Monitoring Report

White Book of Justice

Progress, Constraints, Priorities

Developed by members of the Justice Experts Group (GEJ):

Olesea Doronceanu, Tatiana Ciaglic,

Pavel Grecu, Ecaterina Popșoi, Adrian Ermurachi

Chișinău, February 2022

Disclaimer:

This publication was developed within the project "Justice Experts' Group", financially supported by the Soros Foundation Moldova. The opinions presented in the paper belong to the authors and do not necessarily reflect the position of the Soros Foundation Moldova

Published by:

The Institute for European Policy and Reforms (IPRE)

Str. București 90, of. 20, Chișinău,

MD-2001, Republic of Moldova

T: + 373 22 788 989, E: info@ipre.md W: www.ipre.md

CONTENTS

LIST OF ABBREVIATIONS

ACA	Agency for Court Administration
GAJ	General Assembly of Judges
GAP	General Assembly of Prosecutors
AI	Artificial Intelligence
NIA	National Integrity Authority
WBJ	White Book of Justice
CC	Constitutional Court
ECEJ	European Commission for the Efficiency of Justice
NAC	National Anti-Corruption Centre
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy
SCP	Superior Council of Prosecutors
GEJ	Justice Expert Group
IT	Information technologies
ODIHR	The OSCE Office for Democratic Institutions and Human Rights
AP	Government Action Plan for 2021-2022
GPO	General Prosecutor's Office
IFMS	Integrated File Management System
AIS	Automated Information System
SJS	The strategy for ensuring the independence and integrity of justice sector for 2022-2025

EXECUTIVE SUMMARY

In the last 10 years the justice sector in Moldova has gone through various stages of reforms, progress, setbacks, and stagnation. The ambitious Justice Sector Reform Strategy of 2011-2016 initiated several important processes to reform the justice sector, including the reorganization of the judicial system, audio recording of court hearings, raising judges' salaries, establishing the function of judicial assistants, etc. However, the political context of that period affected the justice system through corruption, intimidation, and blackmailing by the ruling elite.

After the fall of the kleptocratic regime in 2019, several judges and prosecutors, favoured by the regime, left the top positions of the system. However, the justice system has remained largely unchanged, facing the same problems of corruption, lack of integrity, selective justice, and in addition to these, institutional blockages caused by the system's resistance to change.

In the summer of 2021, a new parliamentary majority has appointed a government that prioritised the reform of the justice system and to fight corruption.

In August 2021, IPRE's Justice Experts' Group drafted and presented the White Book of Justice, which proposed a series of actions aimed at improving the state of affairs in the justice sector, from amending the Constitution for increasing the independence of the judiciary, the extraordinary evaluation of judges and prosecutors, to ensuring transparency and communication with citizens.

Thus, the current Monitoring Report aims to highlight the most important developments in the field of justice since the White Book was developed and presented until the 15th of January 2022, based on the methodology presented in the following section.

The Report analyses the actions arising from the White Book of Justice recommendations which the central public authorities have proposed to undertake in the coming period. Most of these are reflected in the Government Action Plan (AP) and the Strategy for Ensuring the Independence and Integrity of the Justice Sector 2022-2025 (SJS).

Among the most important developments that can be listed during the monitoring period are:

1. The adoption by the Parliament with qualified majority of the constitutional amendments on the judicial system, aiming at increasing its independence, efficiency, accountability and transparency.
2. Adoption of the Strategy for Ensuring the Independence and Integrity of the Justice Sector for 2022-2025, which is reflecting most of the recommendations of the White Book of Justice, including those concerning the implementation of information technologies at both the pre-judicial and judicial stages, and the inter-linking of justice sector information systems with other available information systems.
3. Development of the concept of the extraordinary evaluation of judges and prosecutors (vetting procedure), with the proposal of an extraordinary and extra-judicial mechanism for the evaluation of judges and prosecutors, consisting of the International Monitoring Mission, Evaluation Commission and the Special Board of Appeal.
4. Adoption of the law on some measures related to the selection of candidates as members of self-administrative bodies of judges and prosecutors in accordance with the recommendations of the Venice Commission.
5. Enhance the SCP's decision-making transparency by publishing its meetings, motivation the decisions taken and publishing them in due time.
6. Initiate the amendment of the Article 46 para. (3) of the Constitution, proposing an exception from the presumption of lawful acquisition of goods for those holding public office.
7. Adoption of amendments to Law No. 132/2016 on the National Integrity Authority and Law No. 133/2016 on the declaration of assets and personal interests, extending the list of those to whom assets control applies, introducing the obligation to declare the market value of movable and immovable goods, introducing the reversal of the burden of proof.
8. Addressing issues faced by the attorneys' institution by organising General Assemblies of Bars and Congresses through online platforms.

9. Appointment of new members to the Mediation Council, which has ensured functionality in the self-governing bodies of the mediation profession.
10. Unblocking the activity and ensuring the functionality of the self-administration bodies of notaries by appointing a new body of the Chamber of Notaries by the Ministry of Justice.

The Parliament plays an important role in the process of strengthening the justice sector, as it is a key institution in the process of creating the framework for the functioning of the justice system and the establishment of the bodies that will be responsible for ensuring the independence, integrity, and accountability of this system. Therefore, both the judiciary and the Parliament must ensure full accountability, perform their duties with maximum transparency, so that the old practices of dubious appointments and nominations remain in the past. Only then will the constitutional amendments discussed above have a positive impact on the justice system and the rule of law.

In addition, the attention is drawn to the extraordinary evaluation mechanism ("vetting" and "pre-vetting"), which provides a great degree of optimism and hope. But it is important to understand that in addition to the law, the Commission and the mechanism, a more comprehensive and structured approach is needed.

Moreover, attention is drawn to the transparency of the specialised colleges under the SCP, which continue non-transparent practices and provide limited access to the topics discussed and decisions taken.

Thus, bearing in mind that the exercise of justice and respect for human rights can only be achieved as a result of a constructive dialogue between all the actors involved. The authors of the report consider it imperative to strengthen the efforts of all the actors concerned to effectively implement the most important recommendations of the White Book of Justice.

METHODOLOGY

This report is an updated summary of progress, constraints and priorities identified in the field of justice between the 26th of August 2021 and the 15th of January 2022. The report is based on the structure of the White Book of Justice and analyses the dynamics of the implementation of the WBJ recommendations for four distinct areas of intervention: strengthening the capacities of justice sector authorities, promoting integrity in the justice sector, strengthening justice related professions and implementing information technologies in the justice sector.

The report was prepared following an analysis of public policy documents in the justice sector, legislative initiatives, legislative amendments and strategic documents relevant to the justice sector - AP 2021-2022 and SJS.

The progress, constraints and recommendations presented for each area analysed in this Report have been formulated as summaries of the findings made by experts from the Justice Experts' Group.

AREA I - STRENGTHENING THE CAPACITIES OF JUSTICE AUTHORITIES

1.1. SUPERIOR COUNCIL OF MAGISTRACY

1.1.1. ADOPTION BY PARLIAMENT OF THE DRAFT AMENDMENT TO THE CONSTITUTION TO STRENGTHEN THE INDEPENDENCE OF THE SCM AND THE STATUS OF JUDGES

PROGRESS

On the 23rd of September 2021, the Parliament adopted in final reading the constitutional amendments in the judiciary field. These amendments enhance the independence, efficiency, accountability and transparency of the judiciary. The constitutional amendments will enter into force on the 1st of April 2022. By that date, Parliament is to adjust the legislation in line with the new constitutional provisions.

