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TOOLKIT

Independent investigations of high level
corruption cases and integrity
background checks of justice actors

Capacity building training for
investigative journalists and
vetting analysts

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[#Justice4Moldova](https://twitter.com/Justice4Moldova)

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DISCLAIMER

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ACRONYMS

GDPR - General Data Protection Regulation

LAIPi - Law on Access to Information of Public Interest

NIA – National Integrity Authority

SCJ – Supreme Court of Justice

SCM – Superior Council of Magistracy

SCP – Superior Council of Prosecutors

INTRODUCTION

The purpose of this toolkit is to guide independent analysts and journalists on how to conduct integrity checks of justice actors (judges and prosecutors) and investigating high-profile corruption cases. It combines both theoretical knowledge and practical recommendations on collecting and analysing publicly available information, as well collecting data through freedom of information tools.

The first section is a step-by-step guide on conducting integrity background checks of justice actors and investigating high-level corruption. It also provides background information about the vetting process in Moldova. The includes instructions on searching and analysing general information about the individuals, their professional background, financial flows, and different schemes. It answers three basic questions - what, where and how to look for. The guide also collects links to different sources of information and searching tips. Importantly, the toolkit provides instruction on conducting financial flow analyses, the instrument the Independent Evaluation Commission uses for assessing the integrity of the candidates applying to the self-governing bodies of judges and prosecutors (Pre-vetting Commission), the Independent Evaluation Commission on the External Evaluation of Judges and Candidates for the position of Judge of The Supreme Court of Justice (Vetting Commission) and the Commission for the Evaluation of Prosecutors (Prosecutor Vetting Commission).

The second part provides the legal framework for collecting information and it explains how to use the instrument of access to public information. In particular, it details the general provisions of the Moldovan legislation, what kind of information could be requested, how to request and receive information, and what to do in case the request is refused or rejected.

The third section addresses the issues of processing information and managing legal risks, which is particularly relevant when investigating high-profile corruption cases. The invasion of privacy could be an effective measure to prevent journalists and analysts from continuing their investigations, therefore it is crucial to take into consideration the requirements and limitations established by the law when conducting background checks and inquiries.

I. INTEGRITY CHECKS OF JUSTICE ACTORS IN MOLDOVA - OVERVIEW

1.1. Background

In 2021, the government of the Republic of Moldova launched a comprehensive justice reform aimed at cleaning and raising the transparency of the country's judicial and prosecutorial systems. The main instrument the reform introduced is the integrity scrutiny of judges and prosecutors as well as members of self-governing institutions.

The Integrity evaluation of justice actors is a powerful mechanism, which in case of flawless implementation will lead to qualitative renewal of the country's rule of law system. In particular, the law envisions that failure to pass the integrity evaluation performed by independent panels, consisting of national and foreign experts, will result in dismissal from office.

The key to success is a meticulous scrutiny of justice actors: the more detailed and accurate the data is, the more informed decisions the evaluation panels will be able to make. The role of civil society and investigative journalists is crucial as they can provide decision-makers with important information concerning the subjects of the evaluation.

1.2. Legislative framework

The integrity evaluation of justice actors in Moldova is prescribed by three main laws:

1. Law No. 26/2022 On certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter Law No. 26/2022).

The bill sets the grounds for the pre-vetting phase, which is the initial and preparatory stage before evaluating all judges and prosecutors. Pre-vetting involves checking the integrity of judges, prosecutors, and professionals applying for positions in the Superior Council of Magistracy (SCM), Superior Council of Prosecutors (SCP), and the boards within these two councils.

2. Law No. 252/2023 On the external evaluation of judges and prosecutors and amendments of some regulatory acts (hereinafter Law No. 252/2023).

The bill establishes the rules for a comprehensive procedure of vetting judges and prosecutors. In particular, the vetting process involves checking the integrity of judges of Courts of Appeal, and presidents and vice-presidents of courts. It also includes checking the integrity of prosecutors in key positions within the General Prosecutor's Office, prosecutors in the Anti-Corruption Prosecutor's Office, and the Prosecutor's Office for Combating Organized Crime and Special Cases (PCCOCS), as well as chief prosecutors and their deputies in territorial prosecutor's offices.

3. Law No. 65/2023 On the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice (hereinafter Law No. 65/2023).

The bill details vetting of acting judges of the Supreme Court of Justice (SCJ) and candidates for the SCJ positions.

The integrity laws package adopted in 2016-2017 is also significant. In particular, the Law No. 132/2016 on the National Integrity Authority envisioned the establishment of the NIA, which is responsible for exercising control of assets and personal interests of public officials, including justice actors and candidates for positions in judiciary and law-enforcement.

The Law No. 133/2016 On the declaration of assets and personal interests introduced electronic declarations of justice actors, thus enabling public scrutiny and promoting accountability of judges and prosecutors. Finally, the Law No. 82/2017 provides for a comprehensive set of anticorruption measures aimed at building and strengthening integrity of the public sector.

1.3. Subjects to integrity vetting

- Candidates to the Superior Council of Magistracy;
- Candidates to the Board for the selection and evaluation of judges;
- Candidates to the Disciplinary board of judges;
- Candidates to the Superior Council of Prosecutors;
- Candidates to the Board for the selection and evaluation of prosecutors;
- Candidate to the Disciplinary and Ethics Board subordinated to the Superior Council of Prosecutors;
- Judges of courts of appeal and candidates for the positions;
- Courts' presidents and vice-presidents (if they have been appointed since 01.01.2017);
- Prosecutor General, Deputy Prosecutor General, chief prosecutors of General Prosecutor's Office subdivisions (if they took position since 01.01.2017) and candidates for the positions;
- Chief prosecutors of a prosecutor's office and deputy chief prosecutors of a prosecutor's office (if they took position since 01.01.2017);
- Prosecutors of specialised prosecutor's offices (if they have been appointed since 01.01.2017) and candidates for the positions;
- Judges of the Supreme Court of Justice and candidates for the positions.

1.4. Evaluation criteria

The legislation establishes that justice actors should meet criteria of **ethical integrity and financial integrity**. However, the description of these criteria slightly differ for members of self-governing bodies and other actors:

Table 1. Legislative definition of the integrity criteria

Law No. 26/2022 (vetting of self-governing bodies)	Law No. 252/2023 (vetting of judges and prosecutors)	Law No. 65/2023 (vetting of Supreme Court of Justice)
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Ethical integrity	
<p>The subjects of the evaluation shall be deemed to meet the criterion of ethical integrity if:</p> <p>a) they have not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and have not committed, in their activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer;</p> <p>b) there are no reasonable suspicions that the candidates has committed corruption acts, acts related to corruption or corruptible acts, within the meaning of the Law on Integrity no. 82/2017;</p> <p>c) have not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions and/or limitations.</p>	<p>The subjects shall be deemed not to meet the requirements of ethical integrity if the evaluation commission determined that:</p> <p>a) over the last 5 years, they have seriously violated the rules of ethics and professional conduct of judges, prosecutors or, as the case may be, other professions, as well as if they acted arbitrarily or issued arbitrary acts, over the last 10 years, contrary to the imperative rules of the law, and the European Court of Human Rights had established, before the adoption of the act, that a similar decision was contrary to the European Convention for Human Rights;</p> <p>b) over the last 10 years, the subjects had incompatibilities and conflicts of interest in their activity that affected the position held.</p>
Financial integrity	
<p>The subjects of the evaluation shall be deemed to meet the criterion of financial integrity if:</p> <p>a) their assets have been lawfully declared;</p> <p>b) the evaluation commission finds that the wealth they acquired in the past 15 years corresponds to the declared revenues</p>	<p>The subjects of the evaluation shall be deemed not to meet the criterion of financial integrity if the evaluation commission has serious doubts determined by the fact that:</p> <p>a) the difference between assets, expenses and income, for the last 12 years, exceeds 20 average salaries per economy, as set by the Government for 2023 (or the year in which the evaluation of SCJ judge begins);</p> <p>b) over the last 10 years, the subjects committed tax irregularities as a result of which the amount of unpaid tax exceeded, in total, 5 average wages per economy, as set by the Government for 2023 (or the year in which the evaluation of SCJ judge begins).</p>

* **red** is used to underline differences between the norms

The different definition of ethical and financial integrity in Law No. 26/2022, Law 252/2023 and Law No. 65/2023 is not essential for the purpose of integrity background checks performed by civil society analysts and investigative journalists.

