciplinary offence.[36] Such a sanction may be applied as a result of the complex disciplinary procedure in which the SCM does have a role together with the relevant disciplinary bodies.[37] Without entering into details, what can be derived from these Constitutional and statutory provisions is that under the present Constitutional framework the removal of a judge from the office is still possible, but only through the channel of and as a result of the appropriate disciplinary proceedings, or one of the other grounds listed in Art. 25 of Law no.544/1995 on the Status of judges. The Venice Commission is of the view that in view of its impact, the dismissal of a judge following a negative evaluation should be decided by the SCM.

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[33] Venice Commission, CDL-AD(2019)020, paras. 47-48.

[34] Art. 25 of Law no.544/1995 on the Status of judges. ***"****Article 25. Dismissal of judge. (1) The judge shall be dismissed in the following cases:*
a) filing the request for resignation;
b) obtaining the qualification "insufficient" in two consecutive performance evaluations;
d) transfer to another position as provided by law;
f) committing a disciplinary offence specified in Law No. 178 of July 25, 2014 on disciplinary liability of judges;
g) there is a final judgment about his/her criminal conviction;
g1) if there is a final establishing document, ascertaining the fact that the judge has concluded directly or through a third person a legal act, took or participated in the taking of a decision without resolving the actual conflict of interest in accordance with the provisions of the legislation on the conflict of interest;
g2) not submitting the declaration of assets and personal interests or refusing to submit it, in accordance with art. 27 par. (8) of the Law No. 132 of June 17, 2016 on the National Integrity Authority;
g3) ordering by the court, by irrevocable decision, the confiscation of unjustified wealth;
g4) establishing, by a final act of ascertainment, the situation of failure to resolve the incompatibilities referred to in art. 8 par. (1) of this Law within the time limit;
g5) the negative result of the professional integrity test under the decision of the disciplinary board;
h) loss of the citizenship of the Republic of Moldova;
i) non-compliance with art. 8 par. (1);
j) finding of incapacity to work, as evidenced by a medical certificate;
k) reaching the retirement age-limit;
l) establishing a judicial protection measure;
(2) The proposal for the dismissal of the judge shall be submitted by the Superior Council of Magistracy…".

[35] Constitution of the Republic of Moldova, Article 123(1) (effective as of 01.04.22).

[36] Law No. 178/2014 On the Disciplinary Liability of Judges, Article 6(1)(d).

[37] Law No. 178/2014, Ibid., Articles 38-39.

50. The evaluation/vetting process described in the drafts may by no means be equalled with the disciplinary proceedings. As the Venice Commission has noted previously, "[e]valuation and disciplinary liability are (or should be) two very different things."[38] Disciplinary liability requires a disciplinary offence. A negative performance, which leads to a negative overall result of an evaluation, can also originate from other factors than a disciplinary offence. Therefore, a proposal that negative overall evaluation results should lead to the instigation of disciplinary proceedings raises problems.[39] At the same time, the Venice Commission has admitted that there can be established a proper system in which information about errors or misconduct of judges - including those discovered during an evaluation process - can be assessed and transferred to a disciplinary procedure.[40]

51. Therefore, the following recommendation of the Venice Commission, set forth in the 2019 Opinion, is still valid:

- *"for the draft law to be compliant with the Constitution, all decisions concerning the transfer, promotion and removal from office of judges should be taken by the SCM. The SCM should thus be entrusted with the power to take decisions based on the recommendation contained in the report of the Evaluation Committee. The decision of the SCM should be public and fully reasoned and should be triggered automatically by the evaluation committee's report […];"*[41]

52. For the draft law to be compliant with the Constitution, the Evaluation Commission should only issue non-binding or advisory opinions. Even though the Evaluation Commission's decision that the judge has failed the ethical/financial integrity test results in the suspension,[42] not the removal of the judge, which decision may anyway be contested by the judge in the SCM,[43] the draft law still imposes very strict limits on the SCM's area of discretion. Namely, it is with the qualified majority of 2/3 that the SCM may overrule the Evaluation Commission's decision, failing which will lead to the removal of the judge from office.[44] Thus, in the situations where there is no qualified majority in the SCM, the Evaluation Commission's decision is final. In the absence of any references in the Constitution to the Evaluation Commission and the SCM's duty to overcome the Evaluation Commission's decisions by qualified majority, the proposed provision of the draft law seems to be at odds with the Constitution. The Venice Commission recommends that the Evaluation Commission, instead of having a power to issue a decision, be entitled to prepare "findings" for the SCM[45] on which basis the SCM would make its reasoned decision under Article 123(1) of the Constitution and the relevant statutory provisions, following a disciplinary proceeding. The Commission welcomes the positive intention shown by the Moldovan authorities to take these changes into consideration.[46]