The constitutional amendments concern the following aspects of the judicial system:

a. **Removal of the 5-year initial appointment term for judges.** Candidates will be appointed from the start up to the age limit. Once the changes enter into force, all judges who's initial 5-year term of appointment has not yet elapsed will be considered as appointed up to the age limit. This change is essential to ensure the independence of judges and reduce their vulnerability to the SCM and the political factor.
b. **Appointment of all judges by the President.** Parliament will no longer be involved in the process of appointing Supreme Court judges. Moreover, the requirement that only persons with 10 years' seniority as a judge should be appointed to the SCJ is eliminated. This will allow the legislator to reduce the experience required to be promoted to the SCJ by organic law, or even open the possibility of promotion to the Supreme Court to professionals from outside the judiciary.
c. **Removal of the constitutional regulations which foresee that presidents and vice-president of courts, are appointed on the SCM's suggestion by the President of the country for a term of 4 years.** This amendment will provide the possibility to exclude the President of the country from a procedure concerning the promotion and career of judges. The legislator will also be able to maintain, reduce or increase the term of office of presidents of courts by means of an organic law.
d. **Introduction of an obligation for the SCM and/or specialised bodies to motivate their decisions on the appointment and career of judges.** These decisions are to be taken in a transparent manner, based on objective criteria and meritocracy.
e. **The immunity of judges is reduced merely to functional immunity.** Respectively, following the adjustment of the legal framework, the SCM's consent to initiate criminal proceedings against a judge will only be required for actions related to the work of judges, such as, actions within the trial process, issuing court decisions, etc.
f. **Consultation with the SCM in the process of drafting and approving changes concerning the budget of courts.** The SCM may also submit proposals to the Parliament directly on the draft budget of the courts.
g. **Limiting the number of SCM members to 12, of which six are from among judges elected by the GAJ and the other six are from outside the judiciary, appointed by Parliament.** Thus, the legislator will no longer be able to change the composition of the SCM by organic law. Also, the non-judge members will no longer be chosen only from among law professors, but from a much wider circle of people with relevant experience. Members of law (the Minister of Justice, the President of the SCJ and the Prosecutor General) will no longer be members of the SCM. Members of the SCM are to be elected for a 6-year term with no possibility of extension.
h. **Members of the SCM who are not elected from among the judges are to be selected by Parliament through a contest, with a vote of 3/5 of the MPs (61).** However, if this vote fails, the constitutional provisions will allow for elaborating a special procedure to appoint SCM members under other conditions (e.g., with a lower number of votes), so as not to block the work of the SCM due to the lack of a broad consensus in Parliament.
i. **The SCM is to exercise its powers directly or through its specialised bodies. This change could, in theory, allow for the simplification of certain procedures for the**

administration of the judicial system. For example, a disciplinary procedure against a judge can currently go through up to 6 stages (Judicial Inspection, Admissibility Panel, Disciplinary Board, SCM, Court of Appeal and SCJ). This amendment could allow decisions of the Disciplinary Board to be challenged directly in the courts, without the need for SCM checks and decisions in these cases.

In addition to the above, the Government plans to enact the constitutional amendments as follows:

1. Action no. 1.1.1. letter a) of the SJS 2022-2025 Action Plan, aims to amend the infra-constitutional legal framework for the year 2022 following the adoption of constitutional amendments in the following areas: appointment of judges until they reach the age limit, by excluding the 5-year term; appointment of SCJ judges by the President of the Republic of Moldova; removal of the requirement of at least 10 years of service as a judge in order to be appointed as a judge of the SCJ; guarantee of functional immunity;
2. Action no. 1.1.2 letter a) of the SJS 2022-2025 Action Plan aims to amend the infra-constitutional legal framework for the year 2022 following the adoption of the constitutional amendments regarding the composition and mandate of the Superior Council of Magistracy.

CONCLUSIONS

These constitutional changes create the conditions needed for introducing positive changes in the judicial system. The removal of a time limit for the initial appointment of judges, the exclusion of the Parliament from the process of appointing judges to the SCJ, as well as the possibility of excluding the President from procedure of promoting a judge to a senior position, the removal of members of law from the composition of the SCM, and the establishment of a fixed number of members of the SCM, can enhance both the independence of individual judges and the independence of the judiciary as a whole.

The possibility of widening the circle of persons to be appointed by the Parliament to the SCM or by the President to the SCJ, as well as simplifying administrative procedures such as the disciplinary procedure for judges could increase efficiency and reduce the corporatism of the judicial system. The constitutional obligation to motivate career-related decisions concerning judges could increase the transparency and accountability of the judicial system. Limiting judges' immunity to functional immunity is expected to contribute to increasing the responsibility of judges.

Theoretically, the proposed amendments could bring a number of improvements to the justice system, but in order to achieve the above-mentioned goals in practice, they need to be detailed in a qualitative legal framework. At the same time, it is crucial that those specifically targeted by these amendments, namely judges and their self-administrative bodies, have sufficient internal independence (in addition to the external independence provided by law and legal mechanisms), integrity and professionalism to implement the intention behind the amendment of the Constitution.

At the same time, it must be ensured that there is no duplication of previous experiences concerning the amendment of the Constitution, where the amendments adopted did not bring any tangible positive effects. In 2016, the Constitution of the Republic of Moldova was amended to provide additional guarantees of independence and autonomy for the prosecution system by establishing, among other things, that the Prosecutor General is elected by the SCP and not by Parliament[1]. However, the situation in the prosecution system has not significantly improved so far. There has been neither a political will nor the will of the prosecution system to clean itself up.

Today, the new parliamentary majority is showing increased interest as regards justice and anti-corruption reforms. The above-mentioned constitutional amendments have been adopted, the

[1] Law No. 256 of 25 November 2016, available at: https://www.legis.md/cautare/getResults?doc_id=96427&lang=ro.

legal framework has been amended to make the election of judges to the SCM more transparent (e.g., election campaign for judges, publication of participation files on the website), the legislation on the declaration of public officials' assets has been improved (e.g., declaration of assets at market value), the Justice Reform Strategy 2022-2025 and its implementation action plan have been adopted, etc.

At the same time, the current government has shown a lack of transparency in some cases.[2] Also, in the context of the promotion of vetting and pre-vetting procedures, an appointment made by Parliament to the SCJ in the absence of a thorough integrity check of the candidate has raised concerns among civil society and justice sector actors.[3]

On the subject of the Constitutional amendments, Parliament is to appoint 6 out of 12 members to the SCM. Parliament will thus have an important role in the judiciary, with the power to appoint 50% of the SCJ members. Also, the Parliament will adopt laws on pre-vetting and vetting procedures, which will be discussed in more detail in the next section. The Parliament will as well appoint three of the six members of the vetting commission, according to the draft law on pre-vetting adopted in the first reading, who will check the integrity of all candidates who wish to become members of the SCM and its subordinate specialised bodies.

Parliament is thus a key institution in the process of creating the framework for the functioning of the justice system and the formation of the bodies that will be responsible for ensuring the independence, integrity, and accountability of the justice system. Both the judiciary and the Parliament must show accountability, perform their duties with maximum transparency, so that the old practices of dubious appointments and promotions remain in the past. Only then will the proposed constitutional amendments have a positive impact on the justice system and the rule of law.

[2] Public appeal dated 13 August 2021 by several non-governmental organisations noting Parliament's lack of transparency in passing important amendments on the Law on the Prosecutor's Office, NIA Law and others, available at: https://crjm.org/wp-content/uploads/2021/09/2021-08-13_declaratie_Parlament_transparenta.pdf.