Their task is to provide the vetting commission with much relevant information as possible about the subject of the evaluation. The vetting commission will then analyse the information and decide whether their findings violate the criteria established by law. This toolkit aims to help civil society analysts and investigative journalists to direct their search and suggests what instruments are available.

II. BACKGROUND CHECK: FIRST STEPS

The first step before the ethical and financial integrity assessment is collecting general information on a subject of evaluation. This will direct any further search.

In particular, the research needs the subject's:

- Date of birth,
- Place of residence,
- Contact details (email address and/or phone number),
- Social media accounts,
- Close persons*, their places of work and social media accounts.

The list of **close persons is defined in Law No. 133/2016 on the Declaration of Wealth and Personal Interests: cohabitants, as well as any blood relative or adopted person up to fourth degree (parent, sibling, grandparent, nephew/niece, uncle/aunt) and any person related by affinity up to the second degree (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law) to the said subject.*

Sources of information:

- Search engines (Google, Bing, DuckDuckGo)
- Dossier or application (judicial/prosecutor's dossier, candidate's application etc.)
- Official information (governmental websites, requests for public info)
- Social media (Facebook, Instagram, X, LinkedIn, VKontakte, Odnoklasniki, Reddit, Threads etc.)
- Asset declaration

Here are some **tips on open sources investigations**

1. Conduct search in Romanian and English. Try different search engines: Google, Bing, and DuckDuckGo. Be cautious of sources of information and their credibility (sources with documentary confirmation of the stated facts or such confirmation can be obtained from open and publicly available sources prevail).
2. Tips for Internet search:
 - a. use "" quotation marks
 - b. site:gov.md, ext:pdf
 - c. -, OR, AND operators
3. Tips for search on social media, particularly on Facebook:
 - a. www.stopfake.org/ru/prepariuem-facebook-osnovnye-priemy-poiska-v-krupnejshej-sotsseti/
 - b. www.stopfake.org/ru/prepariuem-facebook-ispolzuem-vsyu-silu-graph-search-dlya-poiska-chast-ii/

2. Bellingcat`s online investigative toolkit:
docs.google.com/spreadsheets/d/18rtqh8EG2q1xBo2cLNyhIDuK9jrPGwYr9DI2UncoqJQ/edit#gid=930747607
3. Open Source Investigative Tools:
start.me/p/gyvaAJ/open-source-investigative-tools
4. Source for checking names:
e-services.md/?q=ru/content/prover-kolichestvo-lyudey-s-odinakovymi-imenamifamiliyami
5. State database of voters:
a.cec.md/ro/verifica-te-in-rsa-3111.html
6. Other state data:
date.gov.md/ckan/ro/dataset?organization=2701-agentia-servicii-publice

III. ETHICAL INTEGRITY BACKGROUND CHECK

The Law No. 26/2022, the Law 252/2023 and the Law No. 65/2023 all refer to professional rules of ethics.

The **Code of Ethics and Professional Conduct of Judges** adopted by the SCM in 2018 contains the following criteria (principles) of ethics and professional conduct:

- Independence,
- Impartiality¹,
- Integrity,
- Professionalism,
- Fairness,
- Collegiality,
- Confidentiality and transparency.

The document details and describes each principle and is available at the official website of the SCM at:

https://www.csm.md/files/Acte_normative/Codul_de_etica_al_judecatorului.pdf

The **Code of Ethics of Prosecutors** adopted by the General Assembly of Prosecutors in 2016 contains the following criteria (principles) of ethics:

- Rule of law;
- Independence;
- Integrity;
- Impartiality,
- Professionalism;
- Collegiality;
- Transparency;
- Confidentiality;
- Fairness.

The document details and describes each principle and is available at the official website of the SCP at: The document details and describes each principle and is available

https://csp.md/sites/default/files/inlinefiles/CODUL%20de%20Etica%20Redactat%2015.07.2019_0.pdf

The **Deontological Code of Lawyers of the Republic of Moldova** adopted by the Congress of Lawyers in 2022 (with amendments of 2007 and 2016) details the following criteria (principles) of ethics:

¹ Principle of independence and impartiality is primarily regulated by the Constitution of the Republic of Moldova, Article 116, paragraph (1).

- Independence;
- Trust and moral integrity;
- Confidentiality;
- Professionalism;
- Compliance with the incompatibility requirements;
- Truthful and accurate personal advertising.

The document details and describes each principle and is available by the following link: https://uam.md/media/files/files/codul_deontologic_5358927.pdf

There is not an academic document regulating professional ethics as each university or other scientific establishment adopts own ethical rules. For instance, the Code of Ethics and Academic Integrity of the State University of Moldova defines the following principles: integrity, academic freedom, justice and equity, transparency, honesty, respect and tolerance, privacy and loyalty (the document is available at: [Cod-de-Etică-și-Integritate-Academică-.pdf \(usm.md\)](#)).

Box 1.

The **Bangalore Principles of Judicial Conduct** is the Universal Code of Ethics for judges. Drafted in 2001 by judges from all over the world and approved by the United Nations Social and Economic Council in 2006, the code defines six core values: **independence, impartiality, integrity, propriety, equality, competence and diligence**. In 2007 the Intergovernmental Expert Group on Strengthening Basic Principles of Judicial Conduct prepared a commentary to the Bangalore Principles. The document contains many examples with detailed explanation and can be found at www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf.

Professional codes of ethics for judges, prosecutors, attorneys and academia suggest ethical principles that are quite similar. What is important are specific actions or inactions that violate the mentioned principles.

The ethical integrity background check focus on finding information about such violations. So what to look for? Let us explore each criterion separately.

3.1. Independence

Indicators of non-compliance with the Independence principle:

- The judge/prosecutor/attorney/law professor is affiliated with political parties, politicians, and members of government
- The judge/prosecutor took decisions under the influence (intervention) of another person

- The judge/prosecutor took unlawful, arbitrary or politically motivated decisions
- The judge/prosecutor/attorney/law professor received unfair preferences in their professional career
- The judge/prosecutor/attorney put pressure on colleagues or other justice actors
- The judge/prosecutor/attorney/law professor demonstrated inability to resist undue influence
- The judge/prosecutor/attorney/law professor tolerated illegal practices or unethical behaviour of others

Examples:

1. A judge is seen having a private dinner with an influential Member of Parliament, who is known for informal influence on the judicial and law-enforcement system.
2. A court president instruct a judge on how to rule in a specific case.
3. A law professor signs a statement in support of a dubious politician who provides financial support to educational establishment where the academic works.
4. A prosecutor fails to ensure a proper investigation of a criminal case concerning a high-ranking government official representing a leading political party.
5. A judge is promoted to appellate court circumventing ordinary procedure and requirements on professional experience while the mother-in-law is a presiding over the judicial appointment commission.

Tips for conducting search

Check dossier/application/google/asset declarations for information about work experience (dates and places of work) and other relevant information.

Sources of information:

- Official website of the Superior Council of Magistrates www.csm.md/ro/ (check decisions of selection commission, disciplinary commission, ethics commission, request information directly);
- Official website of the Superior Council of Prosecutors csp.md
- Official website of the Union of Lawyers of the Republic of Moldova, decisions of Ethics and disciplinary commission uam.md/actele-uniunii
- Database of judges` profiles magistrat.md
- Google and other search engines
- Online searching tool for investigating justice actors [ipre.md/justitie-pentru-moldova²](http://ipre.md/justitie-pentru-moldova2)
- Court decisions registry instante.justice.md

² NOTE: The IT platform shall be operational by the end of 2024.

