Grupul de Experți în domeniul Justiției

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# WHITE BOOK OF JUSTICE

## Recommendations for an independent and integer justice

**Developed by the members of the Justice Experts' Group (JEG):**

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## LIST OF ABBREVIATIONS

| | |
|---|---|
| **AI** | Artificial Intelligence |
| **AIS** | Automated Informational System |
| **APS** | Agency of Public Services |
| **ARCA** | Agency for the Recovery of Criminal Assets |
| **ATC** | Attorneys' Training Centre |
| **CMA** | Court Management Agency |
| **CC** | Criminal Code |
| **CEPEJ** | European Commission for Justice Efficiency |
| **CivC** | Civil Code |
| **CivPC** | Civil Procedure Code |
| **CPC** | Criminal Procedure Code |
| **GAJ** | General Assembly of Judges |
| **GAP** | General Assembly of Prosecutors |
| **GIBP** | General Inspectorate of Border Police |
| **GPI** | General Police Inspectorate |
| **IFMP** | Integrated File Management Programme |
| **IT** | Information Technologies |
| **JPEB** | Judges' Performance Evaluation Board |
| **JSCB** | Judges' Selection and Career Board |
| **MHLSP** | Ministry of Health, Labour and Social Protection |
| **MoI** | Ministry of Interior |
| **NAC** | National Anticorruption Centre |
| **NCSGLA** | National Council for State Guaranteed Legal Aid |
| **NIA** | National Integrity Authority |
| **NIC** | National Integrity Commission |
| **NIJ** | National Institute of Justice |
| **NJEC** | National Judicial Expertise Centre |
| **NBM** | National Bank of Moldova |
| **NUBM** | National Union of Bailiffs of Moldova |
| **ODIHR** | Office for Democratic Institutions and Human Rights |
| **PCCOCS** | Specialised Prosecutors Office against organised crime and special cases |
| **PDEB** | Prosecutors Discipline and Ethics Board |
| **PPEB** | Prosecutors' Performance Evaluation Board |
| **PSCB** | Prosecutors' Selection and Career Board |
| **SCJ** | Supreme Court of Justice |
| **SCM** | Supreme Council of Magistracy |
| **SCP** | Supreme Council of Prosecutors |
| **SFS** | State Fiscal Service |
| **SPFML** | Service of Prevention and Fight against Money Laundering |
| **UAM** | Union of Attorneys of the Republic of Moldova |
| **UI** | User Interface |
| **UX** | User Experience |

## EXECUTIVE SUMMARY

The Justice Sector has experienced several legislative efforts in recent years on the organization of self-governing authorities in the justice sector. Thus, provisions were inserted in the Constitution related to the Superior Council of Prosecutors and the Prosecutor General. Achievements include new regulations in the field of related professions (judicial experts, notaries, lawyers, mediators), but also measures have been taken to make the position of judge and prosecutor more attractive by gradually increasing salaries.

There have also been some improvements in the functioning of self-governing authorities in the justice sector such as the SCM and the SCP, as well as the authorities responsible for the management and organisation of related professions.

In 2016, the updated national framework of verification of integrity and avoiding conflicts of interest was adopted.

However, efforts to improve justice in the Republic of Moldova have not yielded the expected results. The activity of justice institutions does not enjoy a high level of trust, with suspicions of lack of integrity, corruption, political control, but also the influence of criminal groups and the kleptocratic system on the justice sector.

Although the activity of self-governing authorities, such as the SCM and CSP, but also related professions was affected during 2020 and 2021 by the pandemic generated by COVID-19, many of the omissions of the authorities responsible for the justice sector, but also the actions criticized, including those undertaken by the Parliament and the Government, have overcome the arguments related to the limitations generated by the pandemic. The lack of finality on the competitions organised for vacant positions in the self-administration authorities, the lack of cooperation with the representatives of the related professions and the tendencies of political control over the self-administration authorities accentuated even more the way the justice is managed.

Inefficient management of justice at the pre-trial and trial stages, but also at the stage of enforcement of judgments, modest use of information technologies, double statistical reporting, as well as the lack of justification of decisions issued by self-managing judicial authorities continue to raise multiple questions about how the justice sector is managed in the Republic of Moldova.

**The White Book of Justice** recommends actions directed towards the improvement of the state of affairs, the most important being the following:

1. Amend the Constitution in the part related to the access of the position of judge and the burden of proving the assets of civil servants.
2. Strengthen the function of verification of assets, interests and lifestyle of persons working in the justice sector, in particular judges, prosecutors, members of self-governing bodies in the justice sector and other persons involved in the management of justice.
3. Carry out the external (extraordinary) evaluation of the actors in the justice sector, with the involvement of the development partners and of the civil society, while ensuring the correspondence of the mechanism with the provisions of the Constitution and of the recommendations of the Venice Commission.
4. Gradually increase the attractiveness of the justice sector for employees trained in the sector, by ensuring adequate working conditions, ensuring a fair workload, reviewing the competences of courts and prosecutors' offices and ensuring an attractive salary.
5. Ensure the functionality of the self-management authorities in the justice sector, by organising the forums established by law for the election of members in the SCM, SCP, their specialised boards, as well as the appointment based on merit of members in the self-regulatory authorities of professions related to the justice sector.
6. Reform the SCJ by reducing the number of judges and giving it the status of a true cassation court, responsible for standardising judicial practice.

7. Review the admissibility criteria for the appeals to the SCJ and avoid repetitive retrial of cases in the courts.
8. Large scale implementation of information technologies at both the pre-trial and trial stages and interconnection of information systems in the justice sector with other available information systems.
9. Promote compulsory extrajudicial mediation for certain categories of civil and criminal cases.

## METHODOLOGY

**The White Book of Justice** was developed by the Group of Justice Experts' (GEJ), with experience in the justice sector, including the functioning of self-governing authorities (SCM, CSP, Notary Chamber, Union of Lawyers, CNEJ, UNEJ, Mediation Council) , how to organize the bodies of the justice system, promoting integrity, transparency and professionalism, ensuring the quality of the initial and continuous training process, professional internship and admission and career in the legal professions, as well as the application of information technologies.

The findings of the White Paper on Justice are based on a prior analysis of public policy documents, reports and analysis available to the general public, as well as statistical data provided through information systems such as the Integrated Case Management System.

The components of the White Paper on Justice were developed following a complex process of consultations and interviews organised between June and July 2021 with over 50 participants from various sectors of justice but also from the authorities responsible for implementing information technologies.

The achievements, constraints and recommendations presented for each sub-area analysed in the White Book of Justice were formulated as summaries of the findings of the experts of the Justice Experts' Group.

The recommendations provided in the White Book of Justice are formulated to be implemented in the short and medium term, without which other activities and improvements in the sector are not possible.

# AREA I – STRENGTHENING THE CAPACITIES OF JUSTICE SECTOR AUTHORITIES

## 1.1 SUPREME COUNCIL OF MAGISTRATES

### ACHIEVEMENTS

Since 2017, there have been three initiatives of the Government to amend the Constitution in the part related to the judicial system. These provided for the appointment of judges until the age limit was reached, excluding reconfirmation by the President of the country, after an initial term of five years; strengthening the independence of the SCM, by establishing the possibility of holding a single term of six years as a member of the SCM and clarifying the conditions for the election or appointment of its members. The draft excluded the requirement that SCJ judges be appointed by Parliament and that they have at least 10 years of experience as a judge. So far, the draft amendment to the Constitution has not been adopted.

On 27 September 2018, Parliament adopted several legislative amendments that improve the procedures of selection and promotion of judges. The new rules stipulate that all vacancies in the system are announced in the same competition, candidates choose their vacancies in descending order of the obtained score. Based on these new procedures, in the period 2018-2019, the President of the Republic of Moldova appointed for a term of five years 51 judges in the courts and 7 judges in the courts of appeal. In 2021, the Parliament appointed two judges to the SCJ, and the necessary number of votes did not meet for the other four judges. The SCM has not repeatedly proposed to the Parliament the appointment of judges to the SCJ.

In 2019, the proposal for external evaluation of the professionalism and integrity of judges and prosecutors was launched. This initiative has recently been relaunched. According to a survey conducted between October and December 2020, half of prosecutors and judges support or have a neutral attitude towards external evaluation. The Venice Commission and the ODIHR have acknowledged the justification for such an extraordinary measure to ensure the integrity and independence of the justice sector.

### CONSTRAINTS

In September 2019, a group of judges asked the Chisinau Court of Appeal to oblige the SCM to convene the General Assembly of Judges (GAJ) at which it was decided to revoke the mandates of permanent members and alternate members of the SCM from among judges elected in October 2017. The organisation of the GAJ on 27 September 2019 raises great questions about the state of the judiciary and the legality of the taken decisions. The SCM's refusal to convene a general meeting to give judges the opportunity to discuss issues in the system was not justified. On the other hand, it is not legal to revoke the judges of the SCM. The Venice Commission set out in its opinion of 14 October 2019 on the draft law on the reform of the SCJ on the illegal nature of the revocation of SCM members by the GAJ.

In 2020, more than 10 decisions of the SCM on the career of judges were challenged. In three cases, the courts obliged the SCM to propose to the President of the Republic of Moldova the confirmation and promotion of the applicants. These decisions are not final. In 2019, the SCM enforced a decision of the Chisinau Court of Appeal, by which it was obliged to appoint a judge. On 18 May 2021, the SCM suspended all pending competitions for the promotion of judges in higher courts or positions of chairmen/chairwomen and vice-chairmen/vice-chairwomen of courts. The suspension of the competitions was made after the SCM was obliged to propose to the Parliament of the Republic of Moldova the appointment to the SCJ of some candidates previously rejected by the SCM.

Between 2018 and 2020, the SCM examined 17 complaints from the Prosecutor General related to the issuance of the agreement to initiate criminal proceedings against judges. The SCM published only the operative part of its decisions. Article 19 para. ($4^1$) of the Law on the status of judge stipulates that these decisions must be motivated and published on the website of the Council, with the anonymisation of data on the identity of the judge. Although the SCM has given

its consent, prosecutors' investigations are dragging on or they have insufficient evidence to prosecute those targeted.

In the autumn of 2020, the term of office of several members of the Judges' Performance Evaluation Board (JPEB) and of the Judges' Selection and Career Board (JSCB) have expired. Due to the lack of a quorum, the meetings of both Boards did not take place for almost a year. At the same time, the term of office of members of the selection and career boards of prosecutors has been extended by a legislative amendment.

