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Amicus Curiae Position Paper

on complaints no. 282a/2023 and no. 60a/2024

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SUMMARY

This Opinion has as its object the notifications [no. 282A/2023](#) and [no. 60a/2024](#) regarding the review of the constitutionality of some provisions of the [Law no. 65 / 2023 on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice](#) and from [Law no. 252 / 2023 on the external evaluation of judges and prosecutors and the amendment of some normative acts](#), notifications to which the unique registration number "282a" was assigned.

The conclusion of the Group of Experts in the Field of Justice (GEJ) is that most of the provisions, whose constitutionality is requested to be verified, have been examined and subjected to an in-depth analysis, including repeatedly, by the Venice Commission, which exposed itself through the opinions and opinions communicated to the authorities at the stage of drafting and adopting Law no. 65/2023 and Law no. 252/2023. The authorities have amended the draft laws, reflecting most of the recommendations put forward by the Venice Commission.

SUBJECT OF THE COMPLAINT

Complaint no. 282a/2023.

On December 29, 2023, Grigore Novac, Member of the Parliament of the Republic of Moldova, notified the Constitutional Court regarding the review of the constitutionality of some provisions of Law no. 252/2023.

In particular, Mr. Grigore Novac requested the declaration as unconstitutional of the following phrases and texts of the law:

- The phrase in Article 4 para. (4) – ***"The evaluation commissions are not public authorities within the meaning of the provisions of the Administrative Code"***;
- The phrase in Article 11 para. (5) – ***"... it also takes into account the wealth, expenses, income of close persons..."***;
- The phrase in Article 4 para. (7) – ***"from other sources not prohibited by law"***;
- The phrase in Article 5 para. (3) – ***"the evaluation commissions shall submit annually to the Parliament a report on their activity in the previous year"***;
- The phrase in Article 18 para. (3) letter b) – ***"... if it finds factual circumstances or procedural errors that could have led to promotion or..."***;
- The phrases in Article 11 para. (2) letter a) – ***"in the last 5 years, has seriously violated the rules of ethics and professional conduct of judges or, as the case may be, of prosecutors, as well as if it has engaged in arbitrary conduct or issued arbitrary acts, in the last 10 years, contrary to the mandatory norms of the law, and the European Court of Human Rights had established, prior to the adoption of the act, that a similar decision was contrary to the European Convention on Human Rights."***;
- The phrase provided in Article 18 para. (1) – ***"... based on the evaluation file received from the evaluation commission"***;
- The phrase provided in Article 18 para. (2) – ***"... takes into account the evidence confirming the commission by the subject of the evaluation of the facts provided for in art. 11 para. (2) and (3)." ;***
- Article 18 para. (6) – ***"The judge or, as the case may be, the prosecutor dismissed from office according to the provisions of para. (5) of this article:***



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- a) **does not have the right to exercise the position of judge, prosecutor, as well as other functions of public dignity for 5-7 years** from the date of the decision of the respective council, the order of the Prosecutor General or, as the case may be, the decree of the President of the Republic of Moldova;
 - b) **is deprived of the right to the single dismissal indemnity provided for in art. 26 para. (3) of Law no. 544/1995 on the status of the judge or, as the case may be, on art. 62 para. (2) of Law no. 3/2016 on the Prosecutor's Office;**
 - c) **is deprived of the right to a special pension provided for in art. 32 of Law no. 544/1995 on the status of the judge, with the maintenance of the general old-age pension according to the general conditions established by Law no. 156/1998 on the public pension system."**
- The phrase contained in Article 14 para. (1) „... The evaluation commissions **can receive from any person only the relevant information about the subject evaluated and can accumulate that information on their own**".
 - The phrases of Article 16 para. (3) "The hearing shall take place **in a public hearing...**", Article 18 para. (4) "The reasoned decision **shall be published ...**".

Complaint no. 60a/2024

On March 7, 2024, Vlad Bătrîncea and Vladimir Voronin, deputies in the Parliament of the Republic of Moldova, notified the Constitutional Court regarding the review of the constitutionality of some provisions of Law no. 65/2023 and Law no. 252/2023.

In particular, Mr. Vlad Bătrîncea and Mr. Vladimir Voronin requested the declaration as unconstitutional of the following provisions:

Article 6 para. (1) letter b) in cumulation with para. (6) of Law no. 65/2023 and Article 6 para. (1) letter b) in cumulation with para. (6) of Law 252/2023 (**on the international members of the EC**);

- Article 11 para. (2), para. (3) of Law no. 65/2023 and Article 11 para. (3) of Law no. 252/2023, **in the part of the period in which the extraordinary evaluation of the activity of the subjects of the evaluation is authorized in order to ensure the integrity of judges and prosecutors, and to increase confidence in justice;**
- Article 11 para. (2) and (3) in conjunction with the provisions of Article 17 para. (2) of Law no. 65/2023 and Article 11 para. (3) and Article 18 para. (2) and (3) of Law 252/2023 (**evaluation criteria**);
- Article 17 para. (4) and (5) of Law 65/2023 and Article 18 para. (5) and (6) of Law 252/2023 (**sanction and effects of failure to pass the evaluation**);
- Article 18 para. (21), item 2 para. (2)²) of Law no. 65/2023 and Article 19 para. (5), item 2 of Law no. 252 (**powers of the Supreme Court of Justice**).

On April 19, 2024, Vlad Bătrîncea, deputy in the Parliament of the Republic of Moldova, completed the notification 60a/2024, with the extension of the object of the notification to on:

- Article 3 para. (2) letter b) and para. (3) of Law 65/2023 and Article 3 para. (2) letter c), para. (4) of Law no. 252/2023 (**subjects who are not subject to evaluation**).