[3] The Parliament promoted SCM member Dorel Musteață to the SCJ, while the current legislation prohibits SCM members to be promoted during their mandate or 6 months after it, within the judiciary. The President of the Committee on Legal Affairs, Appointments and Immunities, Olesea Stamate, explained this decision by the fact that in 2018, before this rule was introduced in the law, the SCM proposed Mr Musteață for the position of judge within SCJ, but the Parliament did not take any official decision on him. Thus, Parliament would promote Dorel Musteață on the basis of the SCM's 2018 decision. Regardless of whether this explanation is reasonable or not, it is certain that the appointment raises questions. The interdiction to promote SCM members from among judges within the system is based on the reasoning that they should not be motivated and/or influenced by the promotion perspective in their actions during their mandate. Even if the law allows for such promotion, the parliamentary majority should have considered the ethical implications of such a decision and demonstrated that the previous practice of promoting judges at the convenience of power has ended.

1.1.2. ADOPTION OF THE MECHANISM FOR THE EXTRAORDINARY EVALUATION OF THE PROFESSIONALISM AND INTEGRITY OF JUDGES AND PROSECUTORS IN LINE WITH THE RECOMENDATIONS OF THE VENICE COMMISSION, ODIHR AND THE CASE LAW OF THE ECHR

PROGRESS

On the 15th of November 2021, the Ministry of Justice published a concept on the extraordinary evaluation of judges and prosecutors (vetting procedure). It provides for an extraordinary and extra-judicial evaluation mechanism for judges and prosecutors. This mechanism is mainly aimed at ensuring the integrity of the justice sector.

According to the concept of the Ministry of Justice, the vetting of judges and prosecutors is to be carried out without constitutional changes or additions. The Constitution of the Republic of Moldova provides that decisions on the career of judges and prosecutors are taken by the SCM and the SCP respectively. According to the Venice Commission, based on the provisions of the Constitution of the Republic of Moldova, the final decision following the extraordinary evaluation is to be taken by the SCM in the case of judges and by the SCP in the case of prosecutors. [4] Thus, inevitably, the above-mentioned self-administration bodies will play an important role in the extraordinary evaluation of judges and prosecutors. For these reasons, the concept provides for the need to assess candidates to the SCM, the SCP and their specialised bodies as a matter of priority.

On the 1st of December 2021, the Ministry of Justice published the first version of the draft law on some measures related to the selection of candidates for administrative positions in the self-administration bodies of judges and prosecutors (pre-vetting procedure). The draft law provided for a simplified version of the vetting procedure carried out in Albania, and of the vetting procedure that is planned after the completion of pre-vetting in the Republic of Moldova.The initial draft provides for the creation of a single ad hoc body: Independent Commission for the evaluation of the integrity of candidates for administrative positions in the self-administrative bodies of judges and prosecutors (Evaluation Commission). The Commission is to be composed of 6 members, 3 national members appointed by Parliament (2 by the parliamentary majority and 1 by the opposition), and 3 international members appointed by development partners. The Evaluation Commission is to verify, on the basis of a set of pre-established criteria, the integrity and assets of all candidates for membership of the SCM and SCP and subordinate specialised colleges.

On the 13th of December 2021, the Venice Commission adopted an opinion on the draft law. The Venice Commission experts concluded that *"ultimately, it is up to the Moldovan authorities to decide whether the general situation in the national judiciary justifies the extraordinary integrity assessment of all judges, prosecutors and members of the SCM, SCP" and that the draft law establishes a "balanced procedure*"[5].

On the 17th of December 2021, the Ministry of Justice submitted the draft law for approval and on the 19th of January 2022 the Government approved the draft law in an adjusted version following the recommendations of the Venice Commission and civil society. It should be noted that in December 2021 IPRE also submitted an opinion on the originally published draft law and presented a number of recommendations to improve the proposed mechanism, which were largely implemented in the adopted draft law. Also, most of the proposals in the Venice Commission's opinion are reflected in one form or another in the draft law adopted by the Government, with the exception of the recommendations concerning: the exclusion of the requirement that the members of the Evaluation Commission should not have been prosecutors/judges in the last 3 years, the organisation of hearings of candidates in closed sessions and the non-publication of the Commission's decisions.

On the 20th of January 2022, IPRE submitted an additional opinion to the draft law adopted by the Government for consideration in the parliamentary platform. The additional opinion reiterated

[4] Venice Commission Opinion No 966/2019 of 14 October 2019, para. 63 and 87, available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)020-e, Venice Commission Opinion No 1058/2021 of 13 December 2021, para. 75 and 105.
[5] Venice Commission Opinion No 1069/2021 of 13 December 2021, para. 42-44, available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)046-e.

previous recommendations and presented a number of new recommendations arising from changes inserted in the final version of the draft approved by the Government.

On the 21st of January 2022, the Parliament adopted in the first reading the draft law on pre-vetting, with no amendments to the version approved by the Government.

Further, according to Action 1.2.2. of the SJS Action Plan 2022-2025, the Government has undertaken the following activities:

1. Develop the regulatory framework for the extraordinary (external) evaluation of judges and prosecutors in line with the recommendations of the Venice Commission in 2022.
2. Implementation of the extraordinary (external) evaluation mechanism for judges and prosecutors between 2022 and 2025.
3. Conducting priority verification of the assets and personal interests of all judges, prosecutors, members of the Superior Council of Magistracy and the Superior Council of Prosecutors, including members of their specialised bodies, between 2022 and 2025.

Given the complexity of the vetting and pre-vetting procedures, and the myriad of other challenges faced by the current government, an effort has been made during the reporting period to plan for the activities aimed at verifying the integrity of the justice system and to develop and improve the draft law on pre-vetting.

The pre-vetting procedure is a complex mechanism and must be implemented with the utmost diligence and professionalism in order to ensure the integrity of the process and the rights of the persons put under scrutiny, while at the same time it must be carried out as quickly as possible in order to unblock the work of the SCM, the SCP and their specialised bodies, so that the vetting of all judges and prosecutors is possible and so that these bodies can perform their ordinary functions of ensuring the independence, professionalism and accountability of the justice sector. It is important that before the adoption in final reading, the Parliament takes into account the unimplemented recommendations in the draft, which relate to: the hearing of candidates in closed sessions, the establishment of the obligation for members of the Evaluation Commission to submit declarations of assets, the clarification of the mechanism for delegating members delegated by development partners to the Evaluation Commission, and the procedure for resolving potential conflicts of interest between the members of the Evaluation Commission and the evaluated candidates, as well as other recommendations resulting from the opinion of the Venice Commission and the additional opinion issued by IPRE.

CONCLUSIONS

This extraordinary evaluation mechanism (vetting and pre-vetting) offers a great degree of optimism and hope. But it is necessary to understand that in addition to the law, the Commission and the mechanism, a more comprehensive and structured approach is needed. The extraordinary evaluation alone, carried out independently of other processes, is not enough to achieve the desired impact, as the whole system of public administration, the control system and the sustainable independence of law enforcement bodies must be strengthened.

It is crucial that the authorities promoting vetting and pre-vetting procedures ensure a fair and constitutionally compliant integrity screening procedure, but also provide a credible justification for the need for these extraordinary measures. This justification must be presented both to the competent authorities (e.g., in the event of a challenge of draft laws to the Constitutional Court) and to society. The society needs to understand why these mechanisms are needed, how they will work and what the outlook for the extraordinary review is. In addition to the above recommendations to the draft law and the launch of the extraordinary evaluation mechanism for judges, efforts are needed to increase society's confidence in the judiciary. Only by ensuring transparency and communicating in an effective manner will help to build confidence in the judiciary and the prosecution systems, so that citizens can be confident that these will respond effectively to the real needs of society.