### RECOMMENDATIONS

1. Adoption by Parliament of the draft amendment to the Constitution in order to strengthen the independence of the SCM and of the judges;
2. Adopt the mechanism of extraordinary (external) evaluation of the integrity and professionalism of judges and prosecutors in accordance with the opinions of the Venice Commission, ODIHR and the case-law of the ECtHR;
3. Ensure a genuine process of selection and promotion of judges, by adopting an interview guide and motivation of SCM decisions related to the career of judges;
4. Exclude impediments in the convening of the GAJ, including when judges wish to discuss the state of justice;
5. Ensure a unified practice and exclude cases when the SCM is obliged to propose to the President of the country or the Parliament the appointment or promotion of judges;
6. Ensure the activity of the SCM Boards, until the election of the new members;
7. Organise the GAJ with the opportunity for the candidates for positions of SCM member among judges to promote their candidacies in front of the fellow judges.

## 1.1.1 JUDGES' SELECTION AND CAREER BOARD

### ACHIEVEMENTS

Between 2017 and 2020, the Judges' Selection and Career Board (JSCB) evaluated 310 candidates for the position of judge, 147 judges who intended to participate in competitions for promotion to an upper court and 71 candidates for positions of chairmen/chairwomen or vice-chairmen/vice-chairwomen of courts.

### CONSTRAINTS

The term of office of several members of the JSCB expired in October 2020, and the law does not provide for the extension of the term of office of members until the election of the next members from among judges at the same level of court. This has significantly affected the candidate evaluation process and has already created a greater workload for the JSCB.

In 2018, Law no. 154 on the selection, performance evaluation and career of judges of 5 July 2012 was amended. Among other things, the changes gave the SCM an important role in evaluating candidates. The SCM could provide a score of no more than 20% of the candidate's score and confirm the final score, but in the absence of an evaluation methodology, an interview guide and due to the lack of a motivation of the score offered, an important part of the candidates who had a maximum score at the JSCB, in the end obtained lower scores offered by the SCM. Thus, the evaluation process and the JSCB scores are ignored, the role of the JSCB diminished, and the SCM decisions (in the part related to 20% of the final score) are not motivated. According to a study, during 2013-2018 the SCM proposed more judges to be appointed or promoted, although they had a lower score than their competitors - 110 (69%) were among the candidates for appointment as judges, 20 (43%) - promoted to the courts of appeal and 6 (43%) - promoted to the SCJ.

Contests with a single candidate for administrative positions in courts are common, as are contests in which candidates do not accumulate the required number of votes for appointment, transfer or promotion. Judges may be encouraged to run for administrative office if they are not discouraged by their colleagues or by unmotivated and unpredictable SCM decisions. Thus, the SCM must motivate its vote to reduce the discretion of the option for the final solution, which

could be abusive or influenced by elements of corruption. According to a study, during 2013 - 2018, out of the 78 candidates proposed by the SCM in administrative positions in courts, 25 (32%) were selected following competitions in which more than one candidate participated and 53 (68%) were selected in competitions with only one candidate. During the same period, in 20 (57%) of the 35 announced competitions, no applications were submitted or the candidates withdrew from the competition. For the administrative positions within the SCJ, 16 competitions were organised. After several postponements, withdrawals from the competition or failed competitions, the SCM appointed the only running candidate.

Candidates for the position of judge and candidates requesting promotion, transfer or appointment to administrative positions are evaluated by different procedures and criteria by the JSCB and the SCM. This indicates that the existing procedures need to be improved and the evaluation criteria - revised. Multiple competitions in which only one candidate participates indicates that judges are not motivated to compete. This can be explained by the effect of unmotivated SCM decisions (which do not explain the insufficient number of votes or the offered score), the lack of objective criteria to evaluate the activity or certainty of the favourite candidate.

#### RECOMMENDATIONS

1. Review the system of selection and career of judges to promote transparency, efficient management of human resources and assessment of professional skills;
2. Exclude the mimicking of the assessment of professional integrity at all stages of activity of candidates;
3. Review the criteria of assessment of integrity, include and describe the criteria of assessment of impeccable reputation of candidates for the position of judge (stage of access to office) and judges (reconfirmation, promotion or transfer);
4. Analysis of the workload of the JSCB members and appropriate reduction of the workload during the mandate.

### 1.1.2 JUDGES' PERFORMANCE EVALUATION BOARD

#### ACHIEVEMENTS

Judges are evaluated by the Judges' Performance Evaluation Board (JPEB) for their work according to the efficiency and quality of professional activity and integrity, and chairmen/chairwomen or vice-chairmen/vice-chairwomen of courts at any level are evaluated both for their work as judges and for their activity in leadership positions. The periodic evaluation of judges' performances takes place once every three years (ordinary), and the extraordinary evaluation is made in case of a possible promotion or transfer.

In 2020, the JPEB evaluated 151 judges. Thus, the following grades were given: “excellent” to 29 (19%) judges, “very good” to 121 (80%) judges, “good” to a judge, and the grade “insufficient” was not awarded. In 2019, 134 candidates were evaluated, in 2018 - 117 candidates, and in 2017 - 131 candidates. The vast majority of grades are "very good", and the grade "excellent" is given much more often than the grade "good". In 2020, 43 judges were evaluated for the appointment of judges until reaching the age limit, 22 - in 2019, 11 - in 2018 and 16 - in 2017. In 2020, 12 judges were evaluated for promotion to an upper court, 17 - in 2019, 10 - in 2018 and 17 - judges in 2017.

#### CONSTRAINTS

The term of office of several members of the JPEB expired in October 2020, and the law does not provide for the extension of the term of office of members until the election of the next members from among judges at the same level of court. This has significantly affected the candidate evaluation process and has already created a greater workload for the JPEB.

Lack of a unified practice and insufficient reasoning of court decisions is a systemic problem, especially in certain types of cases (eg. corruption, arrests). However, over 99% of judges were rated "excellent" or "very good", which is disproportionate to the lack of confidence in the justice sector. In 2021, according to the Public Opinion Barometer, only 19% of respondents answered

that they have a very high or some confidence in justice. In 2019, the trust in justice was 26%, in 2018 - 16%, and in 2017 - 14%. Thus, it is necessary to rethink the mechanism for evaluation of performance of judges, review the evaluation criteria, as well as the maximum and minimum limits for each rating.

When asked if they agree with the statement that the judges' performance appraisal system helps judges to improve their performance, half of the responding judges answered in the affirmative. The other half of the judges do not trust the judges' evaluation mechanism. The JPEB must ensure that the results of the performance evaluation are weighted when promoted, decisions must include specific recommendations for those evaluated, and the score and/or grade given must be accompanied by a motivation. The JPEB must exclude the award of different scores for similar situations.

#### RECOMMENDATIONS

1. Develop criteria to assess the integrity and impeccable reputation of candidates for the position of judge and for the judges in office;
2. Rethink the mechanism and revise the criteria of evaluation of judges' performances;
3. Analysis of the workload of JPEB members among judges and appropriate reduction of workload during their term of office.

### 1.1.3 DISCIPLINARY BOARD

#### ACHIEVEMENTS

Between 2015 and 2020, the SCM registered over 8,800 complaints against judges, and the Disciplinary Board examined over 310 cases and applied 62 disciplinary sanctions. The vast majority of the sanctions applied were "warning", and the most frequent violations relate to the violation, for reasons attributable to the judge, of the deadlines of fulfilling the procedural actions, including the deadlines for drafting judgments and sending copies to participants, if it directly affected the rights of participants in the trial or of other persons.

Of the 67 disciplinary cases examined by the Disciplinary Board, most disciplinary proceedings (27) were initiated against judges from district courts, especially from the Chisinau court, Ciocana headquarters (court specialised in examining misdemeanour cases and those within the jurisdiction of the investigative judge), 10 - against the judges from the Chisinau Court, Buiucani headquarters (court specialised in criminal cases). In 2020, the Disciplinary Board sanctioned four judges with warning, five judges with reprimand, and two judges were disciplinary sanctioned with dismissal.

#### CONSTRAINTS

For each case that goes through all the stages of a disciplinary procedure, five institutions and between 30 and 38 people must be involved, the duration of each case being estimated, on average, at 400 days. Such a disciplinary system is inefficient.

Law no. 178/2014 on the disciplinary liability of judges of July 25, 2014, establishes 15 potential disciplinary violations applicable to the judge. In 2018, several disciplinary violations were reviewed. However, several provisions need to be clarified, and some excluded because they refer to ethics and not to the discipline of the judge. Moreover, there are no grounds or procedures regarding disciplinary violations committed by inspectors-judges, members of the SCM or other specialised bodies. These deviations must be regulated, and in case of application of the disciplinary sanction, the judge must be automatically dismissed from the position in which he was seconded or elected. Also, the chairmen/chairwomen and vice-chairmen/vice-chairwomen of the courts in respect of which the SCM has found a mismanagement of the court (eg. unfair distribution of cases, tolerance of prolonged and camouflaged medical leave of judges), must be removed from the position of management, without the need for a disciplinary procedure.

At the moment, there are six stages of review of an alleged disciplinary violation committed by a judge - the judicial inspection, the admissibility panels, the Plenum of the Disciplinary Board, the SCM, the Chisinau Court of Appeal and the SCJ. Until the entry into force of the Administrative Code (on April 1, 2019), the SCM decisions were appealed directly to the SCJ, in a specialised panel.

In a survey of judges', prosecutors' and lawyers' perceptions of judicial reform and the fight against corruption, 31% of judges said the disciplinary liability mechanism is adequate. The judges criticized the most the participation in the disciplinary procedure of the person who filed the complaint, the large number of disciplinary violations and their too general formulation.

The activity of the Judicial Inspection is briefly described in art. $7^1$ of Law no. 947/1996 on the Superior Council of Magistracy. Once the activity of the SCM and the independence of judges will be strengthened, it is inevitable that the law will describe in more detail the activity of the inspection and of the inspectors. It is inevitable to develop criteria of appointment and sanctioning of judicial inspectors, as well as development of a system of evaluation of the activity of the inspection.

As the composition of the Disciplinary Board is diverse, it is necessary to clarify incompatibilities for lawyers pleading in court or judges examining cases.

## RECOMMENDATIONS

1. Review the grounds for disciplinary liability and simplify the procedure for disciplinary examination and challenge of judges, SCM members and judicial inspectors;
2. Development of criteria for the application of disciplinary measures by the Disciplinary Board and the SCM, to exclude the adoption of different solutions in similar cases;
3. Strengthen the role and mandate of the Judicial Inspection by ensuring autonomy from the SCM;
4. Development of criteria for selection and evaluation of judges-inspectors' performances;
5. Exclude the stage of review of notifications by the admissibility panels and challenge of the decisions of the SCM at the Court of Appeal with direct appeal to the SCJ.