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RELEVANT REGULATORY FRAMEWORK

The notifications refer to the review of the constitutionality of some provisions of:

- *Law no. 65 / 2023 on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice (in force since 06.04.2023);*
- *Law no. 252 / 2023 on the external evaluation of judges and prosecutors and the amendment of some normative acts (in force since 22.08.2023).*

The authors of the complaints invoked the incidence of the following articles of the Constitution of the Republic of Moldova: Article 1 (*State of the Republic of Moldova*), Article 2 (*Sovereignty and State Power*), Article 4 (*Human Rights and Freedoms*), Article 7 (*Constitution, Supreme Law*), Article 8 (*Respect for International Law and International Treaties*), Article 16 (*Equality*), Article 20 (*Free access to justice*), Article 21 (*Presumption of innocence*), Article 22 (*Non-retroactivity of the law*), Article 23 (*Right of everyone to know his rights and duties*), Article 28 (*Intimate, family and private life*), Article 34 (*Right to information*), Article 39 (*Right to administration*), Article 46 (*Right to private property and its protection*), Article 48 – (*Family*), Article 53 (*Right of person injured by a public authority*), Article 54 (*Restriction of the exercise of rights or freedoms*), Article 114 (*Administration of justice*), Article 115 (*Courts*), Article 116 (*Statute of judges*), Article 120 (*Binding nature of sentences and other final decisions*), Article 122 (*Composition of the Superior Council of Magistracy*), Article 124 (*Prosecutor's Office*), Article 125⁽¹⁾ (*Superior Council of Prosecutors*), Article 134 (*Constitutional Court*).

THE ARGUMENTS PRESENTED IN THE COMPLAINT AND THE RELEVANCE OF THE ARTICLES OF THE CONSTITUTION INVOKED IN THE COMPLAINT

For a better explanation and systematization of the arguments invoked by the authors of the complaints, we will analyze the 2 complaints separately. Thus, the authors of the complaints bring criticisms of unconstitutionality regarding the following procedures and legal texts.

Complaint no. 282A/2023

for the review of the constitutionality of some provisions of Law 252/2023:

1. Article 4 para. (3) - **the lack of the status of "public authority" of the Evaluation Commissions** would be contrary to Articles 20, 124 para. (1), 125¹ para. (1), 53 para. (1) and 54 para. (1) of the Constitution.
 - With regard to the impact of Article 54 of the Constitution, in its case-law, the Court held that it does not have a stand-alone applicability. In order to be applicable, the author of the complaint must demonstrate the existence of interference with a fundamental right (see *HCC no. 29 of 12 December 2019, § 19; DCC no. 28 of 12 March 2020, § 18; DCC no. 64 of 11 June 2020, § 21*).
 - The provisions of draft law 252/2023 have been examined and expertized by the Venice Commission and the Directorate General for Human Rights and the Rule of Law (DGI) at least 3 times ([March](#), [June](#) and [October](#) 2023). As the role, functions and



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independence of the Evaluation Committees have also been examined, I consider the following aspects and findings to be relevant to the present case:

- The Venice Commission confirmed the constitutionality of the evaluation model in which the report of the Evaluation Commission will have an advisory character, and the SCM/CSP will take the final decision.¹
- The main guarantee against the misuse of the verification mechanism is the fact that the decision to dismiss judges and prosecutors remains within the competence of the SCP and the SCM.²
- In addition, with reference to Articles 20, 124 para. (1), 125¹ para. (1), art. 53 para. (1) of the Constitution, we note that the author did not motivate to what extent the challenged provision affects the mentioned constitutional norms. However, the evaluation commissions act within these procedures for the external evaluation of judges and prosecutors as a fact-finding body with extensive powers to investigate the correspondence of the subject subject subject to the evaluation of the criteria of ethical and financial integrity.

The reports of the evaluation commissions, accompanied by the files of the subject subject to evaluation, are communicated to the Superior Council of Magistracy (SCM) and/or the Superior Council of Prosecutors (CSP), after which the SCM and CSP decide whether to accept or reject the evaluation report and ascertain the passing or non-passing of the evaluation by the person subject to evaluation.

Thus, we can say that the final act within the procedure of external evaluation of judges and / or prosecutors who fall under the scope of Law no. 252/2023 is adopted/issued by the CSP/CSM, the latter being the individual administrative act by which the respective administrative procedure is completed and which is subject to legality control under the conditions of Law no. 252/2023 and the Administrative Code.

In other words, the activity of the Evaluation Commissions carried out under the conditions of Law no. 252/2023 is rather an administrative operation carried out within the administrative procedure carried out before the SCM / CSP, which ends with the individual favorable or unfavorable administrative act issued by the competent public authority – SCM / CSP, a decision that can be challenged in the order of administrative litigation before the Supreme Court of Justice.

In this context, according to Articles 24 para. (2) of Law no. 317/1994 on the Constitutional Court and 39 of the Code of Constitutional Jurisdiction, the complaints must be motivated. In similar situations, the Court noted that the mere reference to a text of the Constitution, without explaining the alleged non-conformity with it of the challenged legal provisions, does not amount to an argument. If it were to examine such referrals, the Court would replace their authors in formulating criticisms of unconstitutionality, which would amount to an ex officio review (see *DCC No 99 of 10 August 2023*, § 18).

¹ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors, March 2023, para. 13, 14 Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf.

² Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors, March 2023, para. 26, Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf.



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- Finally, because the Venice Commission did not criticize the current formula, since the author of the complaint failed to argue the incidence of a fundamental right, we consider that the lack of the "status of public authority" according to the national law is rather an aspect of opportunity, i.e. it does not identify a problem of constitutionality.
2. Article 11 para. (5) - **Taking into account in the evaluation the wealth, expenses, income of close persons** would be contrary to Articles 4, 21, 23, 28, 54, 48 of the Constitution.
- With regard to Articles 4, 23 and 54 of the Constitution, the Court has specified in its case-law that they do not have an applicability in their own right. In order to be applicable, the author of the complaint must demonstrate, in a reasoned manner, the existence of interference in the rights guaranteed by the Constitution. (see *DCC no. 43 of 31 March 2022, § 26; DCC no. 80 of 17 June 2022, §§ 22-23; DCC no. 138 of 29 September 2022, § 34*).