- Social media accounts
- Journalistic investigations

Relevant questions regarding acting judges and prosecutors:

- 1) How and when a person was appointed?
- 2) Was the procedure fair and transparent at that time?
- 3) Was the appointment based on merit?
- 4) Who was in charge of the appointment? Are there any links between a judge/prosecutor and appointing authority?
- 5) Does a judge/prosecutor have a history of disciplinary proceedings? what were the claims? the outcomes?

Relevant questions regarding attorneys and law professors:

- 1) What are their relations and acquaintances?
- 2) Who are the owners and beneficiaries of the companies and establishments they work at?
- 3) Who are their business partners/partners of their family members?

Table 2. Tools and tips for checking companies, professional and business ties	
<ul style="list-style-type: none"> • Official registry of legal entities: date.gov.md/home/publicpages • Open database of legal entities: www.bizzer.md/entitate/c%c4%83utare?denumirea=j • Bureau of credit history: www.infodebit.md • International database of legal entities: opencorporates.com • Tax service data (debts, licenses): sfs.md/ro/services-online/route.taxpayer information, other relevant info on a company sfs.md/ro/services-online/route.taxpayer information • Official data on tax debts: date.gov.md/open/company-details • Statistic data on companies: webapp.statistica.md/infoRSF • Salary calculation: salarii.md • Court decisions registry: 	<ol style="list-style-type: none"> 1. Indicate all relevant names (founders, board members, executive, supervisory, beneficiary) of a company 2. Detail the company's history (change of name/restructuring/change of board and management) 3. Crosscheck the list of indicated persons (are they involved in any other company? in which capacity? Are there other links between the companies/persons involved?) 4. Check the address and telephone (there is the office, is something else registered on the same address) 5. Check if the company profitable. Does it have debts? 6. Check all available financial information 7. Is company involved in illegal activity (try Google and court decisions registry) 8. Has the company ever participated in state procurements:

instante.justice.md	tender.gov.md/ro/contracte-atribuite <i>Important! Check close persons and their business relations and affiliations, places of work etc.</i>
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3.2. Impartiality

Indicators of non-compliance with the Impartiality (Unbiasedness) principle:

- The judge/prosecutor took decisions in favor of a specific person under questionable circumstances
- The judge/prosecutor made public comments in favor of one of the parties
- The judge intervened into the case distribution system
- The judge considered a case with unjustified delays
- The judge abused the right to vacation or sick leave or self-recusal

Examples

1. Judges recused themselves from a case and failed to do so considering another case under the same circumstances
2. The judge considering criminal cases related to corruption harshly criticised on Facebook the special anti-corruption prosecutor's office
3. The judge gave in interview commenting on a case under his consideration
4. Judges go against their own practice when considering charges against the child of an influential politician
5. The judge of appellate court attends a closed birthday celebration of a lower instance court judge

Sources of information:

- Court decisions registry instante.justice.md
- Official website of the Superior Council of Magistrates www.csm.md/ro/ (check decisions of selection commission, disciplinary commission, ethics commission, request information directly)
- Official website of the Superior Council of Prosecutors csp.md
- Database of judges` profiles magistrat.md
- Google and other search engines
- Online searching tool for investigating justice actors ipre.md/justitie-pentru-moldova
- Social media accounts
- Journalistic investigations

3.3. Fairness and integrity

Indicators of non-compliance with the Fairness and Integrity principle:

- The judge/prosecutor/attorney/law professor provided false information in official statements or applications
- The judge/prosecutor/attorney/law professor hid relevant information from the authorities
- The judge/prosecutor/attorney/law professor violated the principle of academic integrity, for example, using results of someone else's academic or creative activities
- The judge/prosecutor/attorney/law professor used dubious ways to acquire ownership of property, establish certain legal facts, evade taxes etc.
- The judge/prosecutor/attorney/law professor committed serious violations of traffic regulations
- The judge/prosecutor/attorney/law professor used unethical communications with journalists and other society representatives
- The judge/prosecutor/attorney/law professor failed to perform/improperly performed their parental/family commitments
- The judge/prosecutor/attorney/law professor knowingly disseminated false information
- The judge/prosecutor engaged in communications with members of a criminal/terrorist organisation
- The judge/prosecutor received government-assigned housing as a result of an abuse or privatised such property using the following means: artificially increased a number of family members registered in it; registered his/herself in a dormitory while having own housing; transferred ownership of own housing to relatives; received one/two more apartments in the same way; received an apartment, privatised it and sold it straight away; received a government-assigned apartment and took actions to privatise it, specifically, took it out of the government-assigned category
- The judge/prosecutor/attorney/law professor acted unethically, failed to report unethical behaviour of his/her colleagues or covered such behaviour.

Box 2.

The Bangalore Principles of Judicial Conduct describes the principle of “Integrity as follows:

“The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done”.

It suggests that the judge must not only be honest, but also appear to be so. A judge has the duty not only to render a fair and impartial decision, but also to render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and

also as to the judge's integrity.

The "must seen to be done" formula allows us to evaluate judicial decisions, whether they seem to be fair and impartial to a reasonable observer. Therefore, judicial decisions concerning peaceful assemblies, cultural heritage or communal ownership if they seem to be arbitrary can serve as a ground to a reasonable doubt of whether a judge meets the integrity criteria.

Examples

1. A law professor drafts a thesis (dissertation) for a politician.
2. A judge publishes offensive comments about others on his/her personal Facebook page.
3. A court ruling proves that a prosecutor failed to provide financial support to his/her children.
4. A judge buys a car from a third person and indicates in a contract a price that is a few times lower than the actual price paid in order to pay lower taxes.
5. A judge is caught drunk driving.

Sources of information:

- Google and other search engines
- Online searching tool for investigating justice actors ipre.md/justitie-pentru-moldova
- Social media
- Journalistic investigations
- Official websites of the Superior Council of Magistrates www.csm.md/ro/ Superior Council of Prosecutors csp.md, and the Union of Lawyers uam.md
- Official dossier and any other documents/relevant information that can be requested from governmental institutions

Box 3. Case study

Decision No. nn of dd mm yyyy

of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors on the Candidacy of XXX YYY, Candidate for the Superior Council of Magistracy

In 2021, the candidate, XXX YYY examined the case filed by the former President of the Chisinau Court of Appeal (ZW) against the Decree of the President of the Republic of Moldova annulling the president's decree appointing ZW to the position of the President of

the Chisinau Court of Appeal. In accordance with the candidate's decision of 31 December 2021, ZW was reinstated as the President of the Chisinau Court of Appeal. On 16 January 2022, the reasoned Decision in this case was delivered. It could be appealed within 30 days.

The candidate's father had a long-standing business relationship with ZW's uncle. The candidate had worked as a lawyer in one of their companies for three months in 2011. The candidate did not recuse himself from examining the case of ZW.

Following the decision, in January 2022 AB, Head of the General Direction of the Information and Security Service submitted official requests to National Anti-Corruption Center, the General Prosecutor's Office and the Superior Council of Magistracy to examine candidate's actions and investigate potential crimes. The requests were obtained by the media. The candidate made the following public comments:

"I read Mr. AB's complaint. In fact, I regard this complaint as an intimidation, and I have already highlighted that Rurac has a rich experience of intimidating judges...The decision is reasoned and I have not seen anyone read it in order to verify the aberrations of Mr. AB and Mr. ST. ... If he wants to talk about usurpation of power, he should check how ST appointed presidents of the Court of Appeal by decree and not by an SCM Decision, and if that is not abuse of power, then I don't know what is".