## 1.1.4 JUDICIAL INSPECTION

### ACHIEVEMENTS

The law on the Superior Council of Magistracy establishes the following competencies of the Judicial Inspection: verification of the organisational activity of the courts and the correctness of the random distribution of the files; review of petitions on judicial ethics and notifications of facts that may constitute disciplinary offenses; review of the requests of the Prosecutor General, who requests the issuance of the agreement to initiate criminal proceedings against the judge; analysis of the grounds to reject applications for appointment as a judge or for appointment to leadership of a court. The organisation, competence and functioning of the judicial inspection are established in the same law and by the Regulation approved by the SCM.

### CONSTRAINTS

Between 2017 and 2019, some important legislative changes were made regarding the Judicial Inspection - the number of inspectors-judges was increased from five to seven, the term of office of inspector-judge was increased from four to six years (with the possibility of holding one mandate only). However, the possibility for judges to submit their candidacies for the position of inspector-judge was excluded. This limitation is unjustified and contrary to the spirit of the principle of the independence of the judiciary, according to which verifications and sanctions must be applied by a body in which the majority are judges. The law does not provide clear criteria for selection and removal from the position of inspector-judge. The organisation of the competition, the status and obligations of inspectors-judges, as well as their disciplinary liability must be regulated by law.

In 2019 and 2020, the Judicial Inspection carried out complex controls at the Drochia, Ungheni, Chisinau district courts, Chisinau and Cahul Courts of Appeal, as well as the Supreme Court of Justice. Only the SCM decisions on the verifications of the Chisinau and Cahul Court of Appeal, as well as the Ungheni and Drochia courts are available on the SCM website. The judicial inspection did not find systemic problems related to the violation of the rules of random distribution of files, poor management of courts, lengthy examination of cases. The Judicial Inspection did not examine or publish any thematic reports to exclude suspicions of violation of the random distribution of files, unjustified depersonalisation of court decisions, intimidation and interference in the activity of the judiciary by prosecutors, etc.

Judicial inspectors do not receive specialised trainings (eg. case management, court management, court and inspection case-law on disciplinary measures). This is a constraint in particular in the context of changes that exclude the participation of judges in office in the judicial inspection.

### RECOMMENDATIONS

1. Provision in the law of the organisation of the competition, the status and obligations of inspectors-judges, as well as their disciplinary liability;
2. Establish clear procedures for the activity of the Judicial Inspection and provide staff (separately from the SCM apparatus), to investigate the facts that may constitute disciplinary offenses committed by judges and to verify the organisational activity of the courts;
3. Ensure the autonomy of the Judicial Inspection, by allocating premises distinct from the SCM headquarters, allocate the necessary financial resources and establish the salaries of the inspectors-judges at the level of the SCJ judges;
4. Allocation of sufficient personnel to ensure the activity of the Judicial Inspection, distinct from the employees of the SCM apparatus;
5. Exclude impediments to access to the position of judicial inspector from among the judges in office;
6. Establish criteria of appointment and dismissal from office of the chief inspector;
7. Introduction of a system of evaluation of the activity and dismissal of judicial inspectors and the possibility of dismissal (not as a disciplinary sanction);

8. Development of mandatory criteria and procedures to carry out the verification of the activity of the courts and ensure that the final act of the Judicial Inspection and of the SCM includes the findings;
9. Institutional assessment of the Judicial Inspection, in particular of the internal procedures enforcing their mandate.

## 1.2 SUPERIOR COUNCIL OF PROSECUTORS

### ACHIEVEMENTS

In July 2020, several amendments to the Law on the Prosecutors' Offices extended in due time the terms of office of the members of the boards of the Superior Council of Prosecutors (SCP), thus ensuring their uninterrupted activity. At the same time, the right of the General Prosecutor to propose to the SSP the transfer of prosecutors without organising a competition was offered.

### CONSTRAINTS

The SCP practice of transferring prosecutors at the request of the Prosecutor General has become more frequent and is debatable. Granting the determining role of the Prosecutor General for the transfer of prosecutors undermines the independence of prosecutors and affects the transparency of the transfer.

The SCP does not motivate its decisions in detail, referring to the order of the Prosecutor General, which is not a public document. Delegations of prosecutors, including in / from specialised prosecutors' offices are another form of (long) camouflaged transfer. Often, temporarily transferred or delegated prosecutors are appointed to the permanent position.

The activity of the SCP must be transparent. Discussions in meetings are often not public, with discussions being invoked to be in "deliberation". This significantly affects the transparency of SCP activity. Moreover, the decisions of the SCP are published with long delays, which lack important circumstances relate to the examined issues. The composition of the SCP includes ex officio members, including the Prosecutor General, which may affect the independence of the members of the SCP, especially of the prosecutors elected at the General Assembly of Prosecutors (GAP). The exclusion of certain ex-officio members from the composition of the SCP must be examined.

In June 2021, the Prosecutor General appointed a member of the SCP as interim chief prosecutor of the Anticorruption Prosecutors' Office. This appointment took place while avoiding restrictions on SCP members from participating in competitions for appointment or promotion during their term of office.

The 2016 Law on the Prosecutor's Office limited the powers of the General Prosecutor's Office, but the number of prosecutors in this entity did not change significantly. Every eighth prosecutor in the country works in this structure (81), a number almost similar to those in the specialised prosecutors' offices (86). In 2020, 104 prosecutors were delegated (or each sixth of the total number), half of them were delegated to specialised prosecutor's offices.

Between September 2019 and June 2021, the SCP agreed to 9 requests of the Prosecutor General to change the structure of the Prosecutors' Offices. None has reduced the number of prosecutors in the country, although they are almost twice the number of Council of Europe member states. Reducing the number of some structures can contribute to the territorial reorganisation of prosecutor's offices, according to the reorganisation of courts and the opportunity to increase the number of staff to assist prosecutors in their work, with their latter assigned with procedural competences.

Annually, the SCP analyses and approves the activity reports of its colleges. In the absence of an evaluation procedure and indicators, the SCP decision is a formal one and without any qualitative analysis.

### RECOMMENDATIONS

1. Ensure a genuine transparency of the SCP's activity, motivation of adopted solutions and timely publication of adopted solutions;
2. Amendment of the composition of the SCP, by excluding the Prosecutor General and re-examine the need to exclude the Minister of Justice. The procedure of appointment of the representatives of the attorneys and the Prosecutors' Office of ATU Gagauzia in the composition of the SCP must be modified;

3. Initiate the process of relocation of the prosecutors' offices and analyse the opportunity to reduce the number of prosecutors, including from the General Prosecutor's Office;
4. Exclusion of practices of camouflaged transfer of prosecutors (including through delegations) and return to the practice of transfer of prosecutors based on competition;
5. Approval of the qualitative indicators of evaluation of the activity of the Boards subordinated to the SCP.

### 1.2.1 PROSECUTORS' SELECTION AND CAREER BOARD

#### ACHIEVEMENTS

The Prosecutors' Selection and Career Board (PSCB) examines candidates in the recruitment and promotion procedures, interviews candidates, grades them and issues reasoned decisions on the results of the competition. The SCP proposes to the Prosecutor General the appointment of the candidates nominated following the competition. The SCP may reject the nomination if it finds that the candidate is incompatible with the position of prosecutor. The PSCB consists of 7 members: 5 prosecutors elected by the General Assembly of Prosecutors and 2 representatives of civil society selected by the SCP.

The competition for the position of prosecutor has been modified so that all vacancies in the system are put out to competition. This ensured the regular organisation of competitions and a predictability for candidates about the vacancies in the system. However, the SCP has returned to the previous practice of organising competitions only for certain vacancies, so that competitions are announced or held much more often. Between August 2019 and June 2021, at least 12 competitions for several positions were announced. Frequent announcement of competitions increases the workload of the PSCB which cannot assess in time the workload and organise the evaluations within its competence. It also affects the work of the PPEB.

#### CONSTRAINTS

The Law on the Prosecutor's Office does not stipulate whether the SCP must follow the result of the evaluation of the candidates done by the selection committee. GRECO recommended that if the SCP deviates from these results, the decision should be reasoned. In 2021, the SCP appointed 14 chief prosecutors of the territorial prosecutors' offices based on the PPEB and PSCB evaluations. Only one candidate participated in nine competitions, who on the date of the competition held the interim position of chief prosecutor of the prosecutors' office in which he was appointed. In 2020, the SCP appointed six chief prosecutors of the territorial prosecutors' offices. Only one candidate participated in four competitions, who on the date of the competition held the interim position of chief prosecutor of the prosecutors' office in which he was appointed. Also in 2020, only one candidate participated in the position of Chief Prosecutor of the Prosecutors' Office against organised crime and special cases (PCCOCS). In order to ensure the participation of several candidates in the positions of prosecutor or management positions in the prosecutor's office, PSCB must ensure that the selection and career mechanism is genuine, based on merit, and competitions are not announced for a particular candidate.

Between August 2019 and June 2021, the SCP accepted at least 36 requests of the General Prosecutor to transfer prosecutors to other prosecutors' offices. All requests were accepted, being coordinated in advance with the chief prosecutor of the prosecutors' office where the prosecutors were transferred. These transfers did not involve any evaluation of the PSCB. This practice must be ruled out. The transfer to a permanent position in a prosecutors' office of the same level must be made on the basis of a competition, similar to the one organised by the SCM. This change will strengthen the role of the PSCB and ensure that the transfer to the post of prosecutor is based on merit and provides an opportunity for all prosecutors to decide on their career. The transfer must exclude the favouring of any candidate and will reduce the chief prosecutor's discretion to choose a specific prosecutor in a territorial prosecutors' office.

According to a recent survey, prosecutors said that the NIJ and the PSCB are the most corrupt autonomous institutions. The PSCB did not publicly discuss this opinion of prosecutors.

### RECOMMENDATIONS

1. Amend the mechanism of selection and career of prosecutors to ensure the genuine organisation of competitions and encourage the participation of more candidates;
2. Establish a transfer mechanism for the position of prosecutor on the basis of merit;
3. The members of the PSCB must be selected as to have relevant experience in interviewing and evaluating prosecutors, including in the field of management;
4. The revision of the scores by the SCP offered by the PSCB, must be motivated. This will ensure the soundness of the SCP request, will change the PSCB practices of evaluation of candidates and will contribute to a better understanding of the evaluations by the candidates;
5. Development of a set of qualitative indicators of evaluation of the activity of PSCB;
6. Periodic evaluation of the corruptibility of the mechanisms within the PSCB, including on the basis of surveys among prosecutors.