53. Article 14^4 of the Draft Law provides for an appeal procedure against decisions by the SCM. The appeal shall be examined by an appeal board composed of three judges of the SCJ. In this regard, the Venice Commission recalls the following recommendation adopted in the 2019 Opinion:

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[38] Venice Commission, CDL-AD(2014)007, Joint Opinion on the Draft Law Amending and Supplementing the Judicial Code (Evaluation System for Judges) of Armenia, para. 28.
[39] Venice Commission, CDL-AD(2014)007, Ibid., para. 102.
[40] Venice Commission, CDL-AD(2014)007, Joint Interim Opinion of the Venice Commission and the Directorate of Human Rights (DHR) and Rule of Law (DGI) of the Council of Europe on the draft law on the reform of the Supreme Court of Justice and the Prosecutor's Office, para 107.
[41] Venice Commission, CDL-AD(2019)020, para. 87.
[42] Article 14^2 of the Draft Law
[43] Article 14^4 of the Draft Law
[44] Article $14^3(7)$ of the Draft Law.
[45] During the preparation of the Opinion, the SCM has been the object of a procedure whereby the candidates have been vetted.
[46] Comments provided by the Moldovan authorities on 18 October 2022, point IXX.

- *[…] the draft law should provide for an appeal before a judicial body against the decisions of the Superior Council of Magistracy based on such report. This judicial body should be designed outside the cohort of judges of the Supreme Court of Justice. The criteria for selection of its members and the procedure to be followed should be set out in the law."* [47]

54. If the SCM is to be entrusted to take final decisions on extraordinary evaluation of SCJ judges, it cannot act as second instance, as foreseen in current draft law.[48] Instead, there needs to be judicial appeal against the decision taken by the SCM and, as noted in the 2019 Opinion, it would defeat such purpose to give the same SCJ the power to review the relevant decisions.[49] Although Draft Article 14^4(2) provides that only judges "who have passed the evaluation and have not served in the Supreme Court of Justice until December 31, 2022" can be member of the appeal board, the risk of conflict of interest persists. If the negative evaluation is rejected, the hypothesis of Draft Article14^5 (transfer to another court) might endanger the position of the newly appointed decision makers. The Venice Commission therefore recommends to ensure that neither the newly appointed judges nor the appellant can be transferred to a different court if the appeal quashes the SCM decision.

55. In view of the foregoing arguments, the reduction of the actual number of the SCJ judges (See Section C(a) above) looks particularly troublesome. First, it is worrying that a judge who has successfully passed the evaluation may nevertheless be transferred to a lower court if there are more than 11 judges who succeeded in the evaluation proceedings.[50] The Venice Commission and the CCJE have always been critical of the transfer of judges to the lower courts without their consent.[51] Contrary to this approach, the draft law seems to have left no choice for judges for whom no place in the SCJ is reserved. Second, Draft Article 14^5(1) provides that "fortunate" and "unfortunate" judges will be selected by the questionable method of drawing lots.[52] Third, the fact that out of the current 24 SCJ judges only 11 or even less (if less than 11 judges will pass the evaluation) will retain their office might convey the impression that the government's aim is to hastily replace the existing corpus of the SCJ judges. The comments submitted by the Moldovan authorities on 18 October 2022,[53] do not seem confute the fact that some judges may need to be transferred to other courts, albeit to a court of their choice and with the same salary. The proposal to give priority, in case of future vacancies at the SCJ, "to former SCJ judges who passed the integrity test, but were subject to transfer", confirms that such transfer would happen without their consent.