The Commission stated that the candidate made a broad attack against AB and his submission of requests. The candidate's remarks about AB's handling of the case involving another judge when AB was a prosecutor and his remarks about usurpation of power on the part of judge ST likewise lacked reasonableness and measure. The candidate was not able to explain how those remarks were relevant to the facts or merits of the request for an investigation about him, only that the allegation of usurpation of authority against him justified him accusing judge ST of usurpation of power. The Commission disagreed. The comments were gratuitous and disparaging, in violation of the 2015 Code of Ethics and Professional Conduct of Judges. His remarks about judge ST purported handling of judicial appointments at the SCM were also in conflict with the ethical provisions prohibiting judges from commenting on the work of other judges and from disparaging the professional and moral integrity of colleagues.

Therefore the Evaluation Commission concluded that the candidate's statement violated the rules of ethics.

3.4. Incorruptibility

Indicators of non-compliance with the principle of incorruptibility

- The judge/prosecutor/attorney/law professor committed a corruption or corruption-related offense
- The judge/prosecutor used his/her status to satisfy his/her or other individuals' interests or his/her actions or omission let other individuals benefit from his/her status unlawfully.

- The judge/prosecutor violated compatibility requirements, for instance, failed to transfer his interest in a company
- The judge/prosecutor/attorney/law professor failed to report the existence of a conflict of interest and (or) failed to take measures to prevent it

Examples

1. A judge considered a case concerning the business interests of his brother-in-law and ruled in his favor.
2. A judge of the appellate court considered an appeal against a decision of the first instance court taken by his niece upholding the decision while failing to report the conflict of interest to the parties.
3. A prosecutor received a car as a gift from a leader of a political party who is under investigation for allegedly corrupting voters.

Sources of information:

- Google and other search engines
- Online searching tool for investigating justice actors ipre.md/justitie-pentru-moldova
- Social media
- Journalistic investigations
- Official websites of the Superior Council of Magistrates www.csm.md/ro/ Superior Council of Prosecutors csp.md, and the Union of Lawyers uam.md
- Official dossier and any other documents/relevant information that can be requested from governmental institutions
- Court decisions registry instante.justice.md

3.5. Professionalism and competence

Indicators of non-compliance with the Professionalism and Competence principle:

- The judge's/prosecutor's behaviour led to serious violation of the rules of process and (or) violation of fundamental rights and liberties (this may be evidenced by the decisions of the European Court of Human Rights, decisions of higher instance courts, special court rulings, disciplining, obvious nature of violations)
- The judge substantially and groundlessly deviated from his/her own earlier case law, and such deviation led to making an unlawful decision
- The judge/prosecutor/attorney/law professor practiced obviously negligible execution of documents
- The judge ignored the case law of the European Court of Human Rights
- The judge violated the publicity and openness principle
- The judge/prosecutor practiced bureaucratic delays; as a result, reasonable deadlines were missed that enabled someone to escape liability

Examples

1. The judge systematically issues decisions with numerous typos, misspelling of the words, wrongful names of parties concerned and referring to wrong legislative norms.
2. The judge fails to hear a case on drunk driving in time allowing an offender to avoid responsibility.
3. The judge prohibited a meeting of an opposition party without providing any reasoning.
4. The judge repeatedly denies justice to a person after ECHR explicitly ruled on violation of the person's right to a fair trial.

Sources of information:

- Official websites of the Superior Council of Magistrates www.csm.md/ro/ Superior Council of Prosecutors csp.md, and the Union of Lawyers uam.md
- Official dossier and any other documents/relevant information that can be requested from governmental institutions,
- Online searching tool for investigating justice actors ipre.md/justitie-pentru-moldova,
- Court decisions registry instante.justice.md,
- Social media,
- Database of judges' profiles magistrat.md,
- Google and other search engines.

Box 4. Case study

Decision No. nn of dd mm yyyy

of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors on the Candidacy of XXX YYY, Candidate for the Superior Council of Prosecutors

The Independent Evaluation Commission found XXX YYY non-compliant with the ethical integrity criteria due to ethical violation concerning the investigation of a criminal case of alleged rape.

In April 2015, the Criminal Investigative Unit of a Police Inspectorate registered a complaint from a woman who alleged that her daughter was the victim of series of rapes. However, the prosecutor's office, following a pre-investigation inquiry, ordered not to initiate a criminal investigation. In December of the same year the superior prosecutor sent back the case for additional investigation. On May 4 2016, following a proposal of Criminal Investigative Unit of the Police Inspectorate, the candidate ordered to reject the initiation a criminal proceeding of alleged rape.

The Evaluation Commission carefully scrutinised the facts, legislative framework and conducted a few rounds of questioning with the candidate. In summary, the Commission noted that the candidate's order of May 4, 2016 was adopted without some critical investigative measures having been undertaken, such as questioning the siblings and a close relative. The Commission also noted that the order was not sufficiently reasoned to "reassure a concerned public that the rule of law has been respected".

Thus, the candidate, in the circumstances of the case, seriously violated the rules of ethics and professional conduct of prosecutors and committed inactions, which are inexplicable from the point of view of a legal professional and an impartial observer.

IV. FINANCIAL INTEGRITY BACKGROUND CHECK

The Law No. 26/2022, the Law 252/2023 and the Law No. 65/2023 indicate that, in order to assess financial integrity, the evaluation commission shall verify:

- a) The subject's compliance with the tax regime regarding the payment of taxes on using funds and income derived from the owned property, as well as taxable income and the payment of import duty and export duty;
- b) The subject's compliance with the legal regime of declaring assets and personal interests;
- c) The method that the subject, or people close to him/her, used for acquiring the assets they own or possess, as well as the expenses for the maintenance of such assets;
- d) The subject's sources of income and, where appropriate, of the persons close to him/her;
- e) The existence of any loan, credit, leasing, insurance or other agreements that can generate financial benefits, where the subject, persons close to him/her or the legal entity that they are beneficial owners of, is a contracting party;
- f) The existence of donations, where the subject or persons close to him/her have the status of donee or donor;
- g) Other relevant aspects to clarify the origin and justification of the subject's wealth.

There are three main questions that need to be answered when conducting financial background check:

- Are ALL assets declared?
- Is the declared value correct (meets market prices)?
- Does the lifestyle correspond to the official income?

Here is an algorithm for conducting financial background check:

1. Check asset declarations at portal-declaratii.ani.md
2. Carefully scrutinize declarations from the oldest to the latest, pay attention to changes in movable and immovable possessions
3. Check state registries and other databases to confirm possession/collect-additional info/find undeclared items.

Important! Check social media pages of the subject and his/her spouse and kids, particularly their Instagram accounts; children are usually less cautious and post more info). What to look at on Instagram: geolocations and the frequency of usage, interior similarities on photos, and any remarkable details that could be compared with publicly available data or Google maps.

4. Compare the declared value to market prices

Table 3. Tools and tips for assessing the value of vehicles and immovables

Sources	Tips
<ul style="list-style-type: none"> ● Asset declarations: portal-declaratii.ani.md/ ● State registries (real estate, land cadaster, car owners, business owners, court decisions) ● Data from tax authorities ● Power of attorney ● Other registries and databases ● Public information ● Social media ● Google maps 	<p>Compare the declared prices with market</p> <ul style="list-style-type: none"> - motors.md, www.sauto.md, 999.md/ro current prices for used cars - www.autoprodazha.com/archive prices for used cars on the date of purchase - korter.md/, moldova.realigro.com/, hometer.md, md.agentiz.com/, acesimobil.md/en/apartments-for-sale for apartments, land plots, cottages and other real estate <p>*www.bnm.md/en/content/official-exchange-rates convert prices according to the rate of the date of purchase</p>

5. Conduct an Incoming&Outgoing cash flow analysis

Incoming cash flows: salary, fees, revenue, money gifts received, windfalls received, money inheritance, bank and cash savings at the beginning of the period, all other incoming cash flows such as loans received from creditors or loans repaid by debtors.