In addition, with regard to Article 23 of the Constitution, the Constitutional Court decided that it does not impose on the legislator the obligation to define all the terms used in the substantive law norms. In that context, on the basis of the principle of the general applicability of laws, the Court holds that their wording cannot be absolutely precise. One of the standard regulatory techniques is to use general categories rather than exhaustive lists. Thus, many laws use, by force of things, more or less vague formulas, the interpretation and application of which depend on practice. However clearly drafted a legal rule may be, in any legal system there is an inevitable element of judicial interpretation (see *DCC No 104 of 19 July 2022, § 23*).

- With regard to the impact of Article 21 of the Constitution, the Court reiterated that this article is applicable only in the case of criminal proceedings (see *HCC no. 16 of 3 October 2023, § 29*).
- Next, although he invokes the alleged violation of Article 48 of the Constitution, in his arguments, the author essentially presented criticisms of unconstitutionality in relation to Article 28 of the Constitution (*Intimate, Family and Private Life*).

In particular, the contested rule involves the verification of persons close to the subject evaluated by the evaluation commission. We consider relevant the findings of the Venice Commission:

- December 2021: The list of close persons must be narrow and essential, since it is not clear whether these close persons have a veto in terms of their cooperation with the assessment and whether these persons have an important role in facilitating the candidate's legitimate opportunities. According to the Commission, a distant family member or former business partner could use that capacity to counteract the candidate's legitimate aspirations and that the third party is put in difficulty and suffers an invasion of the right to privacy for a purpose in which he may have no interest.³

³ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law of the Council of Europe on certain measures relating to the selection of candidates for administrative positions in the self-administration bodies of judges and prosecutors and the amendment of certain normative acts, § 27, December 2021, Available: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)046-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)046-e)



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- March 2023: "given the scale of the evaluation exercise, which may relate to the conduct, assets, wealth and expenses of judges/prosecutors and their affiliates, the draft law should set some limits on the type of information that can be requested and obtained. In particular, the draft law does not contain exceptions regarding potentially self-incriminating information, privileged information (solicitor's professional secrecy), medical information or other private information. The right to private and family life, as provided for in Article 28 of the Constitution and Article 8 of the European Convention on Human Rights, must be respected with regard to judges and prosecutors evaluated."⁴
 - Moreover, according to Opinion No 21 (2018) of the Advisory Council of European Judges on the prevention of corruption among judges, it was noted that some countries have extended the obligation to declare assets to wives and other close relatives of judges⁵.
 - We note that in its opinions, the Venice Commission did not invoke a problem of constitutionality, but mentioned the importance of the existence of guarantees in preventing abuses. Thus, given that the assets of close persons are taken into account in the evaluation procedure, provided that the content of the information is reasonable and does not expose private life more than is necessary for the prevention of corruption, it does not constitute a disproportionate interference with their private life.
 - Moreover, in Inadmissibility Decision no. 42/2023, the Court held that, in the category of persons close to candidates for the position of member of the Council, the legislator included, *inter alia*, spouses, children, parents, brothers, sisters, grandparents, in-laws, sons-in-law, daughters-in-law (see Article 2 of Law no. 133/2016 on the declaration of assets and personal interests and Article 33 para. (4)-(5) of Law no. 132/2016 on the National Integrity Authority). In order for the verification of the integrity of the mentioned candidates to be effective, as well as for the purpose of Law no. 26, i.e. in order to strengthen the integrity of the members of the Council and the trust of society in the self-administration bodies of judges and in the judiciary, the legislator also imposed the verification of the assets of persons close to the candidates. However, the Court notes that persons close to the candidate are third parties and have the right to defend themselves against any actions affecting their privacy. The Court therefore concludes that this end of the complaints represents an *actio popularis* (see, *DCC No 42 of 6 April 2023*, §§ 126 to 127).
 - Even if the 2 complaints refer to the vetting procedure, we consider the above conclusions to be applicable *mutatis mutandis* in the present case as well.
3. Article 4 para. (7) and Article 5 para. (3) - **the financing of evaluation commissions from non-prohibited sources and the obligation to submit an annual report to Parliament** would be contrary to Articles 124 and 125¹ of the Constitution.
- In its 3 opinions, the Venice Commission and the DGI did not examine the other elements of the verification/evaluation mechanism, which could affect the

⁴ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law of the Council of Europe on the draft law on the external evaluation of judges and prosecutors, March 2023, para. 85, Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf.

⁵ <https://rm.coe.int/cjje-2018-3e-avis-21-cjje-2018-prevent-corruption-amongst-judges/16808fd8dd>, para. 37



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independence and efficiency of the EC (such as *their budgetary autonomy*, internal structure, stability of the mandate of the EC members, their dismissal procedure, the level of their remuneration, etc.). However, the Venice Commission stated that these elements were not identified as potentially problematic by interlocutors in online meetings.⁶