56. In this context, the Venice Commission would like to highlight the risks that the evaluation of judges entails for the independence of the judiciary and the principle of separation of powers. The Commission has already expressed that "a vetting scheme may create a dangerous precedent and may lead to an expectation that there will be a vetting scheme after each change of government, which would undermine the motivation of the judiciary and reduce its independence."[54]

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[47] Venice Commission, CDL-AD(2019)020, para. 87
[48] Article 14^3(2) of the Draft Law.
[49] Venice Commission, CDL-AD(2019)020, Ibid., paras. 67, 87.
[50] Article 14^5 of the Draft Law.
[51] Venice Commission, CDL-AD(2019)020, paras. 34, 41.
[52] Article 14^5 of Law No. 26/2022. The Venice Commission acknowledges the difficulties to find a fair and equal method to select the judges who will continue working for the SCJ. In this sense, the Commission appreciates the efforts demonstrated by the Moldovan authorities who, as detailed in the written observations of the 7 October 2022, have assessed several possible criteria. Nevertheless, the Commission dissuades the Moldovan authorities to opt for the "drawing lots" method and consider instead the possibility to maintain a higher number of judges for a certain period of time, if necessary.
[53] Comments provided by the Moldovan authorities on 18 October 2022, point XXII.
[54] Venice Commission, CDL-AD(2019)020, para. 85.

57. In the 2019 Opinion,[55] the Venice Commission has upheld that the principle of irremovability of judges is a key aspect of judicial independence, which requires that judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of the term of office.[56] The Venice Commission has "always favoured tenure until retirement"[57] and "has consistently supported the principle of irremovability in constitutions" and has indicated that "[t]ransfers against the will of the judge may be permissible only in exceptional cases".[58]

58. As righteously noticed in the written observations submitted by the Moldovan authorities on 7 October 2022, the Commission recognises that no consent may be necessary where transfer is provided for and has been pronounced by way of a disciplinary sanction, in the case of a lawful alteration of the court system, and in the case of a temporary assignment to reinforce a neighbouring court.[59] However, none of these categories seem to be directly applicable in the current case. A judge passing the evaluation would not be subject to a disciplinary sanction. Likewise, it cannot be considered that the reform of the SCJ set forth by the Draft Law imminently requires the reduction of the number of judges (see Section C(a)) or different competences for the sitting judges of the SCJ.

59. Hence, the Venice Commission considers that the evaluation foreseen in the Draft Law can only be acceptable if it is construed as a one-off exceptional mechanism, set-up to resolve the alleged issue of corruption, where the Evaluation Commission would be an ad-hoc body that carries out the necessary inquiries and collects the relevant elements to produce a factual report to be communicated to the SCM. The latter should be in charge of initiating a regular disciplinary proceeding and take the relevant reasoned decisions, which may lead to disciplinary sanctions, that may possibly include the removal from office.[60]

60. As to the results of the evaluation, if the evaluation is positive (or the decision of the SCM does not result in a disciplinary sanction, or the latter is quashed by an appeal), the judge of the SCJ cannot be removed from his or her office. The Commission and DGI thus reiterate their suggestion (see Section C above) that a higher number of judges be maintained in the SCJ for a certain period of time, in order to adopt a gradual approach, by introducing some transitional provisions that would allow for an interim period of a few years during which the number of judges be progressively and naturally reduced from 33 to 20.

61. On the other hand, if the evaluation is negative, it should be for the SCM to decide on the removal from office. In any case, the Venice Commissions maintains that the consequences of a

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[55] Venice Commission, CDL-AD(2019)020, Ibid., paras. 34-35.
[56] Council of Europe Committee of Ministers, Recommendation No. R (94) 12, on the Independence, Efficiency and Role of Judges, Principle I – General Principles on the independence of judges, point 3.
[57] Venice Commission, CDL-AD(2010)004, Report on the Independence of the Judicial System, Part I: The Independence of Judges, para. 35.
[58] Venice Commission, CDL-AD(2010)004, para. 43.
[59] European Charter on the Statute of Judges, Strasbourg, 8-10 July 1998, para. 3.4.
[60] In the case of Xhoxhay v. Albania, 9 February 2021, the ECHR in relation to the vetting of judges in Albania, noted (para. 245) that: "*With regard to the third criterion, that is, the degree of severity of the penalty, the Court notes that the applicant's dismissal is a sanction characteristic of a disciplinary offence and cannot be confused with a criminal penalty. No fine was imposed on her subsequent to her dismissal. The Court further notes that the Vetting Act does not impose a permanent ban on applying for posts in the justice system. However, the Status of Judges and Prosecutors Act has barred judges and prosecutors who have been dismissed from office from rejoining the justice system (see paragraph 206 above). Be that as it may, this bar, in any event, would not in itself be decisive to regard the vetting proceedings as criminal for the following reasons. The bar is not set out in criminal law. It cannot be considered a sanction that is criminal in nature. The purpose of the bar from rejoining the justice system does not appear to be to impose a punishment in relation to the dismissal from office, but is rather aimed at ensuring and preserving public trust in the justice system. Even though, in itself, the bar appears to be a rather severe consequence, many non-penal measures of a preventive nature may have a substantial impact on the person concerned. The mere fact that the bar is of a permanent nature does not suffice to regard it as a penalty/.../*"