Outgoing cash flows: expenses on assets such as real estate, vehicles, precious items, stocks, etc. or on immaterial items such as vacations, weddings, school fees, loans granted to a debtor or loans repaid to a creditor, consumption expenditures for population, bank and cash savings at end of the period.

Table 4. Incoming&Outgoing cash flow analysis chart

Calendar year (or any other period)	
<p>Incoming cash flow</p> <p>Income plus other cash flows that increase the financial means (liquidity), which the declarant can dispose</p>	<p>Outgoing cash flow</p> <p>Expenditures plus other ways in which the declarant spends/invests his/her financial means (liquidity)</p>
<p>(B) the carryover cash balance of the person and his/her partner from the previous calendar year</p>	<p>(D) any expense, including, but not limited to, living expenses, travel expenses, mortgage repayments</p>

(C) the annual income of the person and his/her partner generated during the reporting calendar year as substantiated by legal/official documents	(A) the balance of cash savings at the end of a given calendar year
If subtotal outgoing (A+D) > subtotal income (B+C), then there is undeclared income/unexplained cash flow	

Table 5. Example

2022 calendar year	
Incoming cash flow	Outgoing cash flow
USD 20,000 on bank account	MDL 750,000 car purchase (~USD 38,265) USD 135*12= 1,620 (minimal cost of living) OR 190*12=2,280 USD (consumer spending)
MDL 814,600 salary (~ USD 41,500) MDL 124,000 sold car (~ USD 6,500)	USD 20,000 on bank account EUR 8,000 on bank account (~8,400 USD)
Total: USD 68,000	Total: USD 68,945
Outgoing (68,945) > Incoming (68,000) there is unexplained cash flow	

V. PREPARING INTEGRITY BACKGROUND CHECK REPORT

The integrity background check report is a document that presents the research findings. It should contain the presentation of facts that indicate person's alleged non-compliance with ethical and/or financial integrity criteria. It has to be brief and contain all relevant details.

The collected evidence is an essential part of the integrity background check report and it can be presented in the form of links, screenshots, and attached documents. Importantly, it has to be clear from the report why the subject's behaviour, actions or inactions constitute a violation of the integrity criteria.

There is no need to include all the information gathered in the research process as the report should focus on the main findings and the evidence to support them.

The wording should be simple and concise.

Example 1.

According to the asset declaration, in 2016 the Subject purchased a car, a Toyota Avensis manufactured in 2014, for the declared price of MDL 180,000 (EUR 8,000). In 2017, the Subject bought a 62 sq.m. apartment in Chisinau for a declared price of MDL 950,000 (EUR 43,000).

According to biographical data, between 2013 and 2019 the Subject worked as court judicial assistant at the Chisinau Court of Appeals. According to the information received from the court upon request for public information (attachment) the Subject's annual salary in 2013 was MDL 132,000; in 2014 MDL 158,000; in 2015 MDL 165,000; in 2016 MDL 184,000, and in 2017 MDL 212,000. The Subject's wife worked as a secretary at the Chisinau Court of Appeals till 2015 when she gave birth to their child and took a maternity leave.

There is a reasonable doubt that the Subject could purchase a car and an apartment for a combined value of MDL 1,130,000, which exceeds his official income in 2013-2017.

In addition, according to a website specialised in buyin-and-selling used cars, in 2016 the market price for a 2014 Toyota Avensis was EUR 18,000-22,000 (links). Thus, there is a reasonable doubt that the price declared by a Subject is correct.

Example 2.

According to the register of court decisions, the Subject systematically took decisions while out of office.

In particular, according to the decision in the case No. 311/5026 of January 4, 2019 the Subject decided to postpone the consideration of a case (link). However, photos posted on Instagram by the Subject's two children in the period between December 31, 2018 and January 8, 2019 she was on vacation in the Maldives (screenshots with place and date tags attached).

According to the Subject's Facebook post (link) and official news on the Court website (link) on April 15-22, 2019 she attended a conference organised by the Association of European Administrative Judges in Madrid, Spain. According to the court register, however, in that period the Subject took five decisions - on April 15 on case No. 423/22/31 (link), on April 15 on case No. 42/22o (link), on April 17 on case No. 3783/21/21 (link), on April 18 on case No. 558/11k (link) and on April 20 on case No. 032/15 (link).

VI. FREEDOM OF INFORMATION AS A TOOL FOR COLLECTING INFORMATION

6.1. Background

The new Law on Access to Information of Public Interest (LAIP) was adopted by the Parliament of the Republic of Moldova on June 9, 2023 and it entered into force on January 8, 2024. The bill replaces the Law no. 982/2000 on access to information (LAI).

This section illustrates how the LAIP can be used to acquire information relevant for journalistic investigations relating to the vetting process, as well as in corruption cases. It will provide what the key steps in the procedure for accessing information are and suggestions and instructions on how to make this tool more effective in practice.

6.2. What kind of information could be requested for integrity checks?

If data needed for completion of integrity checks are not publicly available, they can be obtained through requests for public information submitted to relevant public bodies according to the LAIP. The LAIP contains the broadest possible definition of public information (information of public interest), held by the relevant information providers, mainly public authorities, regardless of the storage medium. It includes:

- written documents in paper copies or electronic format
- audio recordings
- video recordings
- images
- maps
- information recorded in any other technically available format

The box below presents what information of particular relevance for integrity checks could be requested under the LAIP:

Box 5. Integrity-related information about justice actors to be potentially requested under requests for public information

- Data on disciplinary sanctions and proceedings
- Data on any legal proceedings against the relevant person, including materials from these proceedings
- Salary figures, including bonuses, benefits and allowances received
- Data on professional experience
- Data on any subsidies received from public funds
- Banking data
- Property data, including data on transactions

The broad definition of information of public interest does not guarantee unlimited access since the LAIP includes some restrictions.

- *Restrictions based on special laws*

The LAIPI clearly indicates that its provisions do not affect specific regulations regarding access to information of public interest, which are contained in other bills. Hence, limitations established by other laws remain in force, are fully applicable as *lex specialis* to the LAIPI and continue to provide legal basis for restricting the access to information.

The legal system of the Republic of Moldova contains several special regimes of restricting access to information that will have particular relevance in the context of collecting information for journalistic investigations. The following should be especially taken into consideration:

(1) Regime of state secrets established by the Law 245/2008 on state secrets. This bill establishes the legal framework for the protection of state secrets to ensure the interests and/or security of the Republic of Moldova. It indicates the categories of information, which is considered state secrets.

(2) Regime of banking secrecy set out by the Law 202/2017 on the banking activity. The notion of banking secrecy refers to all facts, data and information related to banks' activities, and any facts, data or information at its disposal, related to a person, goods, activity, business, personal or business relationships of the bank's clients or the information related to the clients' accounts (balances, transactions, ongoing operations), the transactions concluded by the clients, as well as other information about the clients that became known to the bank.

In principle, banks cannot disclose any information falling under the category of banking secrecy to any private persons. This information, under specific conditions, could be shared with relevant public authorities, particularly in the context of their investigatory activities. Furthermore, the persons and bodies authorised to request and receive the information that constitutes banking secrecy are obliged to keep it confidential and can only use it for the purpose for which they requested it or were provided to them, according to the law. They are obliged to not provide or disclose the information to third parties, except in cases of execution of the obligations provided by law.

In some cases, special laws do not restrict access to specific information, but establish ad-hoc regime of access. This includes, for example, the access to data from the cadastral register, which is managed by the Public Service Agency according to the Law 1543/1998 on the real estate cadastre.

In principle, the information about the rights registered on real estate cadastre is provided against payment. Secondly, data on the state identification number (IDNP), date of birth and domicile of the natural person, indicated in the cadastre, could be shared only to the requester who justify the purpose of processing personal data in accordance with the Law 133/2011 regarding the protection of personal data. Moreover, the systematised information regarding the immovable property over which a person holds ownership rights might be released only to exhaustively listed bodies, mainly public authorities.