## 1.2.2 PROSECUTORS' PERFORMANCE EVALUATION BOARD

### ACHIEVEMENTS

The Prosecutors' Performance Evaluation Board (PPEB) assesses the activity, level of knowledge and professional skills of prosecutors, their correspondence with the functions held, and is aimed at improving the professional skills and increasing the efficiency of prosecutors. The PPEB establishes the activity evaluation schedule of prosecutors, examines the files of candidates, organises and conducts interviews and adopts decisions of those evaluated. The PPEB consists of 7 members: 5 prosecutors elected by the General Assembly of Prosecutors and 2 representatives of civil society selected by the SCP.

### CONSTRAINTS

Article 85 para. (1) of the Law on the Prosecutors' Offices, stipulates that the decisions on the evaluation of prosecutors are not published, but the results of the evaluation are published. The PPEB website does not contain any judgment or assessment.

PPEB members consider that the opinions of the chief prosecutors are not objective. PPEB and SCP can develop guidelines and criteria for evaluating prosecutors' performance. This will help reduce the time to assess prosecutors' performance and hold chief prosecutors accountable.

During 2017 - 2020, 412 prosecutors (64%) were evaluated, out of the over 640 prosecutors in office (91- prosecutors in 2020, 38 - in 2019, 159 - in 2018 and 133 - in 2017). The slow evaluation is determined by the detailed performance evaluation procedure and the lack of an apparatus to assist PPEB members in their work.

In 2020, 89 prosecutors were rated "very good" and 2 were rated "excellent," and in 2019, 36 prosecutors were rated "very good," and one prosecutor was rated "excellent." and "good." It seems that these assessments do not correspond to the concerns of the Prosecutor General, who questioned the quality of the work of several prosecutors, the specialised prosecutor's offices and the Prosecutor's Office in general. The performance evaluation criteria need to be changed. Previously awarded grades may be subject to review (as part of a re-evaluation of the activity), if new circumstances have been identified that may change the awarded score.

It is necessary to assess the opportunity to increase the number of members or the secondment of prosecutors to exercise their powers within the PPEB. Regarding the opportunity to merge PPEB and PSCB, it must be analysed whether the concertation of all evaluations by a single specialized college of SCP is accepted. Thus, the system of assessment of the career of prosecutors and candidates for prosecutor positions needs to be substantially revised, as well as the role of the SCP. Regardless of the mechanism chosen, PPEB members among prosecutors should be seconded and civil society representatives motivated to be fully involved in the process of assessment of the prosecutors' performance.

### RECOMMENDATIONS

1. Publish the results of the prosecutors' evaluation, after their approval by the PPEB;

2. Amend the criteria of evaluation of prosecutors and the scoring limits for each criterion;
3. Review or re-evaluate the performance of prosecutors, based on institutional or thematic evaluation reports;
4. Analyse the workload of PPEB members among prosecutors and examine the appropriateness of secondment from the positions they hold. At the same time, it is necessary to motivate civil society representatives in the process of evaluation of performance of prosecutors;
5. Examine the opportunity to merge PPEB and PSCB and take a final decision in this regard;
6. Develop a set of qualitative indicators to evaluate the activity of PPEB;
7. Periodically evaluate the risks of corruptibility of the mechanisms within the PPEB, including on the basis of surveys among prosecutors.

### 1.2.3 PROSEUCTORS' DISCIPLINARY AND ETHICS BOARD

#### CONSTRAINTS

Article 85 para. (1) of the Law on the Prosecutor's Office, stipulates that the PDEB decisions are published. The PDEB website does not contain any disciplinary nor decisions on ethics.

If it is found that the publication of certain information may harm the investigation or influence the behaviour of parties involved, these circumstances may be indicated by an amendment to the PDEB Regulation by the SCP. Referring to the personal data of the prosecutor or of other persons concerned in the investigated file cannot be retained as a plausible ground. This data may be anonymised, and some information or parts may be excluded from the text of the PDEB decision, based on a Regulation approved by the SCP, at the request of the prosecutor or the body examining the referral.

The examination of the notifications regarding the disciplinary and ethical responsibility of the prosecutors is in the competence of a Board, although the activities are rather different - the application of the disciplinary sanction and the development and provision of recommendations on the ethics of the prosecutors. The separation of the Board will ensure a composition similar to that for judges.

The Law on the Prosecutor's Office provides for seven types of disciplinary violations. Some of them are vague or may affect privacy and freedom of expression.

The disciplinary process is complex and involves several possible stages of review of an alleged disciplinary violation and three stages of challenge: filing a complaint on the facts that may represent a disciplinary violation and examination by the Prosecutor's Office; review of the case by the PDEB and adoption of a decision; challenge and review of the case by the SCP; challenge and review of the case by the court of appeal and subsequently by the SCJ. This procedure is complex, involves too many people, and the examination may be very lengthy. Thus, a number of steps can be reduced, so that the appeal against the PDEB decision is within the SCJ. Moreover, the streamlining of the system will strengthen the autonomy of the Prosecutor's Office and of the PDEB. Ultimately, the streamlining of the disciplinary liability mechanism will contribute to the disciplinary liability of the prosecutor within one year from the date of committing the disciplinary offense or three years from the date of committing the disciplinary offense in his/her procedural activity.

The SCP is in the process of drafting a Code of Conduct. This must be a priority for the SCP, which is also recommended by GRECO.

The Prosecutors' Inspection is a subdivision of the General Prosecutor's Office that does not ensure the independence of prosecutors. The Prosecutors' Inspection must enjoy functional and financial independence with a separate budget. It must be transferred to the SCP and given a status similar to the judicial inspection within the SCM. The transfer of the Prosecutors' Inspection within the SCP will contribute to the strengthening of the disciplinary mechanism of prosecutors and will streamline disciplinary procedures.

#### RECOMMENDATIONS

1. Examine the opportunity to separate the Ethics and Discipline Board into two structures with distinct competencies;
2. Publish all disciplinary and ethics decisions immediately after adoption, with the exceptions established by the Regulation approved by the SCP;
3. Reduce the stages of review and challenge in disciplinary matters of prosecutors;
4. Approve and inform the prosecutors about the Code of Conduct to be approved by the SCP in near future;
5. Transfer the inspection of prosecutors to the SCP, introduce a transparent procedure and ensure its functional autonomy.

## 1.3 COURT MANAGEMENT AGENCY

### ACHIEVEMENTS

In the last four years, the information system of courts has developed considerably: the new version of the Integrated File Management Program (IFMP) has been implemented, the e-File application has been developed and the Media Server platform has been implemented, equipping all court offices with videoconferencing equipment. Since 2017, IFMP is connected to several electronic government services - MSign, MConnect, MPay and other electronic government services, as well as state registers (of the population, of legal entities), etc. Although the Electronic Statistical Reporting module has been launched for two years in several courts, implementation at the national level is dragging on.

### CONSTRAINTS

The competencies of the SCM secretariat and CMA overlap in some areas, in particular related to ensuring the organisational activity of courts, judicial statistics and the judicial information system. The activity of a number of people in two institutions with similar responsibilities is not justified.

Via Law no. 76/2016 on the reorganisation of the courts of April 21, 2016, it was decided that the unification of the courts will be carried out gradually until December 31, 2027. In this regard, the Parliament Decision no. 21/2017 was approved. So far, only two headquarters have been reorganised. According to the report of the Ministry of Justice for the years 2020, 2019, 2018 and 2017, the allocations from the state budget were not used or were withdrawn. The development of the technical project, the allocation of land for the construction of headquarters and the development of specifications and the acquisition of design / construction works are among the biggest difficulties, which have not been resolved. The government needs to strengthen cooperation with development partners to develop specifications for the construction of court buildings.

Via SCM decision no. 330/19 of August 6, 2019, the draft budgets of the courts for 2020 and the estimates for the years 2021-2022 were approved. Approximately MDL 19 million constitute expenditures for repairs and capital investments. Almost all services and goods are not purchased through centralized procurement, which contributes to increased spending in some categories.

Fraud in the random distribution of files was the subject of several media materials, and the SCM and CMA did not investigate the suspicions.

### RECOMMENDATIONS

1. Carry out an evaluation of the institutional activity of the staff within the SCM secretariat and CMA. There is a need to clarify institutional competences and review the number of staff in both entities;
2. Ensure the gradual introduction in the next three years of the e-file module, which will be applicable in all courts and prosecutor's offices, as well as accessible to attorneys;
3. Carry out an external audit, including the vulnerability of the IFMP, to ensure the efficiency and of the random distribution of files without manipulation;
4. The Government should strengthen cooperation with development partners for the development of the specifications for the construction of court buildings;
5. The relevant institutions in the field of justice (courts, SCM, General Prosecutor's Office, MoI, NAC, Nation Penitentiary Agency, etc.) must adopt a unique methodology for data development and collection, with availability in online format.

## AREA II – PROMOTING INTEGRITY IN THE JUSTICE SECTOR

### 2.1 ASSET, INTEREST AND LIFE-STYLE VERIFICATION OF ACTORS IN THE JUSTICE SECTOR

#### ACHIEVEMENTS

Judges' salaries were substantially increased between 2011 and 2016 and were almost the highest in the public system. Starting with 2019, judges' salaries have decreased compared to other professions in the justice sector, including compared to some court officials. Without changes that would ensure a unified judicial practice and increase confidence in the judiciary, such a budgetary intervention could face criticism from society.

#### CONSTRAINTS

The Anti-Corruption Prosecutor's Office should investigate major corruption only. Limiting the powers of the Anti-Corruption Prosecutor's Office to cases of high corruption justifies maintaining a specialised body with a special status, but it will require the reform of the NAC.

In 2020, the integrity inspectors were given for verification the declarations of assets and personal interests of 413 judges and 642 prosecutors. The verification of the content and the fact of timely submission do not ensure a complex examination of the assets acquired during the term of office. At present, there is no definitive criminal or civil case concerning the confiscation of unjustified property or unjust enrichment among judges or prosecutors. The unjustifiably lengthy examination of criminal cases at the stage of criminal prosecution or in court in respect of several judges and prosecutors, or the existence of an uneven judicial practice in corruption and related cases, must cease.