- According to Articles 24 para. (2) of the Law on the Constitutional Court and 39 of the Code of Constitutional Jurisdiction, the complaint must be motivated. In similar situations, the Court noted that the mere reference to a text of the Constitution, without explaining the alleged non-conformity with it of the challenged legal provisions, does not amount to an argument. In this context, we reiterate that the Court cannot replace the authors of the complaint when formulating criticisms of unconstitutionality, which would amount to a review carried out ex officio (see *DCC no. 124 of 5 October 2023*, § 25) Thus, we consider that the contradiction between the contested text and the constitutional norms invoked has not been demonstrated, and these heads of claim are to be rejected as inadmissible.
 - Finally, taking into account that the Venice Commission did not criticize the current formula, as the author of the complaint failed to argue the incidence of a fundamental right, we consider that the financing of the Evaluation Commissions from sources not prohibited by law and the obligation to present an annual report to the Parliament, is rather an aspect of opportunity, respectively we do not identify a problem of constitutionality.
4. **Article 18 para. (3) letter b) - rejecting the evaluation report and ordering, only once, the resumption of the evaluation procedure in case of finding factual circumstances or procedural errors that could lead to promotion would be contrary to Articles 20 and 54 of the Constitution.**
- With reference to the impact of Article 20, we mention that it cannot be applicable because the contested provision refers to the examination of the results of the evaluation by the Superior Council of Magistracy or by the Superior Council of Prosecutors, but not by the court. However, the interested party may subsequently challenge the decision of the SCM/CSP in court, and the Supreme Court of Justice has the competence to examine both the facts and the law (see *art. 19 of Law 252/2023*). Thus, there is no causal link between the contested rule and the right of free access to justice, guaranteed by Article 20 of the Constitution.
 - The arguments of the author of the complaint regarding the reference to the recitals of the Constitutional Court are unfounded, since the CC Decision no. 5 of 14.02.2023⁷ refers to the competence of the SCJ, and in the present case, art. 18 para. (3) letter b) of Law no. 252 / 2023 falls within the competence of the SCM/CSP.
 - Regarding Article 54 of the Constitution, the Court specified that it does not have an independent applicability. In order to be applicable, the author of the complaint must

⁶ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors para. 45, March 2023, Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf

⁷ CC Decision no. 5 of February 14, 2023, Available: <https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=822&l=ro>



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demonstrate, in a reasoned manner, the existence of interference in the rights guaranteed by the Constitution.

- In view *of the* above, I consider that the incidence of the articles innovated by the author has not been demonstrated and therefore, the heads of complaint cannot be subjected to examination on the merits.
5. Article 11 - failure to promote the evaluation as a result of **arbitrary conduct** or the **issuance of arbitrary acts** in the last 10 years, contrary to the mandatory norms of the law, and the European Court of Human Rights had determined, prior to the adoption of the act, that a **similar decision was contrary** to the European Convention on Human Rights would be contrary to Articles 54, 120, 23 and 20 of the Constitution.
- Regarding Articles 54 and 23 of the Constitution, the Court specified that they do not have an applicability in their own right. In order to be applicable, the author of the complaint must demonstrate, in a reasoned manner, the existence of interference with the rights guaranteed by the Constitution (see *DCC no. 12 of 6 March 2024, § 21*). In addition, Article 23 of the Constitution does not impose on the legislator the obligation to define all the terms used in the substantive law rules. In that context, on the basis of the principle of the general applicability of laws, the Court holds that their wording cannot be absolutely precise. One of the standard regulatory techniques is to use general categories rather than exhaustive lists. Thus, many laws use, by force of things, more or less vague formulas, the interpretation and application of which depend on practice. However clearly drafted a legal rule may be, in any legal system there is an inevitable element of judicial interpretation (see *DCC No 104 of 19 July 2022, § 23*).
 - With reference to the impact of Articles 20 and 120 of the Constitution, we mention that this wording of the article was examined by the Venice Commission in its Opinion of October 2023, which it considered to be "acceptable, as it remains within the limits of narrowly defined situations".⁸ It should be noted that the authorities amended those provisions as a result of the recommendations of the Venice Commission of March 2023.⁹
6. Article 18 para. (1) and para. (2) - **the examination by the SCM/CSP of the results of the evaluation based on the evaluation file received from the evaluation commission and will take into account the evidence confirming the commission by the subject of the evaluation of the facts provided for in art. 11 para. (2) and (3)** would be contrary to Articles 54, 124 and 1251 of the Constitution.
- The authors state that the challenged provisions limit the area of verification carried out by the SCM/CSP, or, the SCM/CSP is limited in examination to the file presented by the Commission, as well as to the evidence confirming guilt, making a prevalence

⁸ Joint follow-up opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the joint opinion on the draft law on the external evaluation of judges and prosecutors, 9 October 2023, para. 19, Available : [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)035-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)035-e).

⁹ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors para. 55-56, March 2023, Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf



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of evidence confirming guilt in correlation with innocence, thus violating the principle of equality of arms, legality and lack of arbitrariness.

- According to the Venice Commission, given the constitutional role of the SCM/CSP, these institutions should be able to take the necessary additional measures themselves and take a decision without referring the case back to the Evaluation Commission.¹⁰
- Analyzing the challenged provision, we do not consider that the attributions of the SCM/CSP are limited, or that the phrase "shall take into account the evidence ..." is not to be interpreted as an obligation on the SCM/SPC to examine those categories of information exclusively. Rather, it is a guarantee of the analysis of the information examined in the evaluation.
- Taking into account the constitutional role of the SCM/CSP, its powers, but also the fact that the Supreme Court of Justice can examine the materials of the case both in law and in fact, there is no question of constitutionality.

7. Art. 18 para. (6) letters a), b), c) - the effects of not passing the evaluation would be contrary to art. 43, art. 39, art. 47, art. 21, 22 of the Constitution

- Examining the draft law on the reform of the Supreme Court of Justice, the Venice Commission established that the existence of sanctions, including harsh ones, are necessary in the evaluation process.