1.1.3. ORGANISATION OF GAJ BY ENSURING THE OPPORTUNITY FOR THE CANDIDATES FOR SCM MEMBERSHIP FROM AMONG JUDGES TO PROMOTE THEIR CANDIDATURES IN FRONT OF FELLOW JUDGES

PROGRESS

On the 20th of December 2019, the Parliament adopted Law No. 193/2019 amending several legal provisions related to the functioning of the judicial system. The amendments in question included, among other things, the ability for SCM candidates from among judges to run an electoral promotion campaign and the obligation for the SCM to publish the candidates' files (CV, letter of motivation, and a draft containing the judge's objectives if elected to this position) on the SCM's official website at least 30 days before the date of the General Assembly of Judges where the election of the judge would take place.

Constitutional Court Decision no. 17 issued on the 10th of June 2021 annulled Law no. 193/2019 on the grounds of violation of the adoption procedure. The CC found that Law no. 193/2019 was voted in the first reading by the date of entry into force of the Government decision approving the draft law on which the law was based, which invalidated the vote cast and led to the situation where Law no. 193/2019 was validly voted only once. Art. 74 para. (1) of the Constitution provides that organic laws shall be adopted after at least two readings. In other words, the laws on the organisation of justice have reverted to their version before the entry into force of Law 193/2019.

Given that several provisions of Law no. 193/2019 brought improvements to the transparency of the judicial system, on the 24th of August 2021, the Parliament adopted Law no. 103/2021 which reintroduced the above-mentioned rules for the organisation of elections of judges to the SCM. This draft also provided more guarantees for candidate judges, by making it compulsory for court presidents to facilitate meetings between candidates and judges.

During the monitoring period, the SCM planned to hold the General Assembly of judges to elect the members of the SCM and the specialised colleges on the 1st of October 2021. Given that Law no. 103/2021, which entered into force on the 17th of September 2021, introduced new deadlines and rules for the conduct of the General Assemblies of Judges. The SCM postponed the holding of the GAJ to the 3rd of December 2021 in order to comply with the new legal provisions. Due to the pandemic situation and the "lack of a legal framework" to conduct the GAJ online, the SCM postponed it again to a later time, without mentioning a specific date. Deriving from the final and transitional provisions of the draft law on pre-vetting, within 7 days after the completion of the evaluation of all candidates for membership of the SCM and its subordinate specialised bodies, the SCM is to convene the GAJ, but no later than 45 days after the SCM session (Art. 20 para. (7) letter (a)).

If the next composition of the SCM will be subject to an extraordinary evaluation filter, once the GAJ is convened, all eligible candidates will already be known as well and they will be able to carry out the promotion campaign in the time remaining until the GAJ. Looking at several provisions of the draft law, the GAJ could realistically be convened in June-July 2022.

OTHER RECOMMENDATIONS FROM THE WHITE BOOK OF JUSTICE, CONCERNING THE WORK OF THE SCM AND THE ORGANISATION OF JUDGES:

The SJS Action Plan 2022-2025 reflects a number of other actions related to the work of the SCM and the organisation of judges, which stem from the recommendations of the White Book of Justice, as follows:

1. According to action 1.1.4. letter d), by mid-2023, the internal regulations of the SCM shall be amended in order to improve the procedure and criteria for the selection, evaluation and promotion of judges on the basis of merit and in a transparent manner, including the development of the methodology for conducting the interview by the SCM.
2. Action 1.1.4 letter e) proposes an independent evaluation for implementing the new procedures and criteria for the selection and evaluation of judges in 2024.
3. According to action 1.1.1. letter b), by mid-2023, a mechanism shall be put in place to involve the panel of judges of the court in identifying candidates for the position of president and vice-president of the court.

1.2. SPECIALISED COLLEGES SUBORDINATED TO THE SCM AND THE JUDICIAL INSPECTION

PROGRESS

During the monitoring period, the work of the specialised colleges subordinated to the SCM was paralysed as the mandates of the majority of the members of the colleges were finalised and the colleges remained without a quorum. At the same time, the GAJ, where new judges were to be appointed to these bodies, has been postponed several times, and will most likely not take place until the spring/summer of 2022. Candidate judges for membership of specialised colleges under the SCM are to undergo the pre-vetting procedure.

As regards the mechanisms for the selection and evaluation of judges, the SJS Action Plan 2022-2025 provides for a series of actions:

1. According to action 1.1.4 letter b), it is proposed to amend the legal framework in 2022 in order to establish a standard system of access to the position of judge and prosecutor on the basis of seniority.
2. According to action 1.1.4. letter. c), it is proposed to amend the legal framework in 2022 in order to strengthen the colleges for the selection and evaluation of judges' performance.
3. According to action 2.2.1. letter. c), it is proposed that by mid-2023, the SCM develops criteria for the quality and clarity of judicial decisions to be taken into account in the process of evaluating the performance of judges.

As regards the mechanism for the disciplinary liability of judges, the SJS Action Plan 2022-2025 also provides for a set of actions for this purpose:

1. According to action 1.1.2. letter. c), it is proposed to establish by mid-2023 the mechanism for challenging SCM decisions to the SCJ, with the exclusion of double jurisdiction degree. Although this is a general provision that will affect the challenge of all SCM decisions, it is particularly relevant in the context of disciplinary proceedings, which can currently go through 6 stages of examination (Judicial Inspection, Admissibility Panels, Disciplinary College of Judges, SCM, Court of Appeal and SCJ).
2. According to action 1.2.4. letter a), it is proposed to amend the legal framework for the work of the Judicial Inspectorate in 2022 in the following areas: rights, obligations, guarantees of judicial inspectors; revocation of the mandate and other capacity building aspects of the Judicial Inspectorate.
3. According to action 1.2.4. letter b), for the first semester of 2023, it is proposed to amend the SCM's internal normative acts related to the activity of the Judicial Inspectorate.
4. According to action 1.2.4. letter. c), it is proposed to amend the legal framework on the disciplinary liability of judges in 2022 in the following areas: ensuring the clarity and predictability of the criteria constituting disciplinary misconduct; the examination procedure; the extension of the situations in which substitute members participate in the meetings of the disciplinary college; and other shortcomings identified by the examination of practices.

1.3. SUPREME COUNCIL OF PROSECUTORS

PROGRESS

During the monitoring period, some of the recommendations of the White Book of Justice were also implemented in the work of the SCP. The first recommendation aimed at the transparency of the institution's work. Compared to previous years, the activity of the SCP has become more transparent thanks to the SCP members ensuring transparency in decision-making process by publishing certain meetings, motivating the decisions adopted and publishing them in due time. The reason for organising closed meetings is justified by the fact that the subject of the debate involves data from criminal files or information that cannot be made public in order not to jeopardise the criminal proceedings. Another recommendation concerned the modification of the composition of the SCP. In September 2021, the provisions of Law No. 102/2021 entered into force, making significant amendments to Law No. 3/2016 on the Prosecutor's Office.