Loans (including interest-free), car loan contracts or donations are often indicated in the declarations of assets of judges and prosecutors. For 2020, no less than 170 prosecutors indicated in their asset declarations that they received gifts / donations of houses, apartments, land or tens of thousands of euros. Thus, NIA controls must be directed at the donations of the subjects of declaration, and in case the donors cannot be verified by NIA, it is necessary to involve and notify the State Fiscal Service for extended verifications or the Prosecutor's Office to order a criminal investigation. The contestation of the ascertainment documents by the control subjects in the administrative contentious court does not constitute a legal ground to avoid the start of the criminal investigation. The SCM and the SCP react to a limited extent to journalistic investigations and do not request verification of the lifestyle of judges and prosecutors, respectively. Moreover, it does not react to procedural acts of refusal or those suspending the examination of criminal cases by prosecutors.

#### RECOMMENDATIONS

1. Exclude from art. 46 of the Constitution of the presumption of the lawful character of property of civil servants;
2. Review the pay of judges and prosecutors, with its gradual increase;
3. Ensure effective cooperation between anti-corruption institutions to collect, analyse and ensure effective verification of declarations of assets and interests for candidates and those holding positions of judge or prosecutor, including for the effective enforcement of extended confiscation of property whose source cannot be justified;
4. Limit the competence of the Anti-Corruption Prosecutor's Office to high corruption and transfer the task of conducting the criminal investigation exercised by the NAC to the prosecutors from the regional prosecutor's offices;
5. Priority examination of criminal cases in the field of corruption, ensuring a uniform practice regardless of the level of the court.

### 2.2 VERIFICATION OF INTEGRITY AT THE STAE OF ACCESS AND PROMOTION OF PERSONS IN THE JUSTICE SECTOR

### ACHIEVEMENTS

With the adoption of Laws no. 132/2016 on the National Integrity Authority and no. 133/2016 on the declaration of assets and personal interests, the requirements for verification of assets and interests of a number of actors in justice sector, including judges, prosecutors, members of the SCM, SCP, specialised boards, the inspection of judges and the inspection of prosecutors, but also of other staff employed within these authorities were established. Declarations of assets and interests are filed once a year or more often, if the person is promoted or transferred to another position.

NIA has the power to verify the correctness and compliance with the deadlines for filing asset declarations, as well as in case of finding a difference between the declared wealth and the existing one, to initiate the control of the asset declaration. From 2016 until now, NIA has managed to become operational, examined the cases taken over from NIC and went on to examine as a matter of priority the statements submitted by persons with important positions.

### CONSTRAINTS

Multiple journalistic investigations show that integrity checks are not carried out effectively. Law no. 133/2016 stipulates that the declarants indicate the contractual value and not the market value of the assets held.

NIA did not complete its staff lists even at half of the number of integrity inspectors. The Authority also faces internal misunderstandings related to the management of NIA. The audit of the automated information system, necessary to establish the work efficiency but also the way of functioning of the mechanism of random distribution of declarations did not take place. The SCM and the SCP do not perform in a practical way the assessment of the integrity of judges at the stage of access and promotion in office. The internal regulations of the SCM and the SCP indicate on the evaluation of the impeccable reputation, which is scored with a very small share from the total number of points, and integrity is not seen as an admissibility criterion, but a criterion for assessing the quality of the candidate. The NIJ does not verify the integrity of candidates for candidate positions, only the condition of promoting institutional integrity being established, in the case of candidates with work experience.

### RECOMMENDATIONS

Amendment of Law no. 132/2016 on the National Integrity Authority and Law no. 133/2016 on the declaration of personal assets and interests, as well as the related regulatory framework to:

1. Establish the obligation to declare the goods at market value, with the maximum permissible deviations of (+) (-) 15% from the average market value, based on a simple market analysis methodology;
2. Clarify the grounds for obtaining assets prior to holding public office (donation, inheritance, exchange, sale-purchase, privatisation, including for land obtained through the abolition of production cooperatives, etc.);
3. Provide for priority control of candidates for judges and prosecutors at all stages of career (admission to NIJ, including based on work experience, appointment, promotion, transfer, including appointment to management positions in courts or prosecutors' offices);
4. Empower the SCM and the SCP with the right to request and the obligation of the public authorities to provide information on candidates at all stages of their career (APS, SFS, SIS, GIPB, GPI, NBM, SPFML, NAC, ARCA);
5. Extend the control of the assets and interests of the candidates 'close family members, including the candidates' spending structure.

## 2.3 DISCIPLINARY, CIVIL AND CRIMINAL LIABILITY OF JUDGES AND PROSECUTOR IN THEIR PROFESSIONAL ACTIVITY

### ACHIEVEMENTS

Through the amendments made to Law no. 544/1995 on 26 November 2020, namely Article 19, paragraph (3) of the Law it was provided that “the judge cannot be held accountable for his opinion expressed in the administration of justice and for the judgment rendered, unless his guilt was established by a final sentence or in a disciplinary procedure was found intent or gross negligence in his actions or inactions that led to one of the consequences provided in art. 2007 para. (1) lit. c) of the Civil Code of the Republic of Moldova” (CivC). At the same time, art. 2007 para. (1) lit. c) the CivC establishes, actions or inactions of the magistrates who attracted, as the case may be:

- the finding by the ECtHR, by a judgment, of a violation of a person's fundamental rights or freedoms and ordering the collection of sums for their benefit;

- the pronouncing of a decision by a national court, following the conviction of the state by the ECtHR, by which it was ordered the granting of the financial means from the state budget.

At art. 2024 of the CivC, amendments were introduced, at para. 2 which establishes that, in case of repairing the damage pursuant to art. 2007, the state has the right of recourse against the person responsible in the criminal investigation bodies, the prosecutor's office or the court, if his/her guilt is established by a final sentence or if, in a disciplinary procedure, the intent or gross negligence in the actions was found or its inactions. Thus, new provisions were introduced in art. $4^1$ by Law 205/2020 which defines the notion of intent and gross negligence.

## CONSTRAINTS

International regulations, as well as previous findings of the Constitutional Court of the Republic of Moldova, expressly establish the possibility of finding guilt in violation of the law by a judge in order to bring material liability only in a fair trial. Thus, the establishment of guilt can take place only in a judicial process by means of a court decision. The requirements of ensuring a fair trial for establishing material liability do not exclude the application of criminal or disciplinary liability, for which there are other requirements, another procedure but also other consequences for the judge or prosecutor subject to those types of liability.

Based on these reasons, the finding of the judge's guilt can take place only through a separate judicial procedure, either by a criminal sentence or by a court decision, which will later be based on material and / or disciplinary liability.

## RECOMMENDATIONS

1. Amendment of national legislation: of the Civil Code, of the Law on Disciplinary Liability of Judges, to regulate a certain, clear and predictable mechanism in case of material liability of judges, by establishing the statute of limitations, by developing a methodology / criteria of assessment for the proportional determination of the amount of the material liability of the judge according to his/her degree of guilt and a limit on the potential material liability of the judge as a result of the recourse action.
2. Introduce a mechanism of compulsory professional liability insurance for actors in the justice sector to effectively compensate cases where the guilt of professionals in the justice sector is established, but also for cases where guilt cannot be established but the damage was caused.

## 2.4 TRANSPARENCY OF ACTIVITY OF AUTHORITIES IN THE JUSTICE SECTOR

### ACHIEVEMENTS

Justice authorities have significantly improved their process of informing citizens about the actions they take in their areas of competence. Thus, the SCP created and developed its own website, the SCM improved some search aspects, the authorities in the field, including the General Prosecutor's Office, the Ministry of Justice, CMA, UAM, NIJ, NCSGLA regularly publish information of public interest on their dedicated webpages.

Through the court portal, data on the set hearings, acts adopted by judges or court panels, as well as searching for files by category and their number may be consulted.

The mentioned authorities publish notices of the organisation of public competitions, including the filling of vacancies for judges and prosecutors, but also of administrative and civil servant positions.

The meetings of the self-governing bodies are broadcast live and can be viewed on open information resources.

### CONSTRAINTS

There are a number of difficulties related to the reasoning of decisions adopted by the SCM and the SCP. Although Law no. 947/1996 establishes that the SCM is to adopt reasoned decisions regarding the career of judges by open vote, the SCM decisions are limited to the finding that the candidate did not meet the required number of votes. The motivation thus is limited only to the finding of non-meeting of the number of votes necessary to accept the request for appointment or promotion of the judge, without arguments to indicate the non-compliance of the requirements established for the judge or failure to meet other conditions established by law.

The acts adopted by the SCP are based on requests issued by the Prosecutor General on the basis of an order, which itself cannot be consulted. Thus, the documents issued by the SCP do not have the necessary substantiation and often only refer to the order of the Prosecutor General, which does not allow the follow-up of the entire subject and its thorough analysis.

The activity of courts and prosecutors' offices is not available to the public, except for press releases issued by central self-government authorities. On important cases no press releases are presented to the public, both before the established hearings and after procedural actions have been taken during the hearings. There is no specialised staff dedicated to communicating with the public, especially as these positions are required within the specialised prosecutor's offices and the biggest courts.

### RECOMMENDATIONS

1. Implement a coordinated policy of communication with the public on current issues by courts, specialised and territorial prosecutor's offices on pending cases of major importance to society, including the presentation of information, management of accounts on social networks and sub-pages of these authorities;
2. Implement the practice of detailed motivation by the SCM and SCP of the adopted acts, including those related to the career of judges and prosecutors;
3. Store on public resources the records of the meetings of the self-governing authorities in the justice sector so that they can be consulted in the future;
4. Present the summary of the meetings of the self-administration authorities, easily accessible to the public regarding the decisions taken, including in the general assembly of judges and prosecutors, of the meetings of the SCM and SCP and of the specialised boards.

# AREA III – STRENGTHENING JUSTICE RELATED PROFESSIONS

## 3.1 ATTORNEYS

### ACHIEVEMENTS

The Law no. 1260/2002 on the attorney profession laid the foundations for the activity of attorney and for the organisation the legal profession, establishing that attorneys are freelancers.

Currently, the profession of attorney is managed by the Union of Attorneys of the Republic of Moldova (UAM) as a self-management body for attorney, composed of four regional Bars. Currently, approximately 2,800 attorneys are registered, but only around 1,600-1,700 have the right to practice, the list being updated each month. It is worrying that the number of attorneys requesting the suspension of the profession is high, due to financial difficulties, especially related to the large number of fees that need to be paid, and especially due to the significant increase in insurance premiums for the social fund.