When requesting access to information covered by any of the special regimes, we have to be aware that the grounds for its release will be considered according to these special regulations and procedures regulated by these laws. In case of establishing grounds for

restricting access to information, the decision refusing access to information, based on the LAIPI, will be issued by the respective information provider.

Restrictions based on Article 8(1) of the LAIPI

The LAIPI also establishes its own list of reasons for limiting access to information. It will apply whenever there is no special regulation governing access to specific type of information. In such cases, the information provider may refuse the access to information, whenever disclosure would result in harm to any of the following interests and values:

- public safety
- international relations
- preventing or discovering crimes or misdemeanors
- carrying out the criminal investigation
- carrying out the administrative or judicial procedure
- protection of personal data
- intellectual property rights
- commercial secret

It is essential to underline that the potential damage to any of the above-listed interests and values does not yet provide sufficient justification for restricting the access to information. To apply the restriction, the information provider has to consider the potential benefits to the public interest associated with the disclosure of information (proportionality test). Only in case when the damage caused by the disclosure is of higher magnitude than benefit for public interest connected with release of information, restricting access is justified.

In this context, the LAIPI lists the reasons where public interest prevails, legitimising the disclosure, regardless of the potential damage to any of the interests stipulated in the LAIPI's Article 8(1). According to Article 9(3), the public interest prevails in which the information will contribute to:

- disclosure of serious or mass violations of human rights and freedoms, and international humanitarian law;
- disclosure of acts of corruption or related acts;
- disclosure of potential conflicts of interest;
- disclosure of illegal public purchases or illegal expenditures from public budgets;
- prevention and disclosure of serious threats to the life or health of persons;
- prevention and disclosure of damage to the environment;
- understanding some issues for which public policies are developed or public consultations are held;
- ensuring equal treatment before the law.

Furthermore, the LAIPI introduces a special rule limiting the possibility of restricting access to some categories of personal data held by information providers. While the protection of personal data serves as one of the major grounds for potential restrictions in access to information, the LAIPI guarantees explicitly public access to the professional activity of public agents, including (but not limited to):

- name and surname
- function
- studies
- professional experience
- remuneration
- conflicts of interest
- unextinguished disciplinary sanctions

This special transparency regime applies to the public agent and personal data relating to their professional activity. Both notions should be defined in line with the Law No. 82/2017 on integrity, which defines a public agent as: a person employed in a public entity and who exercises a public office; a public office with a special status; a position of public dignity (as defined by the Law no. 199/2010),; an individual employed in the office of the person with a position of public dignity or provides services of public interest, and an elected local official. Public agents' professional activity refers to their exercise of service duties (rights and obligations) in the manner provided by the legislative, normative and departmental acts that regulate the activity of the public entities in which they are employed.

It is clear that justice actors - judges, prosecutors, legal assistants and other staff member of justice bodies - fall under definition of public agents.

The catalogue of personal data listed above serves only as an exemplary list and it might be further extended to include all other categories of information relating to the professional activity of public agents. Most of these data categories are formulated clearly, but some of them require further explanation. In particular, the information on remuneration covers both the total salary and bonuses, allowances, and supplements.

Importantly, this regime applies only to obtaining personal data related the professional activity of public agents. The link between specific information and professional activity could be established in the following circumstances:

- The requested data are connected with the performance of the public agents in his or her official capacity;
- The requested data are needed to verify whether the public agent is fit for office and/or met formal requirements for appointment to office;
- The requested data has a clear link with the assessment of the integrity of the public agents as required for the public office they occupy

In the case of personal data of individuals other than public agents or data of public agents not related to their professional activity, the standard regime applies. It means that the information provider will have to assess the damage associated with the disclosure and confront it with the benefit of the release of information for the public interest. The final decision should be taken following this exercise.

The LAIPI does not establish an absolute restriction of access to personal data of persons other than public agents. While the protection of the right to privacy, through the protection of personal data, is an obligation of information providers, the potential benefits for the public interest, relating to disclosure of information, should be always considered.

Furthermore, even in case the access to personal data on the basis of the LAIPI is refused, the requester may still initiate a procedure for accessing them according to the Law 133/2011 about the personal data protection. In such case, the requester will be required to demonstrate the legitimate interest .

6.3. How to request information?

The request to access to specific information should be submitted to the relevant information provider. The LAIPI establishes three channels for filing a request:

- electronic submission
- submission in writing (including sending by post)
- addressing verbally (directly or via phone)

Verbal requests are of minor relevance here and will not be further discussed, considering that it is not an effective channel for obtaining information needed for journalistic investigations.

Most of the times, requests will be submitted online. The LAIPI explicitly guarantees that the request sent in electronic form do not necessary need to meet the legal requirements established for electronic documents. In particular, no digital signature may be required from the applicant. Further, it is also possible to use websites such as <https://vreauinfo.md/>, as an intermediary to communicate with the information providers.

The formal requirements are minimal. Requestd should contain the following mandatory elements:

- The name and surname or name of the applicant (Requirement to provide name and surname of the applicant means that anonymous requests might be left without consideration by the information providers);
- The applicants' postal address and e-mail address if they request an electronic response;
- The name of the information provider;
- The specification that the information requested is of public interest, with sufficient and conclusive details to allow its identification by the information provider.

It is also recommended to specify the form in which the applicant would like to receive the requested information, including:

- Providing documents or information recorded in other form through electronic communication, using the email address of the applicant;
- Receiving the information in paper format sent by post;
- Enabling the applicant to inspect the documents or other materials in the office of the information provider.

The LAIPI explicitly stipulates that applicants are not required to justifying the request or signing it. However, the request should be as specific as possible to enable the providers to identify the relevant information. Applicants will be informed of eventual deficiencies in their requests and given at least 5 working days to remove it. In case of failure to specify the requested information, the application might be left unexamined.

Once the request is registered by the information provider, it has 10 (calendar) days to resolve it. This deadline might be by a maximum of 7 days if the request is complex or a large volume of information is requested, which requires additional processing time. The extension is effective only if the applicant is informed about it in writing, within the basic deadline. Moldova's 17 days as a maximum period for processing public information requests is among the shortest in Europe.

6.4. Receiving information

When the information provider decides that there are no grounds for restricting access to the requested information, it should provide it and resolve the case within statutory deadline. In principle, the information should be communicated to the applicants as indicated in their request. There are however four exceptions:

- The information is available on the Internet and can be communicated to the applicant through a reference to the relevant web page. When informing about the link, the information provider should make sure that the link directs exactly to the website containing the requested information, not just main page of the information provider;
- The information provider does not have the technical capabilities to convert the information into the requested form;
- Converting the information into the requested form involves an excessive amount of work (e.g. several working hours of an employee), which would affect the usual functionality of the information provider;
- The communication of information in the requested form is not possible due to legal restrictions or due to normative provisions establishing another way of providing the requested information.

In principle, the communication of information of public interest is free of charge, but some exceptions apply as per the table below.

Table 6. Fees for the communication of information of public interest

MODE OF COMMUNICATION	FEE
Electronic form	No fee
Paper copy (sending information by post)	Fee: 1 leu/page (above 20 pages)
Paper copy Releasing information in the premises of information provider	Fee: 1 leu/page (above 20 pages)
Examination of the information in the premises of the information provider	No fee

6.5. Refusal and rejection of the request

There are two legal forms in which the request can be rejected. Information providers have formal grounds to reject it if:

- The information provider does not possess the requested information, does not know if it is in the possession of another information provider and there are no circumstances for redirection;
- The information provider has already answered to the request of the same person relating to the same content.

The complete or partial rejection of the application should be motivated in writing and communicated to the applicant within the statutory deadline for handling request (10 + 7 days).