The most important changes to the law concern the following:

a. The composition of the SCP has been modified, as the number of SCP members has been reduced from 15 to 12.
b. The Prosecutor General, the President of the Lawyers' Union and the Chief Prosecutor of ATU Gagauzia were excluded from the composition of the SCP as ex officio members.
c. The procedure for the selection of the interim Prosecutor General has been established.
d. Introduction of rules ensuring the interim coverage of the functions of Chief Prosecutor - appointment by Order of the Prosecutor General with subsequent approval by the SCP.
e. Rules regulating the procedure for evaluating the performance of the Prosecutor General have been included. The evaluation is to be carried out by a 5-member Evaluation Commission, established ad hoc by the SCP. The evaluation shall be initiated at the request of the President of the Republic of Moldova or at least 1/3 of the members of the SCP. Following the evaluation, the Evaluation Commission draws up a reasoned report proposing one of the following ratings: "excellent", "good", "unsatisfactory". The report with the proposed rating is submitted to the SCP. In the event of the adoption of the decision that would confer an "unsatisfactory" rating, the SCP shall propose to the President of the Republic of Moldova the dismissal of the PG.
f. Specific rules on disciplinary liability and suspension of the Prosecutor General were introduced.

On the 9th of November 2021, another draft law was registered in the Parliament to amend the Law no.3/2016 on the Prosecutor's Office, which also includes recommendations set out in the White Book of Justice, including the Opinion of the Venice Commission. The proposed amendments concern the conditions to be met by persons applying for the position of Prosecutor General and the interim Prosecutor General, as well as the manner of termination of the interim position as Prosecutor General; the organisation of the competition for the selection and career of prosecutors and the filling of vacancies; the amendment of the procedures for the transfer, promotion, delegation and secondment of prosecutors. The authors of the draft propose to change the professional experience requirement for the position of Prosecutor General and Chief Prosecutor in specialised prosecutor's offices, so that a person who has 10 years of professional experience in the field of law, both in the country and abroad, is allowed to apply. This proposal aims at bringing to the nominated positions truly independent persons with recognised professional experience. This solution will broaden the spectrum of potential candidates for this position for both prosecutors and judges or lawyers, with experience both in Moldova and abroad.

CONCLUSIONS

The reform of the Prosecutor's Office and all the proposed and implemented changes to the prosecution system were initiated with the aim of fighting corruption as an integral part of ensuring respect for the rule of law. In retrospect, looking back we see that the Law on the Prosecutor's Office has undergone considerable changes, especially in the last half year, due to shortcomings that prevented accountability or sanctioning decisions. However, while the theoretical part has been partially achieved, the most complicated and challenging stage follows, the implementation of the new amendments so that the results of the legislative initiatives are felt by the prosecution body, other justice actors and citizens.

1.4. SPECIALISED COLLEGES SUBORDINATED TO THE SCP

PROGRESS

The College for the Selection and Career of Prosecutors has made some progress in ensuring the genuine competitions for prosecutors are organised. The draft law amending Law no. 3/2016 on the Prosecutor's Office, mentioned in the above section, provides for the completion of the provisions of article 24 by amending the mechanism for the selection of prosecutors. It is also proposed to amend the provisions of article 87 of the Law by obliging the members of the College to motivate their decisions on the results of the assessment of candidates. These amendments will eliminate the practice of camouflaging the transfer of prosecutors, avoiding contests, and making the selection procedure transparent and based on meritocracy.

During the monitoring period, there were no noticeable changes in the work of the College for the Evaluation of Prosecutors' Performance. As in the previous period, none of the Decisions of the Evaluation Board are published, except for the final results of the evaluation. Furthermore, the agenda of the meetings of the Board is also not published. This does not ensure a transparent evaluation process as the decision and the results of the evaluation remain at the discretion of the members of the College. It is also recommended that the criteria for evaluating the performance of prosecutors be reviewed.

The recommendations of the White Book of Justice have not been implemented in the work of the College for Discipline and Ethics either. The College so far does not publish the agenda of its meetings, consequently it is not known which topics are subject to disciplinary proceedings.

CONCLUSIONS

IPRE stresses the importance of the decisions of the Disciplinary College for the citizens and recommends simplifying the procedures for examining appeals by publishing the decisions taken in each individual case. Failure to publish disciplinary decisions discourages citizens from initiating disciplinary proceedings and does not help to prevent similar cases in the future.

1.5. AGENCY FOR COURT ADMINISTRATION

PROGRESS

The White Book of Justice also makes a number of recommendations in relation to the work of the Agency for Court Administration. One of these is to ensure the gradual introduction over the next three years of the e-File programme, applicable in all courts and prosecutors' offices and accessible to lawyers. In this regard, via SCM Decision no. 191/20 of the 7th of September 2021, the application of the Judicial Information System, including the judicial e-File software application, was extended to the Chisinau District Court, Center and Buiucani headquarters, Ungheni Court and Chisinau Court of Appeal (for the files of the first instance courts concerned). Also, according to action 3.17.2 of the AP, the Government plans to extend the piloting of the judicial e-File IT application to at least 10 courts by the end of 2022. Further, according to action 3.3.2 of the Action Plan of the SJS 2022-2025, the Government has undertaken the following activities:

1. Piloting the judicial e-File software application for the development and administration of the electronic judicial file with access to the stakeholders.
2. Implementation of the judicial e-File software application in all courts.
3. Ensuring access to the files for all categories of participants in the trial process through the judicial e-File software application.

In addition, according to action 2.3.2 of the Action Plan of the SJS, the Government intends to carry out training courses on the use of the judicial e-File software and the videoconference system for external professional users. Another recommendation of the White Book of Justice is to conduct an external audit, including the vulnerability of the Integrated File Management System, to ensure efficiency and random distribution of files without any manipulation. In this regard, through Action 3.17.1 of the AP the Government aims to carry out this task by the end of 2022. Also, in order to ensure the strengthening and sustainability of the IFMS, the Government has pledged the following activities in the SJS Action Plan 2022-2025:

1. According to action 3.3.11. it is proposed to institutionalise the use of the IFMS vulnerability monitoring system.
2. Under action 3.3.1. letter a) it is proposed to monitor the functionality of the IFMS including the extent of its use.
3. Under action 3.3.1 letter b) it is proposed to ensure a standardised use of the IFMS functionalities.
4. According to action 3.3.1. letter. c) it is proposed to develop, test, pilot and implement new functionalities in the IFMS.
5. According to action 3.3.1. letter d), by mid-2023, it is proposed to revise the SCM Regulations on the functioning of the Integrated File Management System.

The White Book of Justice also makes a recommendation on the physical infrastructure of the courts. Thus, the state budget for the year 2022 allocates 13,000,000 MDL from general resources and collected revenues towards the construction of new court buildings, which is 3,000,000 MDL more than in 2021. At the moment, the courts of Cahul, Causeni, Edinet, Hincesti and Orhei are under construction.

CONCLUSIONS

Most of the recommendations of the White Book of Justice can be found in the recently approved/adopted strategic documents of the AP and SJS 2022-2025. In order to ensure the effective implementation of the AP and SJS 2022-2025, as well as the strengthening of the infrastructure of the courts' headquarters, it is necessary to carry out an assessment of the institutional work of the staff of the SCM and the Agency for Court Administration secretariats as well as to clarify the institutional competences and review the staffing limits.