76. (...) In its current wording, it appears that the judge who fails integrity in the evaluation process is offered another judicial function, despite the fact that he or she has failed to overcome the suspicion of lack of integrity and this failure has been made public. The text should be clearer in this regard. It should be stressed that in normal procedures, failure to comply with integrity requirements leads to a disciplinary sanction, not a transfer. Given that Moldova is one of the countries where actual and/or perceived corruption in the judiciary is a major issue of public concern, this rather vague provision sends the wrong signal regarding the political will to take all necessary measures to guarantee and promote a culture of judicial integrity at all levels of the judiciary. Thus, the Venice Commission and the DGI consider that the negative report of the Evaluation Commission on the integrity of the judge should trigger a disciplinary sanction established by the Superior Council. The severity of the sanction should depend on the seriousness of the disciplinary offence. Transfer should not be offered when breaches of integrity are at issue. The situation is clearly different for non-compliance with the professionalism assessment.¹¹

- Because the effects of not passing the evaluation lead directly to the impossibility of exercising the function of judge/prosecutor, we admit that they can cause an interference in the rights provided for in art. 43 of the Constitution. In addition, because the sanctions applied obviously pursue a legitimate purpose – the verification of the integrity of judges and prosecutors, the proportionality of the measures must be

¹⁰ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors para. 97, March 2023, Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf

¹¹ Joint interim opinion of the Venice Commission and the Directorate for Human Rights (DHR) of the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the Draft Law on the reform of the Supreme Court of Justice and the Prosecutor's Office, October 2019, Available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)020-e)



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analyzed, taking into account the candidates' rights and the legitimate general interest of the evaluation mechanism.

- The proportionality of the sanctions for failure to pass the evaluation has been the subject of expertise by the Venice Commission repeatedly. The most recent and relevant are those adopted during 2023 (March, June, October). The most important criticism, namely the recommendation made by the Venice Commission, referred to the importance of the existence of several measures/sanctions depending on the seriousness of the deed (individualization of the sanction).¹²
- In the last Opinion of the Venice Commission of October 2023, the amendment made to art. 18 para. (6) letter a) which provides for the possibility of ordering the professional ban not automatically for a period of seven years, but for a period between five and seven years. According to the Venice Commission, this approach introduces a degree of differentiation from case to case, representing a positive change.
- Regarding the deprivation of the candidate of a single dismissal indemnity and the right to a special pension, it is necessary to analyze whether these sanctions/measures represent an interference in the rights provided by art. 47 invoked by the authors.
- According to art. 26 para. (3) of Law no. 544/1995 on the status of the judge and art. 62 para. (2) of Law no. 3/2016 on the Prosecutor's Office, the single dismissal allowance is conditional on the honorable departure from office. Thus, in case of committing acts that discredit justice or compromise the honor and dignity of judges, they will not be entitled to a single indemnity.
- Similarly, regarding the deprivation of the candidate judge of the right to a special pension, Law no. 544/1995 establishes that the pension for seniority established under the conditions of para. (1)–(3) shall be calculated and paid only to judges who have resigned and to judges dismissed from office in connection with reaching the age limit.
- In this regard, the European Court of Human Rights has ruled that if the person concerned does not meet the ¹³ legal conditions laid down by national law for the granting of any special form of benefit or pension, there is no interference with the rights provided for in Article 1 of Protocol no. 1. Shipping:¹⁴
- Because candidates will be deprived of benefits that are conditional on a certain behavior, we consider the findings of the European Court relevant, so we can affirm that there is no interference with the rights provided by Article 43 of the Constitution.
- With regard to the impact of Article 21 of the Constitution, the Court reiterated that this article is applicable only in the case of criminal proceedings (see *HCC no. 16 of 3 October 2023*, § 29).
- With regard to Article 22 of the Constitution, the Court notes that it guarantees, in accordance with the provisions of Article 7 of the European Convention on Human Rights, the principle of legality of criminalization and criminal punishment (*nullum crimen, nulla poena sine lege*). Article 22 guarantees, together with Articles 1 para. (3)

¹² Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors para. 101, March 2023, Available:

https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf

¹³ Bellet, Huertas and Vialatte v. France (Dec.), item 5, Available : <https://hudoc.echr.coe.int/eng?i=001-30636>

¹⁴ Rasmussen v. Poland, § 71, Available : <https://hudoc.echr.coe.int/eng?i=001-92429>



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and 23 para. (2) of the Constitution the standard of quality of substantive criminal law (see *DCC no. 13 of 14 March 2024*, § 18).

8. Art. 14 (1) – "... **The evaluation commissions can receive from any person only the relevant information about the subject evaluated and can accumulate that information on their own**, contrary to Article 28, Article 23 of the Constitution

- With regard to Article 28 of the Constitution, we note that the author of the complaint did not argue either the incidence of the article, nor in what manner the constitutional provision would be violated. According to Articles 24 para. (2) of the Law on the Constitutional Court and 39 of the Code of Constitutional Jurisdiction, the complaint must be motivated. In similar situations, the Court noted that the mere reference to a text of the Constitution, without explaining the alleged non-conformity with it of the challenged legal provisions, does not amount to an argument. If it were to examine such a referral, the Court would replace its authors in formulating criticisms of unconstitutionality, which would amount to an ex officio review (see *DCC No 124 of 5 October 2023*, § 25)
- Regarding the provision, initially challenged, in 2019, the Venice Commission ruled that "the provision is unclear and vague, especially taking into account the fact that judges often have to make unpopular decisions."¹⁵ The Venice Commission therefore recommended that the relevance and probative value of such information be established more precisely in establishing the facts." We consider that the provisions of para. 10 of art. 14 establishes guarantees regarding the relevance and probative value of the information received by the Evaluation Commission. Thus, we do not consider that the challenged provision raises issues of unconstitutionality.
- With regard to Article 23 of the Constitution, the Court specifies that it does not have an independent applicability. In order to be applicable, the author of the complaint must demonstrate, in a reasoned manner, the existence of interferences with the rights guaranteed by the Constitution (see *DCC no. 12 of 6 March 2024*, § 21).