In the case of refusing the request, information providers follow the established procedure. They are required to issue a written rejection act, detailing the elements required in the individual administrative acts regulated by the Administrative Code, including:

- The name of the information provider;
- The applicant's name and surname;
- The date of issuing the refusal;
- The basis and reasoning of the refusal, according to Art. 8;
- The method of contesting the refusal (name and address of the court, as well as the term of contestation);
- The name, surname and holographic/electronic signature of the manager of the information provider or another person authorized by the manager or by law to issue the refusal.

The reason for the rejection is the key element and it should contain at least:

- The description of the content of the request;
- The description of the interest justifying the restriction to access the information as indicated in the LAIPI's Article 8(1) or reference to the restrictions to access to information as established in the special law;
- The description of the results of the proportionality test conducted according to the LAIPI's Article 9 (with regard to any of the interests established by the Article 8(1) of the LAIPI).
- The conclusion.

6.6. Available remedies against refusal or rejection of access to information

The LAIPI has introduced a simplified procedure of challenging the acts of the information providers and it enables applicants to launch an administrative litigation if they are dissatisfied with the way their request was handled. The administrative litigation can be initiated in case of any form of violation of the right to information, including:

- A failure to register request for information of public interest;
- The request is rejected;
- A refusal to communicate information of public interest;
- A lack of response to the application within statutory deadline (administrative silence);
- The communication of incomplete, inaccurate or it contains irrelevant information;
- The unjustified imposition of fee to access to information;
- The failure to proactively publish the information of public interest according to the LAIPI's Article 10.

Applicants have 30 days to launch the litigation. In the case of refusal or rejection, the days are counted by the day the decision is communicated. The submission of complaint to the court is subjected to a stamp duty of 200 lei. Unfortunately, according to the new Law 213/2023 on the state fees, the stamp duty is not subject to return even if the applicant wins the case.

Once the case is in the administrative litigation, the court should resolve it, with a written procedure, within a deadline of 3 months. If there are reasonable grounds, the judge, by means of a reasoned conclusion, may extend the trial period of the case by no more than additional 3 months.

If the court finds violations to the right to information, it has a wide range of measures at its disposal. In particular, it can order the information provider to release the information requested. However, it may also impose financial sanctions on the information provider in a series of cases:

- The non-publication of information of public interest provided for in the Article 10 of the LAIPI;
- The incomplete communication of information of public interest;
- The illegal request of payments for the communication of information of public interest;
- Unfounded rejection or redirection of the application;
- Unjustified refusal to communicate the information of public interest.

VII. PROCESSING THE INFORMATION – MANAGING LEGAL RISKS

Once the relevant information is received (through public information request or other sources), it is of particular relevance to it in accordance with the law, particularly with regard to the personal data protection. This is essential for reducing the legal risks, including the risk of potential liability for violating the rules of the personal data protection.

In this context, the rules set by the Law 133/2011 on personal data protection should be taken into account. As of January 2024 the legislative process regarding the new bill regulating this area is pending. Once approved, it will adopt the EU's Regulation (EU) 2016/679 of the European Parliament and of the European Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the European Union's Directive 95/46/EC (General Data Protection Regulation, GDPR). Therefore, the analysis below relies mainly on the rules established by the GDPR.

The use of personal data obtained during journalistic investigations is considered a form of processing of personal data. The notion involves a wide range of actions related to personal data, including any operation or series of operations performed on personal data by automated or non-automated means, such as the data's collection, registration, organisation, storage, preservation, restoration, adaptation or modification, extraction, consultation, use, disclosure by transmission, dissemination or otherwise, joining or combining, blocking, deleting or destroying.

In principle, the processing of personal data can be carried out only upon the consent of the related individuals. Their consent is not required only in cases listed exhaustively by the Law 133/2011, including:

- The execution of a contract to which the subjects of personal data is a party or to take some measures before the conclusion of the contract, at their request;
- Fulfilling an obligation that falls to the operator according to the law;
- Protecting the life, physical integrity or health of the subjects of the personal data;
- The execution of tasks of public interest or resulting from the exercise of the prerogatives of public authority vested with the operator or the third party to whom the personal data are disclosed;
- A legitimate interest of the operator or of the third party to whom the personal data is disclosed, provided that this interest does not prejudice the interests or the fundamental rights and freedoms of the subject of the personal data;
- Performing the external public audit;
- Statistical, historical or scientific research purposes, provided that the personal data remain anonymous throughout the processing;
- Data exchange under the conditions of the legislation in force regarding data exchange and interoperability.

However, in the context of journalistic investigations, another special regime applies for processing of personal data without consent. The so-called journalistic exemption stipulates that processing personal data for the exclusive purpose of journalistic activity is exempted from the following restrictions:

- The obligation to obtain consent of the subject of data;
- The total ban on the processing of personal data of a specific character, i.e. information revealing the individuals' racial or ethnic origin, their political, religious or philosophical beliefs, social affiliation, data on health or sex life, as well as those related to criminal convictions, coercive procedural measures or contraventional sanctions;
- Restrictions on processing data on criminal convictions, coercive procedural measures or contraventional sanctions.

The journalistic exemption however is applicable only if this refers to data that has been made public voluntarily and manifestly by the related subjects or that are closely related to the subjects' public activity or to the public nature of the facts in which the subject is involved. In other words, there need to be a clear link between the processing of personal data and the need to ensure proper public scrutiny of the persons performing public functions.

The so-called journalistic exemption is established by the Law 133/2011 and is based on the GDPR's Article 85. This provision places an obligation on the Member States to reconcile the right to data protection with the freedom of expression and information, particularly when personal data is processed for journalistic purposes.

The Law 133/2011 should be therefore interpreted in accordance with the GDPR, especially the jurisprudence of the Court of Justice of the European Union (CJEU). Therefore, the broad concept of the journalistic activities should be promoted, as manifested in the CJEU ruling on the Buivids case (case C-345/17). In particular the Court noted that:

- 'Journalistic activities' are those with the purpose to disclose public of information, opinions or ideas, irrespective of the medium which is used to transmit them;
- The medium, which is used to transmit the processed data, whether it be traditional in nature, such as paper or radio waves, or electronic, such as the Internet, is not determinative as to whether an activity is undertaken 'solely for journalistic purposes';
- It also does not matter whether the person processing relevant information for publishing it is not a professional journalist.

While the Law 133/2011 interpreted in accordance with the GDPR establishes solid grounds for processing personal data for journalistic investigations, reporters and media outlets processing data should abide by some general rules, including:

- Purpose limitation – data are to be collected for specified, clear and legitimate purposes and are not further processed in a manner that is incompatible with those purposes;
- Data minimisation – collected data have to be adequate, relevant and limited to the purposes for which they are processed;

- Storage limitation - personal data may only be stored for as long as necessary for the purposes of processing;
- Data accuracy - ensuring that the personal data are not incorrect or misleading as to any matter of fact;
- Integrity and confidentiality – data should be safely processed, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (Article 5 of the GDPR).

VIII. MANAGING RISK OF INTIMIDATION

Journalists investigating judicial officials are particularly vulnerable to the risk of becoming subject of some retaliatory measures or intimidation. Officials under scrutiny may file SLAPPs (Strategic Lawsuit Against Public Participation) or misuse some of their powers against the journalists.

In Albania, the vetting process of judges and prosecutors provides examples of actions targeting journalists investigating judicial officials.

Box 6. Intimidation of journalists monitoring vetting process of judges and prosecutors. Case of Albania

“Between late March and early April 2022, Isa Myzyraj, a journalist with Ora News, faced pressure and intimidation from multiple sources related to his reporting on the vetting process of Elizabeta Imeraj, the former Head of Tirana’s Prosecution Office. Myzyraj had been covering the public hearings in the vetting, a process monitored by a body of foreign judges and prosecutors, the International Monitoring Operation (IMO).