AREA II - PROMOTING INTEGRITY INTHE JUSTICE SECTOR

2.1. VERIFICATION OF INTEGRITY IN THE JUSTICE SECTOR AND TRANSPARENCY OF ACTIVITY OF AUTHORITIES IN THE JUSTICE SECTOR

2.1.1. REMOVAL OF THE PRESUMPTION ON THE LICIT NATURE OF THE ASSETS OF PUBLIC OFFICIALS FROM ART. 46 OF THE CONSTITUTION

PROGRESS

On the 11th of November 2021, the Parliament had sent to the Constitutional Court a request signed by 56 MPs, asking for the endorsement of the draft law on the amendment of Art. 46 para. (3) of the Constitution of the Republic of Moldova. Paragraph three of the aforementioned article states: *"Lawfully acquired property may not be confiscated. The lawful character of the acquisition is presumed"*. MPs propose adding after the second sentence the phrase *"with the exception of the assets of persons holding public office"*. The request contains extensive reasoning, which essentially shows that this amendment is important in order to facilitate the fight against corruption of public officials and dignitaries by confiscating unjustified assets.

According to the informative note, the amendment to the constitutional provision in question will allow *"the burden of proof to be 'shared' between the state authorities and persons whose assets are alleged to be of illegal origin*. *Thus, when the state authorities allege the existence of unjustified assets and present evidence of this, the person subject to control must also take an active role and present additional arguments/documentation on the justification and origin of these goods"*. The informative note also presents arguments from the jurisprudence of the EctHR and the Constitutional Court of the Republic of Moldova, from which is clear that in civil assets freezing cases it is justified to reverse the burden of proof *"provided that the State submits sufficient evidence to prove the lack of proof of the origin of the assets".*

CONCLUSIONS

This initiative is welcomed, and necessary in the context of the pressing need to tackle the endemic corruption within Moldova's public sector. We encourage the Constitutional Court to give a positive endorsement to this amendment, and the parliamentary majority to ensure that they will accumulate enough votes for the eventual adoption of the constitutional amendment (68 votes are needed).

Once the Constitution is amended, the executive and the legislature must ensure that they will regulate in the organic legislation, in an exact and fair manner, the procedure and timing of the reversal of the burden of proof in the case of actions for confiscation of unjustified wealth, but also ensure a set of safeguards to prevent abuses.

2.1.2. LIMITING THE COMPETENCE OF THE ANTI-CORRUPTION PROSECUTOR'S OFFICE TO HIGH CORRUPTION AND TRANSFERRING THE DUTY OF CONDUCTING CRIMINAL PROSECUTIONS FROM NAC TO PROSECUTORS IN THE TERRITORIAL PROSECUTOR'S OFFICES

PROGRESS

The White Book of Justice recommends to reform the Anti-Corruption Prosecution Office twofold:

a. Strengthening the capacities of the Anti-Corruption Prosecutor's Office with all the procedural tools and staff needed to fight corruption effectively, so that it does not depend on other institutions such as the NAC;
b. Limiting the competence of the Anti-Corruption Prosecutor's Office only to high corruption cases, so that it does not waste its resources on small cases, whose eradication does not have a major impact on corruption in the country.

In this context, the Government, through action 1.2.1. letter b) of the SJS 2022-2025 Action Plan, aims, by the end of 2022, to revise the regulatory framework regarding the limitation of the

competences of the Anticorruption Prosecutor's Office in investigating high corruption cases as well as restructuring of the National Anticorruption Centre.

Carrying out this activity and ensuring a high level of integrity and professionalism of the prosecutors of the Anti-Corruption Prosecutor's Office, could have a positive impact in carrying out qualitative investigations on cases of resonance involving aspects of corruption, and in eradicating this phenomenon.

2.1.3. VERIFICATION OF THE ASSETS, INTERESTS AND LIFESTYLE OF JUSTICE SECTOR ACTORS

PROGRESS

On the 21st of September 2021, the CC declared unconstitutional Law no. 244/2020 by which the Parliament[6] adopted some problematic amendments to the laws on NIA' activity and the declaration of assets and income. Among the most important amendments were the reduction from three years to one year of the period in which NIA can conduct verifications after the expiry of the official's mandate and the introduction of the requirement of establishing NIA's infringement for the criminal prosecution to be initiated under art. 326[1] (*the exercise of public sector functions in a situation of conflict of interest*), 330[2] *(illicit enrichment)* and art. 352[1] para. (2) (*intentional listing of incomplete or false data, intentional non-listing of data in the declaration of assets and personal interests*) from the Criminal Code. According to CC, these provisions limited the functionality and effectiveness of NIA and the criminal prosecution bodies in fighting the violations and offences mentioned above [7]. It is worth mentioning that during the last months before the adoption of these amendments, the Anti-Corruption Prosecutor's Office opened several criminal cases against high-ranking politicians and judges under the offence of illicit enrichment[8].

On the 7th of October 2021, the Parliament adopted Law no. 130/2021, which introduced a number of important amendments to Law No. 132/2016 on the National Integrity Authority and Law no. 133/2016 on the declaration of assets and personal interests. Among others:

a. Assets control has been extended to parents/parents-in-law, adult children of the inspected person, and to persons who have donated property to the inspected person, or in whose name property has been registered, which is reasonably suspected of actually belonging to the inspected person[9].
b. The obligation to declare the market value of movable and immovable property has been introduced [10].
c. The obligation to declare crypto-currencies and purchases of any services exceeding 10 average monthly salaries per economy has been introduced.
d. A ban has been imposed on the use of real estate and means of transport not belonging to the subject of the declaration, his/her companies or close family members for more than 30 days.
e. A reversal of the burden of proof has been introduced if the integrity inspector reasonably suspects that the person subject to the inspection has assets other than those entered in

[6] Mostly PSRM, "Shor" Party and defectors from the Democratic Party.
[7] CC decision of the 21st of September 2021, para. 62-70, available at: https://www.legis.md/cautare/getResults?doc_id=128296&lang=ro.
[8] For example, criminal cases for illicit enrichment have been opened against the former president of the SCJ, Ion Druță, details at: http://procuratura.md/md/newslst/1211/1/8040/, former DPM MP, Constantin Țuțu, details at: http://procuratura.md/md/newslst/1211/1/8039/.
[9] Important amendment in the context in which some public officials justified their wealth by extraordinary donations received at weddings or from parents / parents-in-law, for example: the case of prosecutor Andrei Băieșu, who received tens of thousands of euros at several ceremonies and from parents-in-law: https://stiri.md/article/social/crimemoldova-donatii-salvatoare-pentru-procurorii-anticoruptie.
[10] This amendment is extremely important in the context where up to now the courts accepted the declaration of goods at the value resulting from the contract of purchase of the good, no matter how large the discrepancy between this and the real value of the good, for example: the case of Judge Mariana Pitic who was promoted to the SCJ, despite the fact that she declared a Porsche Cayenne car at the value of 11,000 lei (500 euros), https://agora.md/stiri/63097/judecatoarea-cu-porsche-de-11-mii-de-lei--luata-la-rost-la-adunarea-generala-a-judecatorilor-mi-l-dati-cu-12-mii-focus.

the declaration of assets and personal interests or there is suspicion of a substantial difference between the income earned, the expenses incurred and the assets held.

f. The number of members of NIA's Integrity Council has been increased from seven to nine, with the addition of one member appointed by the President of the country, and another member chosen from civil society by the Ministry of Justice.

The amendments mentioned above are only a few of the changes introduced by Law no. 130/2021, but they are among the most important and could have a significant impact on improving the field of integrity assurance of public officials and dignitaries. The expansion of the circle of persons whose assets are subject to verification and the obligation to declare the market value of assets held are among the most important changes, which result from the recommendations of the White Book of Justice, and which have been promoted by anti-corruption experts for several years now.