9. Art. 16 para. (3) and art. 18 para. (4) - the hearing shall take place **in a public hearing...**, the reasoned decision **shall be published ...**" would be contrary to Article 28, Article 21 of the Constitution

- The European Court of Human Rights has held that damage to an individual's reputation must be of a certain level of gravity and be so extensive as to cause damage to the personal exercise of the right to respect for private life. This condition applies to social reputation in general and professional reputation in particular (see *Denisov v. Ukraine* [MC], 25 September 2018, § 112).
- In its opinion of October 2023, the Venice Commission ruled that the provision was amended according to the Commission's recommendations. It now provides several grounds for holding hearings in closed session. The judge/prosecutor has the right to

¹⁵ Joint Interim Opinion of the Venice Commission and the Directorate for Human Rights (DHR) of the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the Draft Law on the Reform of the Supreme Court of Justice and the Prosecutor's Office, para. 71, October 2019, Available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)020-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)020-e)



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request a hearing in a closed session, and the Evaluation Commission may refuse such a request only for good reasons. The Venice Commission ruled that the new wording of the law establishes effective safeguards to protect the interests of the persons assessed and corresponds to its recommendations.¹⁶

- Following the findings of the Venice Commission, in conjunction with the lack of relevant arguments of the authors, we consider that the challenged provision does not raise issues of unconstitutionality.
- With regard to the impact of Article 21 of the Constitution, the Court reiterated that this article is applicable only in the case of criminal proceedings (see *HCC no. 16 of 3 October 2023*, § 29).

Complaint no. 60a/2024 on the review of the constitutionality of certain provisions of Law 65/2023 and Law 252/2023:

1. Art. 6 para. (1) of Law 65 and art. 6 para. (1) of Law 252 - **the presence of the 3 international members in the Evaluation Commissions**, would be contrary to art. 1 para. (1) and (3); Art. 2; Art. 7; Article 39 of the Constitution.
- Regarding the impact of Articles 1 para. (3) and 7 of the Constitution, the Court reiterates that they do not have an applicability in their own right. In order to be applicable, the complainant must demonstrate the existence of interferences with fundamental rights.¹⁷
 - Regarding the international presence in the Evaluation Commissions, the Venice Commission made several clarifications:
 - The participation of an international component in the Ethics Council is a necessary guarantee for such an exceptional measure in Ukraine, which strikes a balance between the independence of the SCJ members and the need to ensure their integrity.¹⁸
 - The evaluation committee, which consists of six members, approves the verification report with a majority of the votes of the members, two of whom are members delegated by the international development partners. This wording is welcome and follows the relevant recommendation of the Venice Commission and the DGI.¹⁹
 - The Venice Commission confirmed the constitutionality of the evaluation model in which the report of the Evaluation Commission will have an advisory character, and the SCM/CSP will take the final decision.²⁰ (including the presence of international members)

¹⁶ Venice Commission, Oct 2023, para. 16, Available: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)035-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)035-e)

¹⁷ DCC no. 43 of 31 March 2022, § 26; DCC no. 80 of 17 June 2022, §§ 22-23; DCC no. 138 of 29 September 2022, § 34

¹⁸ Ukraine – Urgent joint opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the amendment of certain legislative acts on the procedure for the election (appointment) of the members of the Supreme Council of Justice (SCJ) and the activities of the disciplinary inspectors of the SCJ (Draft Law no. 5068), Par. 59, Available : [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)018-e)

¹⁹ Venice Commission, Oct 2023, para. 8, Available: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)035-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)035-e).

²⁰ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors para. 13, 14 Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf



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- The main guarantee against the misuse of the verification mechanism is the fact that the decision to dismiss judges and prosecutors remains within the competence of the SCP and the SCM.²¹
 - At the same time, we note that the authors did not bring relevant arguments regarding the impact of Articles 2 and 39 of the Constitution on an alleged violation of sovereignty as a result of the presence of international members in the Evaluation Commission. In similar situations, the Court noted that the mere reference to a text of the Constitution, without explaining the alleged non-conformity with it of the challenged legal provisions, does not amount to an argument. If it were to examine such referrals, the Court would replace their authors in formulating criticisms of unconstitutionality, which would amount to an ex officio review (see DCC No 99 of 10 August 2023, §18).
 - Finally, because the Venice Commission did not criticize the current formula, on the contrary it welcomed the changes made, because the author did not argue the potential incidence, respectively violation of constitutional provisions, we consider that a problem of constitutionality has not been identified.
2. Art. 11 para. (2) and (3) of Law no. 65/2023 in the part of the evaluation period, and art. 11 para. (3) of Law no. 252, in the part of the period in which the extraordinary evaluation of the activity of the subjects of the evaluation is authorized, it would be contrary to art. 16, 22, 23 and 54 para. (2) of the Constitution.
- In its case-law, the European Court of Human Rights has noted that the determination of the scope of the period under assessment aims to achieve several important objectives, namely to ensure legal certainty and finality of decisions and to protect potential defendants from claims based on facts that have arisen in the distant past that might be difficult to refute. However, the specifics of large-scale asset verification processes must also be taken into account. In the Court's view, given that personal or family assets normally accumulate over the course of a working life, the setting of strict time limits for the valuation of assets would restrict and greatly affect the authorities' ability to assess the legality of all assets acquired by the person being audited during his or her professional career. In this respect, an asset valuation has certain peculiarities, unlike ordinary disciplinary proceedings, which require a greater degree of flexibility for the State authorities to apply legal requirements, in line with the objective of restoring and strengthening public confidence in the justice system and ensuring a high level of integrity expected of members of the judiciary.²² Those findings were considered relevant by the Constitutional Court.²³

²¹ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors para. 26, Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf

²² Xhoxhaj v. Albania, 9 February 2021, §§ 348-349

²³ CC Decision no. 42 of 06.04.2023, paras. 121-124, Available: <https://constcourt.md/ccdocview.php?tip=decizii&docid=1355&l=ro>