Myzyraj said he had noticed that other journalists who had previously been covering the vetting process of Imeraj began self-censoring.. Also, many of Albania’s media did not report on the developments at the Appeals Chamber of the Vetting Process. He began investigating the shift in the coverage as part of his journalistic work.

The IMO recommended Imeraj’s dismissal due to shortcomings related to her assets. Shortly after, anonymously owned media began publishing smear on IMO members, including about fake sex-related scandals. Myzyraj said that his investigations found that at least three online media involved in the smear campaign had links to Imeraj. He published this information on Facebook and X (then called Twitter), denouncing the attack and noting that the owners of the websites did not appear in Albania’s official register.

Shortly after, the manager of a news website contacted Myzyraj via Facebook, while other journalists accused him of being “paid”. In early April, another person contacted one of the journalist’s relatives and offer them a deal to convince him to stop reporting about the case. Myzyraj refused. The journalist received more phone calls demanding him stop covering the issue. A threatening call warning him of consequences for his family was followed by an SMS with a screenshot of his family certificate from the Civil Registry. This document is only available to a notary public. The messages also said they know who Myzyraj is and where he is. The journalist reported the threats against him and his family to Mapping Media Freedom, a watchdog which documents press and media freedom violations across Europe. The Mapping Media Freedom issued an alert, which was republished by Safejournalists.net, a platform that advocates for media freedom and journalists’ safety in the Western Balkans.

On 9 May, Imeraj filed a defamation lawsuit against Myzaraj before the Tirana District Court, contesting the statement that the media outlets involved in the smear on IMO members were allegedly linked to her.

Source: Albanian Journalist Isa Myzyraj Faces Lawsuit after Reporting Intimidation
<https://fom.coe.int/en/alerte/detail/107637530>

Some judges have used SLAPPs against journalists who reported on the integrity of judicial officials, in particular launching defamation cases [1]. Even ineffective legal actions create a burden and costs for journalists and media outlets; they also have a chilling effect on their activities and can discourage them from continuing their investigations.

While the risk of such actions cannot be fully eliminated, there are some measures and tools that affected journalists in Moldova can use. The Law 64/2010 of the freedom of expression should be invoked as a tool for protecting journalistic activities against any attempts of intimidation or unfounded legal actions. This bill enshrines several principles, largely based on the international standards of freedom of expression (e.g. European Convention of Human Rights), that could be raised in case of any proceedings against reporters, especially in the proceedings regarding defamation regulated by this law:

- The restriction of freedom of expression is allowed only to protect one of the explicitly and exhaustively listed legitimate interests and only if the restriction is proportional to the situation that determined it, respecting the fair balance between the protected interest and freedom of expression, as well as the public's freedom to be informed;
- No one can prohibit or prevent mass media from disseminating information of public interest except under the conditions of the law;
- Mass media has the task of informing the public on issues of public interest and carrying out journalistic investigations on issues of public interest, in accordance with its responsibilities;
- Information about the private and family life of public persons and natural persons exercising public functions may be disclosed if this information is of public interest
- If public persons and natural persons exercising public functions themselves draw attention to certain aspects of their private and family life, the mass media has the right to investigate these aspects.

In case of legal proceedings, it is also important to refer directly to the standards of protection of the freedom of expression indicated by the European Court of Human Rights (ECHR), on the basis of the Article 10 of the European Convention on Human Rights. It is recommended to refer to the key conclusions formulated by the ECHR in various cases, collected especially in the following publications:

- Council of Europe, Guide on Article 10 of the European Convention on Human Rights, <https://rm.coe.int/guide-on-article-10-freedom-of-expression-eng/native/1680ad61d6>;
- Toby Mendel, A Guide to the Interpretation and Meaning of Article 10 of the European Convention on Human Rights, <https://rm.coe.int/16806f5bb3>;
- Article 10: Positive obligations of the State to protect journalists and journalistic activities, <https://ks.echr.coe.int/documents/d/echr-ks/positive-obligations-of-the-state-to-protect-journalists-and-journalistic-activities>;
- Protecting the right to freedom of expression under the European Convention on Human Rights, <https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814>;

- Article 10: Contributions to public debate: Journalists and other actors, <https://ks.echr.coe.int/documents/d/echr-ks/contributions-to-public-debate-journalists-and-other-actors>.

[1] See: <https://www.ecpmf.eu/albanian-journalist-hopefully-the-wheels-of-justice-will-grind-fine-in-the-end/>

ANNEXES

Annex 1. Template of the Integrity Check report

NAME, PHOTO

I. Background Check

Date of birth	
Place of residence	
Contact details	
Social media accounts	
Close persons	
Other relevant info	

II. Ethical integrity

Links to application, official dossier, profile etc.:

Information concerning non-compliance with the ethical integrity criteria with links:

Example

According to the register of court decisions, the Subject systematically made decisions while being out of office.

In particular, according to the decision in the case No. 311/5026 of January 4, 2019 the Subject decided to postpone the consideration of a case (link). However, photos posted on Instagram by the Subject's two children in the period between December 31, 2018 and January 8, 2019 she was on vacation in Maldives (screenshots with place and date tags attached).

According to the Subject's Facebook post (link) and official news on the Court website (link) on April 15-22, 2019 she attended a conference organised by the Association of European Administrative Judges in Madrid, Spain. According to the court register, however, in that period the Subject took five decisions - on April 15 on case No. 423/22/31 (link), on April 15 on case No. 42/22o (link), on April 17 on case No. 3783/21/21 (link), on April 18 on case No. 558/11k (link), and on April 20 on case No. 032/15 (link).

III. Financial integrity

Links to asset declarations:

Relevant data obtained from other sources (open sources, social media, state registries and databases):

Found discrepancies:

Incoming&Outgoing cash flows analysis:

Calendar year (or any other period)	
Incoming cash flow	Outgoing cash flow
(B) the carryover cash balance of the person and his/her partner from the previous calendar year	(C) the annual income of the person and his/her partner generated during the reporting calendar year as substantiated by legal/official documents
(D) any expense (including, but not limited to, living expenses, travel expenses, mortgage repayments)	(A) the balance of cash savings at the end of a given calendar year
(A+D) ? (B+C)	

Information concerning non-compliance with the financial integrity criteria with links:

Example

According to the asset declaration, in 2016 the Subject purchased a car, a Toyota Avensis manufactured in 2014, for declared price of MDL 180,000 (EUR 8,000). In 2017, the Subject bought a 62 sq.m apartment in Chisinau for a declared price of MDL 950,000 (EUR 43,000).

According to biographical data,, from 2013 till 2019 the Subject worked as court judicial assistant of the Chisinau Court of Appeals. The information received from the court, upon a request for public information (attachment) showed that the Subject`s annual salary in 2013 was MDL 132,000, in 2014 MDL 158,000, in 2015 MDL 165,000, in 2016 MDL 184,000, and in 2017 MDL 212,000. The Subject`s wife worked as a secretary at the Chisinau Court of Appeals till 2015 when she gave birth to their child and took a maternity leave.

There is a reasonable doubt that the Subject could purchase a car and an apartment for a combined value MDL 1,130,000, which exceeds his official income of 2013-2017.

In addition, according to a website specialised for in buying-and-sellng used cars, in 2016 the market price for a 2014 Toyota Avensis was EUR 18,000-22,000 (links). Thus, there is a reasonable doubt that the price declared by the Subject is correct.

Annex 2. Template for public information request

Name and surname of the applicant (natural person)

or

Name of the applicant (legal person)

Postal address and email address of the applicant

Name of the information provider

(public authority or other addressee of the request)

REQUEST FOR ACCESS TO INFORMATION OF PUBLIC INTEREST

In accordance with the Law No. 148/2023 on Access to Information of Public Interest I hereby request communication of the following information of public interest:

-
-
-

I kindly request communication of this information in electronic format by sending it to my email address provided above.