From 2002-2003, UAM obtained an independent institutional organisation, and the commissions obtained total independence in the mandate related to the admission to profession or related to the ethics and discipline of attorneys. Therefore, the liberal professions self-regulate, with the state having a small presence. By creating the Licensing Commission of the attorney profession and improving the legal framework, the channels of access of candidates in the profession have been diversified. However, for several years, competitions for the selection of members for the Licensing Commission have been contested in courts, which has generated multiple blockages. The mechanism of state-guaranteed legal aid has considerably improved in terms of the legal framework and the functionality of the mechanism of appointment of attorneys, as well as the quality of state-guaranteed legal aid.

Attorneys' access to various trainings has been extended, which are organised by external partners, associations and specialised NGOs. An Attorney Training Center has been created within the UAM, but it does not have the capacity to provide trainings for all attorneys and to cover all training needs. The 50 training attorneys provide free training courses. There are also some differences at the level of the governing bodies of the UAM regarding the functioning and regulation of the ATC's activity.

The recent amendments to Law no. 1260/2002 on attorney profession, will facilitate the organisation of the Congress and the General Assemblies of the Bars, including will allow the introduction and use of electronic voting. At the same time, the mandate of the deans of the Bars was extended to four years compared to two years, which will ensure a greater stability in their activity. Also, several issues related to the activity / taxation of the associated bars, the status of the trainee lawyer, etc. were solved.

### CONSTRAINTS

Lack of a strategic and consolidated vision on the training of attorneys, controversy and distrust in the process of access to the attorney profession, unclear evaluation procedures for admission to the profession, lack of grades in the evaluation of candidates for exams generate distrust in the votes / decisions of Licensing Commission members. There is also a passivity on the part of the attorney profession in terms of involvement and solving the problems of the profession. There is a lack of communication between self-governing bodies and attorneys on existing issues.

One problem is the vulnerability of attorneys, who are often associated with the clients they represent, their independence and freedom of action being thus affected (criminal cases, hostile behaviour by some judges or prosecutors).

There is a lack of professional consolidation due to the holding of general meetings in conditions increasingly criticised in terms of legality, including contested in court, uneven examination of issues of ethics and discipline, including those filed by lawyers regarding fellow lawyers, lack of accountability of committee members, which should be regulated, including in terms of

measures applied in the event of non-performance of duties or inefficient activity of a committee.

Multiple disputes related to the attorney profession against UAM in court significantly affect the self-governing bodies. The courts annul in most cases the decisions of UAM related to the refusal to issue an attorney license to former judges or prosecutors or in case when the criterion of impeccable reputation is invoked, although in this case, the level of morality (impeccable reputation) should be decisive. Often, when applying for an attorney license by former judges or prosecutors, the fact of accepting honourable resignations by the SCM / SCP persists as an impediment when invoking the criterion of non-compliance with the impeccable reputation of the candidate attorneys.

Recent amendments to the Law on attorney profession, art. 10 paragraph 2) are worrying, because the proposals to introduce a filter to access the profession of attorney to judges and prosecutors with length of service following their resignation in the form of a qualification exam were rejected. Moreover, as an innovation by introducing letter d) in the same article, a new category of subjects was introduced who would benefit from obtaining an attorney license, namely those who graduated the training courses of the National Institute of Justice after only six years of work, without any additional conditions.

Another constraint is how to ensure the transparency of the decision-making process within the self-governing bodies. Currently, the meetings of the self-administration bodies do not take place online, and the representatives of the professions have limited access to their works.

### RECOMMENDATIONS

1. Ensure a transparent process based on clear conditions for the selection of members of the Licensing Commission, with an emphasis on professionalism and integrity;
2. There is a need to develop internal regulations with clear rules related to the activity of the members of the Committees within the UAM;
3. Review and reform the examination process for admission to the attorney profession by introducing an electronic attestation and case selection program, as well as the development of clear criteria for the development of the trial cases as well as for the grade evaluation of the performance of the candidates;
4. Include payment for the members of the Licensing Commission for the activities related to the examination;
5. Exclude the jurisdiction of the courts to decide on admission to the profession of attorney on the basis of a court decision;
6. Pay more attention to the attorney profession from the authorities, including in terms of investment, which has been neglected in contrast to that of the prosecutors' offices and the courts;
7. Prior verification of the integrity in particular of the members of the committees and representatives of the UAM, through a well-designed mechanism so as not to jeopardize the independence of the profession;
8. Define the term of impeccable reputation and solve practical problems by introducing clearer conditions that would justify non-compliance with this criterion;
9. Amend art. 10 of the Law on attorney profession to introduce additional criteria to persons applying for an attorney license, namely an entrance exam for judges and prosecutors, including the repeal of letter d) art. 10 paragraph 2) of the Law;
10. Amendment the statute of the legal profession and in the code of ethics and discipline for the regulation of several problematic situations related to the activity of the internal bodies of UAM;
11. Conclude cooperation agreements between institutions and the attorney professio, with regular consultations, debate and analysis of existing issues, to standardise practices.

## 3.2 BAILIFFS

### ACHIEVEMENTS

Currently, bailiffs operate based on the legal framework established by the Enforcement Code, as well as under the management of the professional association - the National Union of Bailiffs of Moldova (NUBM). Until 2013, the enforcement rate of execution procedures recorded positive trends, reaching 50-60%. Progress has also been made in making the procedures more efficient. The Disciplinary Board of NUBM has a diverse composition, representing mostly the academic environment.

A draft approval of professional standards was developed with the participation of external partners, including the component of periodic evaluation of the activity of the bailiffs' offices. A draft amendment to the Criminal Code was also drafted to sanction people for crimes of intimidation against bailiffs.

The Union of Bailiffs recently set up a working group on the fundamental revision of the procedures in the Enforcement Code, especially related to the diversification of typologies of procedures according to the object including the in the enforcement order, specialisation in working methods, territorial competence of bailiffs, etc.

## CONSTRAINTS

Several cases concerning the challenge of bailiffs' actions and enforcement proceedings in the courts have created an uneven court practice and instability in the application of enforcement rules. After 2013, the execution rate of enforcement procedures decreased to below 30%, making the procedures difficult and time-consuming.

Enforcement legislation has become far too permissive towards the debtor. As a result, the vulnerability of the bailiffs has increased by exposing them to the professional risks caused by the aggressive dissatisfaction of the debtors, by the lack of actions from the notified bodies in order to defend the bailiffs and sanction the responsible persons.

The lack of institutional communication and the non-implementation of the electronic register of enforcement cases lead to the stagnation of enforcement procedures and prevents the reform of the enforcement system.

## RECOMMENDATIONS

1. Organisation of joint training courses for bailiffs, judges and other legal professions, focused on a methodology appropriate to the clear objectives in understanding by the audience the correct application of the rules on enforcement and solutions to practical problems;
2. Improve the means of communication of the bailiffs with the parties, especially in case of conflicts;
3. Encourage the use of conciliation procedures at the initial stage of the enforcement procedure, as well as improve the way work is organised;
4. Development of a set of joint recommendations by the professional body (NUBM) and the SCJ to contribute to the activity and uniform judicial practice of the bailiffs with respect to the rights of the parties involved;
5. Adoption via normative acts of measures to increase responsibility of the persons for the actions of aggression / intimidation towards the bailiffs;
6. Review the criteria developed in the draft professional standards and submit them to the competent authorities for approval;
7. Review of disciplinary procedures to strengthen the enforcement mechanism, including review the composition of the disciplinary board to diversify the categories of members, especially by including a member of the judiciary;
8. Implementation and use of the electronic register for the benefit of the enforcement system;
9. Implementation of the enforcement system through online tenders, which would help ensure the transparency of enforcement procedures;
10. Facilitate the filling up of bailiff positions in settlements and regions with an insufficient number of bailiffs calculated on the basis of the number of inhabitants.

## 3.3 JUDICIAL EXPERTS

### ACHIEVEMENTS

By Law no. 68/2016, the process of providing judicial expertise was standardised and the authorities that have the competence to perform judicial expertise were established. Also, by Law no. 68/2016, the criteria for access to the position of judicial expert were also established, as well as the requirements for exercising the profession of judicial expert.

In the last 4 years, financial and institutional support has been provided to complement with equipment the NJEC, NAC, MoI and MHLSP subdivisions, including with the financial support of the EU and other development partners.

Higher education institutions as well as NIJ offer training courses for judicial experts within NJEC, NAC, MoI and MHLSP subdivisions to ensure the continuous training of judicial experts.

### CONSTRAINTS

National institutions that provide forensic expertise face an acute shortage of staff but also with the aging of staff involved in the preparation of forensic examinations. The field suffers from a lack of attractiveness, including due to uncompetitive pay, which is not linked to the wage conditions in the sectors of the national economy, which would require different categories of judicial expertise. The conditions for carrying out forensic examination are often insufficient to be able to ensure objective conclusions of the expert reports. In order to be able to ensure adequate conditions to formulate conclusions, forensic experts need laboratory spaces to be able to carry out the necessary research. The process of preparing new judicial experts is deficient. Law no. 68/2016 does not provide the necessary framework for the training of judicial experts, the training process being ensured through dual education.

Not all traceability and test requirements are met. Given the specificity of the forensic activity, which is based on the materials submitted by the criminal investigation bodies, the traceability of evidence is essential to ensure that no changes have been made to the evidence.

### RECOMMENDATIONS

1. Offer NJEC the status of a research institution to allow access to financial resources but also to strengthen the position of judicial experts in the process of preparing conclusions and reports;
2. Adopt and implement protocols related to ensuring the traceability of evidence to exclude unauthorised interventions in the evidence;
3. Extend the training of judicial experts within NJEC and the NIJ, in cooperation with the judicial experts already licensed to ensure the transmission of knowledge and the strengthening of the methodological capacities to carry out judicial expertise;
4. Increase the attractiveness of judicial expert positions and hire specialists in various fields as part-time judicial experts;
5. Review the mechanism of covering the costs for judicial expertise services within the criminal and civil process, to compensate the costs of judicial expertise covered by NJEC through the state budget, as well as waiving the payment of judicial expertise services from a public authority to another;
6. Establish the responsibility of the laboratory for the quality of the forensic report and implementation of the practice of forensic expertise by several experts (group of 3 experts) to exclude human errors in the process of analysis and formulation of answers to questions from parties.