negative evaluation proposed in Article $14^3(6)$[61] are disproportionate, as they include a ban from most legal professions (including liberal ones, like attorney) for an excessively long period of time (10 years), without any assessment of proportionality to the severity of the offence, and should be reconsidered.

D. Technical remark: the structure of the Draft Law

62. The Venice Commission notes that the Draft Law has some shortcomings when it comes to articles and chapters' numbering, possibly due to the modifications introduced following the public consultation process. For instance, articles 10 and 11 are missing, as well as Chapter III. Moreover, Chapter IV (Final and transitional provisions) includes several provisions amending other organic laws, such as Law 26/2022 on some measures related to the selection of candidates for membership in self-administrative bodies of judges and prosecutors. This chapter also sets forth the ad hoc mechanism for the evaluation of Supreme Court judges. The Venice Commission presumes that this is an attempt to separate the reform of the SCJ (role and structure) from the evaluation process (vetting), in line with previous Venice Commission's recommendations.[62]

63. The Commission also notes that, in the written observations submitted by the Moldovan authorities on 7 October 2022, reference is made to article 63 par. (4) of the Law no. 100/2017 on normative acts providing that: "If the adoption, approval or issue of a regulatory act involves subsequent amendments to other regulatory acts, those amendments shall be included, in chronological order, in a separate draft amendment to the related regulatory framework, which shall be submitted together with the draft basic regulatory act, *or included in the transitional provisions of the basic regulatory act*."

64. Nevertheless, the considerations expressed by the Venice Commission in its previous opinion on the matter were not only of a technical nature and should be fittingly recalled here: "It appears that the current draft law is not focused exclusively on implementing the reform of the Supreme Court, but rather it combines such a reform plan aimed at replacing the existing Supreme Court by a new court having a different jurisdiction/function and fewer judges, with a *vetting process*. This amalgamation between the reform of the Supreme Court and the vetting process is particularly evident as the criteria which shall be used by the Evaluation Board/Committee are not only aimed at evaluating the skills of sitting judges in view of the new jurisdiction/function of the Supreme Court, but they also concern an "integrity" and "lifestyle" assessment […]. This is a problematic combination as it is unclear what the real justification for the interference with the principle of irremovability of the judges is. As the draft law is focused on the method of evaluation of existing judges by reference to integrity […] and not primarily on the new role of the Supreme Court of Justice, the scheme is essentially a vetting process to vet all existing judges of the Supreme Court."[63]

65. Therefore, the Venice Commission recommends adopting distinct legislative acts to amend other specific organic laws, in particular concerning the exceptional mechanism for the evaluation of judges to be included in the Law 26/2022 on selection of candidates for a membership in self administrative bodies of judges and prosecutors. The Commission appreciates the intention declared by the Moldovan authorities in the comments submitted on 18 October 2022 to enact these changes.[64]

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[61] Draft Article $14^3(6)$: the judge "dismissed from office shall not have the right to be a judge, to be admitted to and to practice the professions of: prosecutor, attorney, notary, insolvency administrator, bailiff, as well as to be employed in the public service for 10 years from the date of the final decision of the Superior Council of Magistracy".
[62] Venice Commission, CDL-AD(2019)020, Joint Interim Opinion of the Venice Commission and the Directorate of Human Rights (DHR) and Rule of Law (DGI) of the Council of Europe on the draft law on the reform of the Supreme Court of Justice and the Prosecutor's Office, para.85.
[63] Venice Commission, CDL-AD(2019)020, Ibid. paras 43-44.
[64] Comments provided by the Moldovan authorities on 18 October 2022, point XXVI.

IV. Conclusion

66. On 22 August 2022, the Minister of Justice of the Republic of Moldova requested an opinion of the Venice Commission on the Draft Law on the Supreme Court of Justice. On 19 September 2022, the Minister submitted a revised version of the draft law, following a process of public consultation.