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- The Venice Commission, examining the evaluation period, invited the authorities to reduce the evaluation period. According to the new amendments, the 15-year term has been reduced to 12.²⁴ Changes that were welcomed by the Venice Commission.²⁵
 - With regard to the incidence of Articles 16, 23 and 54 of the Constitution, the Court reiterates that they are not applicable in their own right. In order to be applicable, the complainant must demonstrate the existence of interferences with fundamental rights (see *DCC No 43 of 31 March 2022*, § 26; *DCC no. 80 of 17 June 2022*, §§ 22-23; *DCC no. 138 of 29 September 2022*, § 34).
 - With regard to Article 22 of the Constitution, the Court notes that it guarantees, in accordance with the provisions of Article 7 of the European Convention on Human Rights, the principle of legality of criminalization and criminal punishment (*nullum crimen, nulla poena sine lege*). Article 22 guarantees, together with Articles 1 para. (3) and 23 para. (2) of the Constitution the standard of quality of substantive criminal law (see *DCC no. 13 of 14 March 2024*, § 18).
3. Art. 11 para. (2) and (3) in conjunction with the provisions of art. 17 para. (2) of Law no. 65 and art. 11 para. (3) and art. 18 para. (2) and (3) of Law 252/2023 (**consistency of procedural certainty**), it would be contrary to art. 20, 21, 22, 23, 7, 1 para. (3), art. 53, 54 para. (2) of the Constitution.
- The authors of the complaint invoked criticisms regarding several provisions, but their argumentation refers exclusively to the substantive reasons for the evaluation, especially with reference to the criterion of "serious doubts". In this regard, the Venice Commission ruled that the authorities had amended those provisions in line with the Commission's recommendations.²⁶ In addition, the Constitutional Court did not identify constitutionality problems regarding the term "serious doubts".²⁷
 - The Court has noted in its case-law that Articles 1, 7, 23 and Art. 54 of the Constitution cannot be analysed individually, but may intervene if the applicability of a provision of the Constitution is found (see *DCC no. 177 of 15 December 2022*, § 24; *DCC no. 90 of 25 July 2023*, § 19). In addition, the Court reiterates that Article 23 of the Constitution does not impose on the legislator the obligation to define all the terms used in the substantive law rules. In that context, on the basis of the principle of the general applicability of laws, the Court holds that their wording cannot be absolutely precise. One of the standard regulatory techniques is to use general categories rather than exhaustive lists. Thus, many laws use, by force of things, more or less vague formulas, the interpretation and application of which depend on practice. However clearly drafted a legal rule may be, in any legal system there is an inevitable element of judicial interpretation (see *DCC No 104 of 19 July 2022*, § 23).

²⁴ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors, March 2023, para. 26, Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf

²⁵ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors, June 2023, para. 18, Available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)023-e)

²⁶ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors, June 2023, para. 17, Available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)023-e)

²⁷ CC Decision no. 92 of 25.07.2023, par. 27, Available: <https://constcourt.md/ccdocview.php?tip=decizii&docid=1403&l=ro>



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- With regard to the impact of Article 21 of the Constitution, the Court reiterated that this article is applicable only in the case of criminal proceedings (see *HCC no. 16 of 3 October 2023*, § 29).
 - With regard to Article 22 of the Constitution, the Court notes that it guarantees, in accordance with the provisions of Article 7 of the European Convention on Human Rights, the principle of legality of criminalization and criminal punishment (*nullum crimen, nulla poena sine lege*). Article 22 guarantees, together with Articles 1 para. (3) and 23 para. (2) of the Constitution the standard of quality of substantive criminal law (see *DCC no. 13 of 14 March 2024*, § 18).
 - Finally, because the Venice Commission accepted the changes made, but also because the author of the complaint failed to argue the incidence and relevance of a fundamental right, we consider that a problem of constitutionality has not been identified.
4. Art.17 para. (4) and (5) of Law 65/2023 (**examination by the SCM of the evaluation results**) and art. 18 para. (5) and (6) of Law 252/2023 (**examination by the SCM/CSP of the results of the evaluation**), would be contrary to art. 20, 21, 22, 23, art. 4, art. 1 para. (3), art. 7, art. 53, art. 54 para. (2), art. 116 of the Constitution.
- Regarding the impact of Articles 1 para. (3), 7, 23, and Art. 54 of the Constitution, the Court reiterates that they do not have an applicability in their own right. In order to be applicable, the complainant must demonstrate the existence of interferences with fundamental rights (see *DCC No 43 of 31 March 2022*, § 26; *DCC no. 80 of 17 June 2022*, §§ 22-23; *DCC no. 138 of 29 September 2022*, § 34).
 - With reference to the impact of Article 20, we mention that it cannot be applicable because the contested provision refers to the examination of the results of the evaluation by the Superior Council of Magistracy or by the Superior Council of Prosecutors, but not by the court. However, the interested party may subsequently challenge the decision of the SCM/CSP in judicial order (see art. 19 of Law 282/2023 and art. 18 of Law 65/2023). Thus, there is no causal link between the contested rule and the right of free access to justice, guaranteed by Article 20 of the Constitution.
 - With regard to the impact of Article 21 of the Constitution, the Court reiterated that this article is applicable only in the case of criminal proceedings (see *HCC no. 16 of 3 October 2023*, § 29 and the case-law cited therein).
 - With regard to Article 22 of the Constitution, the Court notes that it guarantees, in accordance with the provisions of Article 7 of the European Convention on Human Rights, the principle of legality of criminalization and criminal punishment (*nullum crimen, nulla poena sine lege*). Article 22 guarantees, together with Articles 1 para. (3) and 23 para. (2) of the Constitution the standard of quality of substantive criminal law (see *DCC no. 13 of 14 March 2024*, § 18).
 - Regarding the incidence of Article 116 of the Constitution, the authors do not bring any argument. In this context, according to Articles 24 para. (2) of the Law on the Constitutional Court and 39 of the Code of Constitutional Jurisdiction, the complaints must be motivated. In similar situations, the Court noted that the mere reference to a



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text of the Constitution, without explaining the alleged non-conformity with it of the challenged legal provisions, does not amount to an argument. If it were to examine such referrals, the Court would replace their authors in formulating criticisms of unconstitutionality, which would amount to an ex officio review (see *DCC No 99 of 10 August 2023*, § 18). Regarding the repeated invocation by the authors of the phrase "serious doubts", we reiterate the arguments invoked in item 4 of the same notification.