## 3.4 MEDIATORS

### ACHIEVEMENTS

Via Law no. 137/2015 on mediation, several aspects related to the activity of mediators were clarified, clearer competencies were established for the Mediation Council and well-defined criteria were set for the mediator profession and access to the position of mediator. From 2015 until now, the mediators' profession has been strengthened by gradually expanding the number of mediators involved in the exercise of this profession.

### CONSTRAINTS

The organisation of the mediator's activity is insufficiently regulated, but there are also conflicts between various provisions. Of the approximately 1,000 registered mediators, there are only around 158 active mediators. The activity of mediator has been subject to fiscal requirements such as compulsory social and medical contributions, which have led to several requests for suspension from the activity of mediator.

The Mediation Council is currently with an expired mandate, which makes it impossible to take decisions within the competence of the Council. Law no. 137/2015 does not establish the extension of the mandate until it is taken over by other members.

The provisions of the CivPC, CPC, CC and CivC, as well as of the Family Code are not coordinated in the sense of mediation activity. In addition to the activity of extrajudicial mediation, judicial mediation is also applicable, which is included in the provisions of the CivPC, which hinders both the activity of the courts and reduces the potential areas of activity of the mediators.

The professional training of judges and prosecutors does not include aspects related to mediation, which makes it difficult to uniformly apply the legal framework relevant to mediation. There are cases when judges summon the parties, including the mediator, for procedures related to the confirmation of transactions concluded with the participation of the mediator. Mediators are also required by law to ensure the finding of a second party, which is confusing the role and functions of mediators.

In practice, misdemeanour cases cannot be subject to the mediation procedure, and the list of misdemeanours that can go through this procedure is very limited.

### RECOMMENDATIONS

1. Appointment of new members of the Mediation Council to ensure the functionality and self-management of the mediation profession;
2. Review the procedural framework and exclude judicial mediation, as well as extend the categories of criminal and misdemeanour cases to which mediation can be applied;
3. Carry out trainings for judges, prosecutors and mediators to exclude the erroneous application of the relevant provisions of the mediation process;
4. Identify and gradually extension of compulsory extrajudicial mediation on civil and misdemeanour cases to reduce the workload of judges and expand the area of intervention and provision of services by mediators;
5. Inventory of the activity of mediators and establish a deadline for them to comply with the new regulations related to the mediation activity;
6. Extensive mediation option awareness rising in courts, prosecutors' bodies, public authorities that apply sanctions for contraventions for which it is possible to apply mediation.

## 3.5 NOTARIES

### ACHIEVEMENTS

New regulations have been adopted related to the notary field, especially Law no. 69/2016 on the organisation of the activity of notaries and Law no. 246/2018 on notary procedure. Also, amendments were adopted to the Civil Code, which supplemented the provisions related to the succession procedure.

The new regulations have set clearer powers for the Notary Chamber, including for its structures - the Council, the Licensing Commission, the Ethics Commission and the Disciplinary Board.

Through the new regulations related to the notarial procedure, the divorce procedure was approved before the notary, when the parties agree, including on the division of property and the establishment of the domicile of minor children.

### CONSTRAINTS

The normative framework related to the fees by notaries is not unified, the provisions prior to the entry into force of Law no. 69/2016 being applicable. The bodies within the Notary Chamber have an expired mandate, and the General Assembly of Notaries cannot be convened given the limits imposed by the pandemic generated by Covid-19. For these reasons, the process of access to the position of notary cannot be organised and the structures responsible for ethics and discipline are not functional.

Since 2017 and until now, no competitions have been organised for notary positions, although there are regions in the Republic of Moldova where only one notary works, which does not cover the needs of citizens of notary services.

The status of the Notary Chamber is uncertain in the normative framework, which creates difficulties at the level of registration and subsequent recognition of the Notary Chamber as a legal person under public or private law.

The share of representation of notaries in the self-administration bodies is insufficient, a more pronounced representation of notaries in the self-administration bodies being necessary - Notary Chamber, Council, Licensing Commission, Ethics Commission and disciplinary board.

The contribution of the Notary Chamber related to the training of trainee notaries is limited only to the approval of the topics and bibliography for trainee notaries. The knowledge assessment process itself is not currently clarified to ensure the work of the Licensing Commission.

### RECOMMENDATIONS

1. Election of the new members of the Council of the Notary Chamber, the Licensing Commission, the Ethics Commission and the Disciplinary Board to ensure the functionality of the self-administration bodies of notaries;
2. Adoption of the necessary normative framework - law on notaries' fees and Government decision - to ensure predictability and clarity on the services to be provided by notaries;
3. Launch the admission process for notaries and approve the necessary framework for admission to the notary's internship and assessment of the knowledge of notaries;
4. Clarification of the status of the Notary Chamber as a professional organisation and extension of this practice to other professional organisations related to the justice sector;
5. Analysis of the coverage map of notarial services and encourage competitions in regions where there is a lack of notaries reported to the number of inhabitants;
6. Promoting the payment of notary services by bank transfer, including the payment of the state fee through the governmental payment platform MPay.

# AREA IV – IMPLEMENTATION OF INFORMATION TECHNOLOGIES IN THE JUSTICE SECTOR

## 4.1 STRENGTHEN THE PROCESSES OF COLLECTION AND ANALYSIS OF STATISTICAL DATA

### ACHIEVEMENTS

Integrated File Management Programme (IFMP) used in courts, the Automated Information System Criminal investigation: E-file (AIS Criminal investigation: E-file) used in the prosecution system, the Automated Information System of the National Council for State Guaranteed Legal Aid (SIA NCSGLA) and the Automated Information System National Union of Bailiffs (SIA NUFM) contain automated statistical modules that extract statistical data.

Via the SCM Decision no. 371/32 of 22.12.2020, it was decided that from January 1, 2021, the national courts will use the Electronic Statistical Reporting Module.

IFMP contains the option "CEPEJ tab" which electronically generates the necessary data to complete the scheme for evaluating the CEPEJ judicial system in order to prepare the European Judicial Systems Report but also monitoring and evaluation of the activity of courts according to CEPEJ standards.

Statistical data on the activity of the judiciary are published on the websites of the courts, the CMA, the Ministry of Justice, the SCM, the National Council for State Guaranteed Legal Aid, the National Bureau of Statistics, and the CEPEJ-STAT database.

With the support of the project "Support for further strengthening the efficiency and quality of the judiciary in the Republic of Moldova" the development of a tool for the publication of judicial statistics following the example of CEPEJ-STAT was launched.

### CONSTRAINTS

Judicial statistics has not yet established itself as a useful and indispensable tool for ensuring efficient management of courts and other institutions in the judicial sector, decision-making, argumentation of public policies and draft regulations, performance evaluation, etc. We assume that this situation is due to the following circumstances:

- The relatively limited use of judicial static data, the occasional nature of complex data analysis;
- Uncertain and incomplete nature of the data generated by incomplete and / or incorrect application of the software by users, high level of staff turnover, high workload, insufficient training, lack of clear descriptions of responsibilities for the use of AIS, ambiguous regulatory framework on the application of the AIS;
- Doubling the process of collecting and generalising data on paper, caused by a lack of confidence in the completeness and correctness of electronically generated data, which, in turn, is the natural consequence of the circumstances set out above; technical errors in data generation that are a consequence in the case of complex information systems; shortcomings in the configuration of workflows and lack of inter-institutional communication.
- Publication on the web page of statistical data in .pdf, .doc or even .rar archives. in the form of a list, without data filtering tools according to useful criteria.

### RECOMMENDATIONS

1. Stimulate the use of electronically managed statistical data;
2. Strengthen the regulatory framework and user responsibilities regarding the use of AIS;
3. Development and implementation of transparent standards for the use of AIS and evaluation of the activity of the institution and users according to these criteria;
4. Provide methodological support to users, organise trainings;
5. Prompt response to user requests for detected technical errors;

6. Gradual elimination of the process of manual collection and management of statistical data, until complete exclusion;
7. Implementation of technical solutions for the automatic extraction / placement of statistical data from the SIA on the website / other information resources (as appropriate);
8. Provide easy access to statistical data on the web page / applications with an intelligible and intuitive interface, modern UX / UI (including adjusted for people with special needs) in the form of a dashboard, including an engine for generating statistical reports with filters / criteria useful to users who need more complex statistical information (eg. CEPEJ-STAT);
9. Development and periodic dissemination through public sources of information via info-graphs on the activity of the judicial system;
10. Create a common statistical basis through the Integration of information systems in the judicial sector.

## 4.2 IMPROVE CAPACITIES OF USE OF INFORMATIONAL SYSTEMS WITHIN THE AUTHORITIES INVOLVED IN THE DELIVERY OF JUSTICE

### ACHIEVEMENTS

At present, several information systems are used in the judiciary: IFMP, AIS Criminal investigation: E-file, AIS NCSGLA, AIS NUFM; others are at the concept stage - AIS of the Bar Association, AIS of the NJEC, other institutions at present do not provide for the development of any AIS - Union of Notaries, Mediation Council.

Most AIS have been developed and are maintained / updated with the support of development partners.

The technical capacities of the institutions of the justice sector can be appreciated, in general, with some exceptions, as a satisfactory one. A considerable part of the technical equipment for judicial institutions has been procured, supplemented and replaced with the support of development partners.

IFMP and AIS NCSGLA are integrated with some state registries and allow the pre-completed automatic generation of documents.

Despite these focused positive examples, justice information systems do not use the potential for integration with state registries and government databases.

Judicial professionals and litigants can use the electronic signature in communication with the court.

### CONSTRAINTS

The high level of staff turnover among court staff and their high workload are major obstacles to applying the AIS to its full potential. The non-use, with some exceptions, of pre-completed draft procedural documents and the duplication of paper and electronic procedures only further increase the workload for court staff.

Another constraint is reluctance to use electronic signatures and information technology in the justice sector. The technical-informational potential available at the current stage of digitisation of the activities of state institutions, to the detriment of solutions proposed at national level such as the Interoperability Platform (MConnect) remains untapped.

The optional nature of the application of the AIS in some institutions of the judiciary and the ambiguous internal regulations on the application of the AIS do not allow for a uniform implementation of the AIS throughout the system.

The high costs of IT maintenance and development services are also a risk factor for keeping information systems up and running.