In addition to the above, a number of other White Book of Justice recommendations on ensuring the integrity of public officials have been reflected in the SJS Action Plan 2022-2025:

1. According to action 1.1.4. letter a), during 2022 there will be established a mechanism for declaring and verifying the assets and integrity of candidates at the stage of admission to the National Institute of Justice, appointment to the position of judge and prosecutor and promotion/transfer in office.
2. According to action 1.2.1. letter a), for the first semester of 2024 it is planned to evaluate the implementation of the amendments to the regulatory framework aimed at improving and strengthening the control mechanism of personal assets and interests, as well as making the work of the National Integrity Authority more efficient.

2.1.4. TRANSPARENCY OF ACTIVITY OF AUTHORITIES IN THE JUSTICE SECTOR

PROGRESS

On the transparency of the justice system, the White Book of Justice proposes a series of recommendations. The Government, through the SJS Action Plan 2022-2025, has set out the following activities in this regard:

1. According to action 1.3.1 letter a), communication strategies are to be implemented within the courts.
2. Action 1.3.1 letter b) provides for the appointment of persons within the courts who are responsible for providing correct guidance to citizens, providing answers to orientational or procedural questions (information centres).
3. According to action 1.3.1. letter d), all the decisions adopted the Superior Council of Prosecutors bodies shall be published on the official website of the Superior Council of Prosecutors.
4. According to action 2.2.1. letter a), during 2022 the legislation will be amended in order to facilitate a better motivation of court decisions.

AREA III - STRENGTHENING JUSTICE RELATED PROFESSIONS

3.1. ATTORNEYS

PROGRESS

The Attorney Profession has succeeded in implementing some of the recommendations reflected in the White Book of Justice and partially solving the problems faced by the lawyers. Thus, a significant achievement has been the organisation of General Assemblies of Bars and Congress in pandemic conditions via online platforms. Such an initiative could also serve as an example to follow for the SCM or the SCP, which have repeatedly postponed General Assemblies and halted the work of the Colleges on the grounds of the pandemic situation and the potential risks of infecting participants.

In September 2021, the Council of the Lawyers Union introduced multiple additions to the Statute of the Profession of Lawyer and approved the Regulation on the organisation of e-voting at General Assemblies of Bar Associations and Congresses of the Union. Among the most important changes are:

a. Clear delimitation of the powers and competences of the Congress, Council and Committees of the Union.
b. Delimitation of the tasks of the dean and pro-dean.
c. Adjusting the status of trainee lawyers to the rigours provided by the law on attorneys.

Between the 21st and the 23rd of October 2021, due to the approval of the Regulation on the organisation of electronic voting, the Ordinary General Assembly of the Lawyers' Bar Association of the Chisinau Court of Appeal was organised for the first time through an online platform. As a result of the electronic voting, 2 lawyers were elected to the Licensing Commission. The selection of the new members of the Licensing Commission was carried out in a transparent process and based on clear selection criteria as recommended in the White Book, with each candidate having the opportunity to publish his or her work record, merits and reasons for joining the commission. In the absence of clear criteria for assessing the professionalism and integrity of the candidates, the lawyers exercised their voting option purely subjectively.

The implementation and practical application of online platforms and e-voting contributed to the safe, transparent and fair organisation and conduct of the Congress of the Lawyers Union between the 1st and 3rd of December 2021. By Decision no. 1 of the Congress, a new President of the Lawyers Union and 5 new members of the Commission for the Licensing of the Attorney Profession were elected (Decision no. 2 of the Congress).

One of the most important recommendations of the White Book of Justice was to amend Article 10 of Law 1260/2002 on the attorney profession in order to make it compulsory for former magistrates and prosecutors to pass an admission examination. In this regard, proposals to amend Law 1260/2002 have been initiated by registering in Parliament the draft Law no. 245 of the 17th of September 2021. On the 1st of October 2021, by the Decision of the Council of the Lawyers Union no.16-02, the Union's Opinion on this draft has been approved. The draft aimed at increasing fairness and transparency of admission to the attorney profession, not only by making it compulsory to take the qualification exam, but also by including the deadline for taking the exam and by indicating the criteria for determining the impeccable reputation of candidates, an aspect also recommended in the White Book of Justice.

At the end of 2021 attorneys faced the proposal to increase the amount of social security contributions payable by the exponents of the legal professions from 24 255 MDL in 2021 to 27 481 MDL in 2022. This initiative provoked a wave of discontent among lawyers who called for the proposals to be rejected as unjustified and discriminatory. The Lawyers' Union has published an Opinion on the Draft Law on the Social Insurance Budget for 2022. Although the proposed increase has been excluded from the draft law, this problem will persist and create instability

every year because the projected salary indexation increases annually while lawyers are not socially insured with pensions compared to other from justice sector.

In January 2022, shortly after the amendments to the Law on Attorneys, which provided guarantees of independence to lawyers by including paragraph 2) in Article 52 of the Law, the Parliament registered an Amendment to the Draft no.245/2021 amending the Law no.1260/2002 on Attorneys. The amendment proposed the exclusion of paragraph 2) of Article 52 of the Law, which provided that *a lawyer may not be detained, subjected to compulsory detainment, arrested, searched without the prior consent of the Council of the Lawyers Union , except for flagrant offences*. The amendment provoked discontent among the lawyers because it was not reasoned, was not consulted with the Lawyers Union and by its content nullified all guarantees of lawyers' independence. In order to withdraw the amendment, the Lawyers' Union sent a request to the Moldovan Parliament, followed by a general strike of lawyers. In its final version, the amendment presents a compromise version which maintains the guarantees of independence for lawyers, except for corruption offences, and includes additional guarantees concerning the search of lawyers' offices.

CONCLUSIONS

Achieving justice and ensuring respect for human rights can only take place as a result of a constructive dialogue between all actors involved. The general strike of lawyers has shown that the absence of lawyers leads to violations of the right to defence and impedes the normal process of justice. Therefore, in the future, more efforts should be made to avoid such situations and to ensure a balance between respecting lawyers' rights and ensuring citizens' right to defence.

The Attorney, as an institution, has not solved all the internal problems related to the transparency of the decision-making process in self-administration bodies, corruption in the system, discrimination in the sphere of social benefits, but has instead managed to ensure the implementation of reforms that establish genuine filters for access to the profession.

3.2. LEGAL EXPERTS

PROGRESS

Legal expertise was extensively reformed in 2016 after the adoption of Law no. 68/2016 on legal expertise and the status of the legal expert, but many practical aspects remain unimplemented. During the monitoring period, some projects have been initiated to improve the quality of judicial expertise.

Thus, the Parliament is to vote on the Draft Law amending Law 68/2016 on legal expertise, developed by the Ministry of Justice. The draft law proposes to make changes that will ensure the extension of the deadline, set by article 85 para. (4) letter a) and para. (5), from 5 years to 8 years. The 5-year term, which expired on the 10th of December 2021, has been granted to the expert institutions for the evaluation and authorisation of the legal expertise laboratories in which they operate. Thus, in order to avoid an institutional deadlock, it was decided to extend this period by 3 years.

The Ministry of Justice has also approved the Regulation on the organisation and functioning of the Judicial Experts Disciplinary Commission, a necessity imposed by article 61 para. (1) of Law no. 68/2016. The Disciplinary Commission was not functional because there was no Regulation on the organisation and functioning of the Commission for the selection by contest of civil society representatives and legal experts working in a legal expertise office.