- Finally, because the Venice Commission accepted the changes made, but also because the author of the complaint failed to argue the incidence and relevance of a fundamental right, we consider that a problem of constitutionality has not been identified.
5. Art. 18 para. (2¹), item 2; para. (2²) of Law no. 65/2023 and art. 19 para. (5), item 2 of Law no. 252 (**SCJ powers**) would be contrary to art. 20, art. 4, art. 53 and 54 para. (2) of the Constitution.
- With regard to the incidence of Articles 4 and 54 of the Constitution, the Court reiterates that they are not applicable in their own right. In order to be applicable, the complainant must demonstrate the existence of interferences with fundamental rights (see *DCC No 43 of 31 March 2022*, § 26; *DCC no. 80 of 17 June 2022*, §§ 22-23; *DCC no. 138 of 29 September 2022*, § 34).
 - In one of its opinions, the Venice Commission recommended that the Supreme Court of Justice should be able to make a final decision in a case regarding the dismissal of a judge or prosecutor, and not just refer the case to the SCM/CSP or the Evaluation Commission.²⁸ In its opinion of June 2023, the Venice Commission accepted the changes made.²⁹
 - At the same time, the arguments put forward by the authors regarding the alleged limitation of access to administrative justice are not confirmed. According to the contested provisions, the Supreme Court of Justice examines both in law (serious procedural errors) and in fact (the factual circumstances that could have led to the promotion or non-promotion of the evaluation). In accordance with the recommendations of the Venice Commission, the Supreme Court of Justice has the capacity to remedy, but also retains the constitutional role of the SCM/CSP as the main decision-making factor.³⁰
 - Finally, because the Venice Commission accepted the changes made, but also because the author of the complaint failed to argue the incidence and relevance of a fundamental right, we consider that a problem of constitutionality has not been identified.

²⁸ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors, March 2023, para. 100, Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf

²⁹ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors, June 2023, para. 26, Available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)023-e)

³⁰ Joint Opinion of the Venice Commission and the Directorate-General for Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on the external evaluation of judges and prosecutors, March 2023, para. 99, Available: https://constcourt.md/public/files/file/comisia_venetia/2023/CDL-AD2023005.pdf



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6. Art. 3 para. (2) letter b) and para. (3) of Law 65/2023 and art. 3 para. (2) letter c), para. (4) Law 252/2023 (**subjects who are not subject to evaluation**) would be contrary to art. 1 para. (3), art. 4, art. 6, art. 20, art. 116 para. (1) of the Constitution.
- Regarding the impact of Articles 1 para. (3), 4 of the Constitution, the Court reiterates that they do not have an applicability in their own right. In order to be applicable, the complainant must demonstrate the existence of interferences with fundamental rights (see *DCC No 43 of 31 March 2022*, § 26; *DCC no. 80 of 17 June 2022*, §§ 22-23; *DCC no. 138 of 29 September 2022*, § 34).
 - Analyzing the authors' arguments, we note that they do not mention the incidence of the invoked articles regarding the contested provisions. Rather, it is a general analysis/assessment of a hidden purpose of the judges' evaluation mechanism. In this context, we reiterate that according to Articles 24 para. (2) of the Law on the Constitutional Court and 39 of the Code of Constitutional Jurisdiction, the complaints must be motivated. In similar situations, the Court noted that the mere reference to a text of the Constitution, without explaining the alleged non-conformity with it of the challenged legal provisions, does not amount to an argument. If it were to examine such referrals, the Court would replace their authors in formulating criticisms of unconstitutionality, which would amount to an ex officio review (see *DCC No 99 of 10 August 2023*, § 18).



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CONCLUSIONS

The authors of the 2 notifications invoked the alleged unconstitutionality of over 17 provisions, in some cases entire articles, of Law no. 252/2023 and Law no. 65/2023.

We note that objections of unconstitutionality have been raised regarding the most important aspects of the extraordinary evaluation of judges and prosecutors, in particular:

- the status and independence of the Evaluation Committees;
- the types of grounds for the extraordinary assessment ('serious doubts', 'arbitrariness', proportionality of the sanction);
- the procedure before the Evaluation Commission and the two Councils (SCM and CSP);
- jurisdiction of the Supreme Court of Justice.

Because both laws have been examined and expertized by the Venice Commission, its findings and recommendations have been taken into account in this opinion:

- The provisions of draft law 252/2023 have been examined and expertized by the Venice Commission and the Directorate General for Human Rights and the Rule of Law (DGI) at least 3 times ([March](#), [June](#) and [October](#) 2023).
- The provisions of draft law 65/2023 were examined and expertized twice, in [October](#) and [December](#) 2022.

International human rights standards were also taken into account, as well as the relevant findings of the Constitutional Court.

As a result of the analysis of the 2 notifications, we find that the provisions of Law no. 252/2023 and the provisions of Law no. 65/2023 largely correspond to the findings and recommendations of the Venice Commission. The arguments of the authors of the complaints are not able to convince on the existence of the problems of unconstitutionality, being rather observed a problem of interpretation and application of the contested provisions, an exercise that exceeds the competences of the Constitutional Court.