67. The Venice Commission welcomes the constructive spirit of cooperation shown by the Moldovan authorities during the meetings as well as in the written observations submitted on 7 October, where it has been declared that "this exercise without the support and endorsement of the Venice Commission and development partners will not continue".

68. As to the evaluation of judges, the Venice Commission recalls that while "pre-vetting" of candidates and integrity checks exercised through the evaluation of asset declarations are quite common and uncontroversial in principle, extraordinary vetting, might only be justified in case of exceptional circumstances.

69. The Venice Commission makes the following key recommendations:

A. As regards the vetting of sitting judges, it reiterates the following recommendation of the 2019 Opinion, which remains valid:

> *1. "for the draft law to be compliant with the Constitution, all decisions concerning the transfer, promotion and removal from office of judges should be taken by the SCM. The SCM should thus be entrusted with the power to take decisions based on the recommendation contained in the report of the Evaluation Committee. The decision of the SCM should be public and fully reasoned and should be triggered automatically by the evaluation committee's report […].*
>
> 2. Also, the draft law should ensure that, in the context of the appeal against the decisions of the Superior Council of Magistracy based on such report before a panel of the SCJ composed of newly appointed judges, neither the latter nor the appellant can be transferred to a different court if the appeal quashes the SCM decision.
>
> 3. Moreover, the evaluation foreseen in the Draft Law can only be acceptable if it is construed as a one-off exceptional mechanism, set-up to resolve the alleged issue of corruption, where the Evaluation Commission would be an ad-hoc body that carries out the necessary inquiries and collects the relevant elements to produce a factual report to be communicated to the SCM. It should be better emphasized that the only objective of all the evaluation is to clarify whether there are any data of corruption and/or actions connected illegal acts. As to the results of the evaluation, if the evaluation is positive (or the decision of the SCM does not result in a removal, or the latter decision is quashed by an appeal), the judge of the SCJ must not be removed from office. On the other hand, if the evaluation is negative, it should be for the SCM to decide on the removal from office. In any case, the Venice Commission maintains that the consequences of a negative evaluation proposed in Article 14^3(6) are disproportionate and should be reconsidered.

B. As to the number and composition of judges of the SCJ, the provision introducing a mixed composition of the SCJ should only be applied gradually and *pro futuro* without affecting the SCJ sitting judges by diminishing the number of career judges to 11. In addition, taking into account the future dimension of the Supreme Court, the proportion 7 (non-career judges) – 13 (career judges) seems more adequate. The Commission

welcomes the open attitude of the Moldovan authorities to take these changes into consideration.[65]

C. A gradual approach should be taken as regards the reduction of the number of judges, by introducing some transitional provisions that would set forth an interim period of few years during which the actual number of judges may variate between 33 and 20. This would allow to adjust to the other changes introduced by the draft law (appointment of non-career judges, evaluation of judges), while granting some time for settling the backlog of pending cases and the natural departure of judges (e.g. retirement or resignation), so as to ensure the respect of the principle of irremovability of judges as well.

D. The mechanism described in Article 4, should be revised, by clearly defining what is the "application in the interest of the law" and in what circumstances this mechanism should be used and by specifying that a judgement adopted on the application in the interest of the law can be binding only for other (future) judgements of the SCJ, and not for lower courts. Where appropriate, other subjects directly concerned by the question of law examined should also be invited to present their position at the hearing. In addition, once the application is found admissible, the representatives of various legal professions, legal experts, academics, civil society organisations, and the ombudsperson should also be invited to present their views and opinions in their capacity of expert witnesses or *amici curiae*.

70. The Venice Commission makes the following further recommendations:

E. Concerning the structure of the law, to adopt distinct legislative acts to amend other specific organic laws, in particular concerning the exceptional mechanism for the evaluation of judges to be included in the Law 26/2022 on selection of candidates for membership in self administrative bodies of judges and prosecutors.

F. As to the issue of uniformisation of the application of the law, for the sake of clarity and legal certainty, to ensure the consistency and specificity of the terminology employed in Article 3, in particular as concerns the "generalisation of judicial practice", a mechanism that should be either removed or detailed further. In addition, the word "non-binding" should be included both in sub-paragraphs (a) and (b) of Article 3.

71. The Venice Commission remains at the disposal of the Moldovan authorities or further assistance in this matter.

[65] Comments provided by the Moldovan authorities on 18 October 2022, point X and XI.