The Ministry of Justice has initiated the procedure to amend the Regulation on the procedure and criteria for evaluating the performance of legal experts and the procedure for awarding qualification grades. The reason for the amendments lies in the difficulties encountered by legal expertise institutions in applying the legal provisions, which directly lead to the impossibility of implementing and applying the regulatory framework concerned. The draft proposes to modify the score for the evaluation criteria so that it corresponds to professional requirements. It also redirects the submission of expert reports carried out in the last five years to the Commission for Qualification and Evaluation of Judicial Experts.

CONCLUSIONS

We therefore consider it imperative to strengthen the efforts of all the actors involved to implement the most important recommendations of the White Book. In particular, in order to ensure the quality of legal expertise, it is essential to take measures to increase the attractiveness of the field by adequately remunerating experts and equipping expertise centres with new technology and means/equipment.

3.3. MEDIATORS

PROGRESS

The professional work of mediators has been improved through recommendations which are also found in the White Book of Justice. The most important progress concerns the appointment of new members to the Mediation Council, which has ensured functionality in the self-governing bodies of the mediation profession.

Another recommendation that is currently being implemented is the revision of the civil procedural framework proposing to exclude judicial mediation, as the procedure complicates the work of the courts, generates procedural bottlenecks, delays and reduces the potential areas of activity of mediators. In this regard, a draft law has been developed which provides for the repeal of Chapter XIII[1] of the Code of Civil Procedure of the Republic of Moldova no. 225/2003. This will ensure the exclusion of judicial mediation from civil proceedings.

CONCLUSIONS

We note that, regrettably, the mediators' work remains however unattractive, mainly because of the burden of the tax regime and the high social and medical contributions. Although mediators are subject to the same tax and social security regime as other liberal professions, however, compared to notaries or lawyers, the services of mediators are less sought after and less remunerated. In order to overcome this situation, actions are needed to inform justice actors about the scope of mediation and its role in resolving certain categories of disputes quicker and cheaper.

3.4. NOTARIES

PROGRESS

The activity of notaries is regulated by Law no.69/2016 on the organisation of the activity of notaries and Law no.246/2018 on the notarial procedure. The biggest problem faced by the notarial sector was the blockage in the work of self-administration bodies, therefore a recommendation of the White Book of Justice was to elect new members to self-administration bodies. In November 2021, it was possible to unblock the work of the notaries' self-administration body by the Ministry of Justice through the appointment of a new board for the Council of the Chamber of Notaries. Thus, the Council of the Chamber of Notaries became functional and the election of new members took place on the basis of transparent and fair criteria, such as professional experience, territorial representation, etc.

The Government has approved and submitted to Parliament for adoption a draft law amending the legislation on the work of notaries in order to improve the quality of notarial services. Its goal is to improve the quality of the notarial act, contribute to the efficiency of notaries' work, and protect all the rights of all the notarial service clients, as well as to avoid situations where the collegial bodies of the Chamber of Notaries, the Licensing Commission, and the Disciplinary College are inefficient.

In addition, in January 2022, the Regulation on the organisation and conduct of online meetings of the Council of the Chamber of Notaries was approved.

CONCLUSIONS

Ensuring the functionality of the Council of the Chamber of Notaries is an important achievement, especially since no contest for recruitment as a notary has been organised in the last 5 years. Thus, the functionality of the Council will also boost the commissions to become functional and the notarial services will become more accessible to citizens.

AREA IV – IMPLEMENTATION OF INFORMATION TECHNOLOGIES IN THE JUSTICE SECTOR

PROGRESS

The White Book of Justice made a number of recommendations on the implementation of technology in the justice sector. The recommendations are structured in several sub-areas, such as collecting and processing statistical data, strengthening institutional capacities, ensuring interoperability between information systems, and increasing access for other stakeholders to justice sector information systems.

The analysis shows that no significant progress has been made in this area over the monitored period. The lack of substantial and tangible progress is due to objective reasons, as the implementation period is short.

At the same time, the Government's strategic documents approved during this period (AP and SJS 2022-2025) set out a whole series of actions for this area, among the most important being:

1. Strengthening the regulatory framework and user responsibilities for the use of informational systems, therefore the SCM regulation on the functioning of the IFMS and its development will be revised by eliminating the human factor as much as possible.
2. Phasing out the process of manual collection and management of statistics, until it is completely eliminated, while piloting electronic judicial statistical reporting.
3. Focus on the recipients of legal services by improving the national Courts portal, implementing the judicial e-File software application, digitising processes, applying MPower when assigning a lawyer's mandate, etc.
4. Development of a new group of informational systems, such as e-Execution, e-Retention, "Management of Judicial Expert Files" informational system, informational system for translating court proceedings, "Criminal prosecution: e-File" informational system, etc.
5. Strengthening the capacity of all actors in the justice sector to use informational systems effectively.
6. Implementation of communication and outreach strategies in courts, and development of communication and conflict management skills with citizens, among court and prosecution staff.
7. Ensure continuous improvement of the functionalities of the National Courts Portal and the creation of a new official webpage of the General Prosecutor's Office and the official webpages of specialised prosecutors' offices.

CONCLUSIONS

Following the analysis of the two strategic documents mentioned above, we can see a high level of coverage of the recommendations contained in the White Book of Justice regarding the implementation of technologies in the justice sector, and it is evident that the objectives and actions proposed are extremely ambitious. Once all these actions are implemented, the involvement of the human factor will be greatly limited.

At the same time, the efficient use of statistical data must be taken into account, as it is necessary to collect and use them throughout the judicial system in order to achieve the desired results. Thus, given that the AIS is in various stages of development in the judicial system, a recommendation would be to provide at the drafting/optimisation stage for the integration of statistical databases and to design an intuitive, comprehensible way of visualising data and an efficient tool for generating statistical reports.

ABOUT THE AUTHORS:

Members of the Justice Expert's Group (GEJ)

Olesea Doronceanu – Coordinator and expert within GEJ, with more than 16 years of professional experience, lawyer with 15 years of experience.

Pavel Grecu – Expert in justice and human rights, member of GEJ. He previously worked as a Justice and Anticorruption Adviser to the Prime Minister of the Republic of Moldova and Legal Officer at the Legal Resources Centre from Moldova.

Tatiana Ciaglic – Expert within GEJ, with 12 years of professional experience, including in the field of court administration, use of informational technologies, as well as in the field of continuous training of justice professionals.

Ecaterina Popșoi – Project Coordinator, expert within GEJ. She previously worked as Legal Officer at the Legal Resources Centre from Moldova.

Adrian Ermurachi – Team Leader, Good Governance and Rule of Law Programme, IPRE, with 11 years of experience in the public policy and public administration sector.

The Institute for European Policies and Reforms (IPRE) was established in March 2015 as an independent, non-profit and think-tank. The mission of IPRE is to accelerate the European integration of the Republic of Moldova by promoting systemic reforms, enhancing participatory democracy and strengthening the role of citizens in national and local decision-making processes.

IPRE is a member of the National Platform of the Civil Society Forum of the Eastern Partnership (www.eapcsf.eu), co-initiator of the Eastern Partnership Forum of the Research Centres (EaP Think-Tank Forum) launched in 2017 in Chisinau.

Address: Str. București 90, of. 20
Chișinău, MD-2001, Republica Moldova
Tel.: + 373 22 788 989
E-mail: info@ipre.md
Web: www.ipre.md

This publication was developed within the project "Justice Experts' Group", financially supported by the Soros Foundation Moldova. The opinions presented in the paper belong to the authors and do not necessarily reflect the position of the Soros Foundation Moldova.