### RECOMMENDATIONS

1. Focus on the beneficiaries of justice services and direct users of the AIS;
2. Establish a rational balance between investment and the benefits of the AIS. In this sense, an optimal and necessary tool is the feasibility analysis;
3. Substantiate the normative provisions on the registration and operation of the AIS on a set of clear and rational software / hardware requirements, along with the reduction of bureaucratic barriers in the way of the development, operation and integration of the AIS;
4. Eliminate the human factor, ensure transparency of the activity, the possibility to verify the activity of the users and, respectively, the reduction of corruption, favouritism. etc.;
5. Outsource technical development and maintenance services. An optimal solution is the takeover of the coordination function of the maintenance, development and integration of information systems in the justice sector by a state institution profiled in this field;
6. Staged provision in the institution's budget of financial sources for the gradual replacement of equipment, encourage the rational use of equipment and consumables;
7. Reduce duplication of procedures, stimulate the digital circulation of documents;

8. Review and improve the pre-completed models of procedural documents and integrate the AI modules to optimise the workflows on the given segment;
9. Have an efficient system for logging user activity in AIS;
10. Encourage the use of electronic signatures by professionals and beneficiaries of services in the justice sector, with the gradual provision of the obligation to electronically sign procedural documents;
11. Review and consolidate the internal regulations of the management institutions on the competences / responsibilities of the AIS user;
12. Ensure a good professional training of staff on the use of AIS;
13. Ensure a prompt response of maintenance / development service providers to detected errors and user requests.

## 4.3 INTEGRATION AND INTEROPERABILITY OF THE INFORMATIONAL SYSTEMS IN THE JUSTICE SECTOR WITH OTHER NATIONAL INFORMATIONAL SYSTEMS

### ACHIEVEMENTS

The digitalisation of work processes is justified by the practical utility, which, in turn, is reflected in the rationalisation of workflows, optimisation and reduction of the necessary volume of financial resources, materials, etc. This common approach can also be addressed in the judiciary.

The digitisation / automation of work processes probably highlights more the justification of the complex approach of the activity of the judicial system - a distinct sector of human activity. Thus, the typical path of a person - beneficiary of justice services, can begin in the office of an attorney, continues in court and end in the office of a bailiff. How easy would this interaction be if our potential beneficiary could schedule an attorney visit from his account on the National Citizen Portal, request and receive electronically the necessary documents provided by public institutions, present in person or through the representative the electronic appeal through the e-Judicial File sub-system, receive documents and subpoenas electronically and via SMS, etc. At first glance, this approach seems sophisticated and somewhat limiting in terms of interaction with the court, but this is only a digital alternative to the "classic" - which allows the litigant to significantly reduce the time required to process documents, travel to court, communicate with the court (present requests/take over the procedural documents, etc.). Such a solution would be useful in times of pandemic, or for people with special needs (elderly, pregnant women) or out of the country. It should be mentioned that at present the proposed scenario is achievable in a share of 60-70% and to become a reality the integration and interoperability of information systems is necessary.

An interesting fact is that the idea of integration and interoperability of the judicial information system was launched in 2007 by the Government's approval of the Judicial Information System Concept for 2007-2008, some of which have been and are being recently implemented.

### CONSTRAINTS

The development of information systems in the justice sector has largely resulted from the digitisation of the processes provided in the procedural normative framework, internal regulations, etc., whilst the potential of process re-engineering has not been exploited.

Recent legislative changes provide that, public authorities are required by law to provide services without requesting documents from individuals / legal entities if the data contained in these documents are available in information resources and can be consulted or provided through the interoperability platform MConnect, and non-compliance with these provisions is sanctioned with misdemeanour sanctions.

The digitalisation of the justice sector began and continues largely under the influence of development partners. On one hand, this support is very welcome and useful for the modernisation of the activity, on the other hand, it generates the danger of the impossibility of ensuring the maintenance and updating of the AIS from the state budget.

The low level or even the lack of data exchange between AIS within the judiciary does not allow optimising the management of workflows, data exchange, generation of statistics, provision of digital public services to litigants, thus missing the possibilities practically existing at present in the state.

Process re-engineering is an essential aspect of digitising workflows and data exchange. Restoring work processes may require changes to the regulatory framework (laws, government decisions, orders, regulations, instructions), a complex and long process with unpredictable results.

Establishing responsibilities in the process of integrating information systems is a challenge for several reasons - specific field of intervention, activity that combines profile knowledge with technical knowledge, additional workload.

## RECOMMENDATIONS

1. The digitisation and integration of AIS in the judiciary, ensure interoperability and the exchange of data between them must be based on a thorough analysis of the experience of beneficiaries of justice services and, in particular, on the shortcomings and impediments encountered by them in the "path to justice";
2. The integration and interoperability and exchange of data of the AIS in the judicial and public system, should be planned in coordination with all decision makers, development partners, civil society and other participants, with the approval of strategy and action plan would be the way to follow for the next 2-3 years;
3. Provision in the state budget of the necessary resources for the maintenance and update of the AIS. In this situation, the resources provided by the development partners can be used for the development of the new functions, integration, etc.;
4. The central role in the integration process and ensuring the interoperability of the AIS is to be taken over by a profile institution with significant experience in the field;
5. Integration of information systems in the justice sector and improvement of their activity in terms of facilitating interaction with litigants and professionals in the justice sector, along with facilitating the electronic exchange of documents and increasing the number of online court hearings.

## 4.4 ADVANTAGES FOR LITIGANTS AND SHAKEHOLDERS (PROFESSIONS AND INTERESTED PARTIES)

### ACHIEVEMENTS

The citizen is to be placed the centre of the digitalisation of the judicial sector as a direct beneficiary of the justice services. Currently litigants have a relatively narrow range of technical facilities generated by the AIS in the justice sector.

In order to facilitate the interaction of litigants and professionals in the justice sector with the courts, the e-Judicial Information sub-system was developed as an integrated part of the IFMP. The first and second versions of this subsystem have been developed and tested. The need to develop the second version of the subsystem was generated by the release of version 5.0 of IFMP, a situation that requires a review of how the application works. The second version of the sub-system has been tested in 2019-2020 but is not currently released.

Litigants and professionals in the justice sector can send and receive electronically signed documents, art. 5 paragraph (2) of the Law on electronic signature and electronic document, no. 91 of 27.06.2014 stipulates that the qualified advanced electronic signature has the same legal value as the hand signature.

SIA NCSGLA facilitated the interaction with its beneficiaries and the competent state bodies by offering the possibility to address by filling in an electronic form on its website. For the online conduct of court hearings in 2018 with the support of the USAID Programme for Transparent Justice, the videoconferencing system was implemented in all courts in the Republic of Moldova and penitentiaries. During the pandemic, the organisation of online court hearings with detainees greatly facilitated the work of the courts and the defence of the rights and legitimate interests of litigants. The digital audio recording of court hearings is a facility offered to litigants since 2013. The purpose of this is to ensure the correctness of the minutes, facilitating its preparation by clerks but also, in perspective, simplifying the technical version of this procedural act.

The national court portal provides a range of information automatically generated from IFMP - agenda of hearings, judgments and rulings, public subpoenas and pending applications and files, court information, application forms, list of insolvency administrators and mediators, judgments and rulings published with a search engine, list of court hearings, public subpoenas. Also, the web pages of the courts ensure transparency by publishing data on budget, statistics, procurement plans, etc. We can see that the pandemic has positively influenced the application of technologies by professionals in the justice sector as well, thus preparing the ground for technological progress.

Social networks are modern tools for the interaction of state institutions with society, beneficiaries of justice services and the media. Members of the judiciary have a relatively low presence on social networks; it is assumed that their presence is expected by applicants.

### CONSTRAINTS

The second version of the Judicial e-File information sub-system is not currently released. The need to enable and provide technical assistance to users on the application of the information sub-system "e-Judicial File" also persists. A considerable constraint is related to the recognition of the electronic signature and the reluctance to use the electronic signature by professionals in the justice sector.

Although IFMP contains the functionality required for automatic electronic sending of documents, it may require longer periods of time from processing to sending - from a few hours to a few days. Another problem is the ignorance of the litigants and therefore the reluctance to receive subpoenas and other procedural documents via e-mail through IFMP.

Another constraint is related to the outdated nature of the Regulation on digital audio recording of court hearings, approved by SCM Decision no. 388/13 of 12.04.2013. IFMP contains functional that allows the conceptual change of the way of managing the audio recordings of the

court hearings. Last but not least, the web pages of the institutions of the justice sector require a complex intervention in order to remedy the following shortcomings:

- lack of facilities for people with special needs (with some exceptions);
- the need to optimise the way information is displayed / structured according to the analysis of searches and users' behaviour on the site;
- out-of-date information;
- the mismatch between the name of the headings and the information it contains.

## RECOMMENDATIONS

1. Integration of the Judicial e-File sub-system in the National Citizen Portal (MCabinet). Thus, the Portal would be a Front Office for the interaction of citizens with state institutions, including their information systems, such as e-Judicial File / IFMP, access to electronic public services, etc.;
2. Launch of the Judicial e-File Sub-system at national level. An interactive guide module (helpdesk) can be introduced to popularize the use of the subsystem;
3. Promote facilities for the use of the e-File sub-system, such as reducing taxes on certain categories of services, when accessing them online;
4. The incorporation in the e-Judicial File sub-system of a module of pre-completable procedural document templates, the gradual integration of an AI module that would guide the litigants in the taking of the steps, etc.;
5. Encourage institutions to use electronic signatures and electronic sending of documents, integrating solutions by confirming receipt of e-mail with attachment(s);
6. Strengthen the regulatory framework by introducing facilities, guarantees, functional obligations, etc., ensuring / facilitating the obtaining of electronic signatures by professionals in the justice sector and litigants;
7. Ensure the electronic sending of documents to courts, with the possibility of verifying the receipt of documents in order to comply with procedural deadlines;
8. Inform litigants and civil society about the new facilities offered by information systems;
9. Monitor, evaluate and improve the organisation of online court hearings according to good practices in the field, further investment in technical solutions and their integration but also identification of solutions how to ensure the publicity of online court hearings, guaranteeing the rights and procedural interests of participants and how to participate online in the meeting, online interaction between participants, presentation of evidence, etc.;
10. Introduce mixed court hearings, in which one or more participants or actors involved in the administration of justice participate online in the offline court hearing;
11. Integrate the videoconferencing system in IFMP and the e-Judicial File sub-system;
12. Adjust the content, design and functioning of the website of the institutions of the justice sector in particular via UX / UI facilities for people with special needs, taking over good practices in the field at regional level, strengthen internal capacities to manage information resources, strengthen the internal normative framework on the management of information resources;
13. Increase the presence of justice institutions on social networks. Manage accounts on social networks, based on a pre-established communication policy.

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