

LAW
on the selection, performance evaluation and career of judges

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**Title I
CANDIDATE SELECTION AND CAREER OF JUDGES**

**Chapter 1
GENERAL PROVISIONS**

Article 1. Selection of candidates for judge position and career of judges

Article 2. Criteria of selection, transfer and appointment as court chair or deputy chair and promotion in positions

Parliament adopts this organic law.

**Title I
CANDIDATE SELECTION AND CAREER OF JUDGES**

**Chapter 1
GENERAL PROVISIONS**

Article 1. Selection of candidates for judge position and career of judges

(1) Regulation of the procedure for selection of candidates for judge position aims at ensuring an objective, impartial and transparent selection process to ensure the selection of the best candidates for the job.

(2) Career of judge involves his/her promotion to judge office in a superior court, his/her appointment as court chair or deputy chair, as well as judge's transfer to a court of the same level or a lower court.

Article 2. Criteria of selection, transfer and appointment as court chair or deputy chair and promotion in positions

(1) Selection of candidates for the position of judge, promotion to the judge position in superior court judge, appointed as court chair or deputy chair, as well as judge's transfer to a court of the same level or a lower court is carried out by the Board for the selection and career of judges (hereinafter – *Selection Board*), on the basis of clear, transparent, objective criteria that are based on merit.

(2) During the process of selection of candidates for judge position, for promotion in judge position in superior court, for appointment as court chair or deputy chair and judge's transfer to a court of the same level or a lower court, the following basic criteria will be taken into account:

- a) the knowledge level and professional skills;
- b) ability to apply knowledge into practice;
- c) length of experience as judge or other legal professions;
- d) qualitative and quantitative indicators of work undertaken as judge or, where appropriate, other legal professions;
- e) ethical standards;
- f) teaching and scientific activity.

(3) The regulations of the Superior Council of Magistracy set out in detail the procedure and criteria:

- a) for selection of candidates for judge position;
- b) for promotion in judge position in superior court;
- c) for appointment as court chair or deputy chair;

d) for judge's transfer to a court of the same level or a lower court.

(4) Regulations of the Superior Council of Magistracy referred to in para. (3) shall be published in the Official Gazette of the Republic of Moldova and on the website of the Superior Council of Magistracy.

Chapter 2 SELECTION BOARD

Article 3. Composition and length of the term of office

(1) Selection Board is established in subordination to the Superior Council of Magistracy and aims to ensure the selection of candidates for judge position, promotion of judges to higher courts, appointment of judges as court chair or deputy chair, as well as the judge's transfer to courts of the same level or lower courts.

(2) Selection Board shall work in the following composition:

a) 4 judges from the courts of all levels, as follows: 2 judges from the Supreme Court, 1 judge from the courts of appeal and 1 judge from courts;

b) 3 representatives of civil society.

(3) Member judges of the Selection Board maintain their salary at their work place, but having a reduced workload depending on work tasks within the Selection Board. Board members from among civil society benefit, for each meeting attended, of an allowance equivalent to one twentieth (1/20) of the salary of a judge from the Supreme Court.

(4) The term of office of members of the Selection Board is 4 years. A member of the Board cannot be elected or appointed for 2 consecutive terms.

Article 4. Election and appointment of members of the Selection Board

(1) Members of the Selection Board from among judges are elected by the General Assembly of Judges.

(2) Members of the Selection Board from among civil society representatives are appointed by the Superior Council of Magistracy, being selected through public competition, organized by the Council.

(3) Members of the Selection Board from among civil society must have an impeccable reputation and good standing in society. To verify these qualities, the information about the candidates proposed for appointment will be published on the website of the Superior Council of Magistracy.

(4) Members of the Selection Board from among civil society representatives are obliged to comply with the restrictions specified in Article 8 para. (1) let. b) and c) and para. (3) of the Law on the Status of Judges.

(5) If a member of the Selection Board is not able to exercise his/her functions, the body that elected or appointed him/her shall ensure, within 30 days, the election or appointment of a new member of the Board for the remaining term.

(6) Members of the Superior Council of Magistracy, members of the Disciplinary Board, members of the Judicial Evaluation Board and inspection-judges may not be elected in the composition of the Selection Board.

Article 5. Competence of the Selection Board

(1) Selection Board shall:

a) examine the dossiers of candidates for judge position, documents submitted by candidates and those concerning the candidates;

b) examine the dossiers and documents submitted by judges seeking promotion to higher court, appointment as court chair or deputy chair, transfer to a court of the same level or a lower court, as well as documents relating to judges concerned;

c) organize and conduct interviews with the candidates for judge position, with judges seeking promotion to a higher court, with those seeking appointment as court chair or deputy chair, as well as with those seeking transfer to a court of the same level or a lower court;

d) provide scoring to candidates for judge position according to selection criteria;

e) provide scoring to judges seeking promotion to a higher court, according to appropriate criteria for promotion;

f) provide scoring to judges seeking appointment as court chair or deputy chair, according to the appropriate criteria for appointment;

g) provide scoring to judges seeking transfer to a court of the same level or a lower court, according to the appropriate transfer criteria;

h) adopt reasoned decisions on acceptance or rejection of candidates for the position of judge, on the promotion of judges to superior court, on appointment of judges as court chair or deputy chair, as well as on transfer of judges to a court of the same level or a lower court and shall submit them to the Superior Council of Magistracy for examination on the day after the deadline for appealing the decisions.

(2) In process of selecting the candidates for the appointment, for the first time, as judges, the Selection Board will necessarily consider the results of the exam taken before the Graduation Commission of the National Institute of Justice.

(3) In process of selecting the judges for promotion to a higher court, appointment as court chair or deputy chair or transfer to a court of the same level or to a lower court, the Selection Board will necessarily consider decisions taken by the Board on judges' performance evaluation.

Article 6. Chairperson of the Selection Board

(1) The Chair of the Selection Board shall be elected by open vote at the first meeting of the Board. The candidate who accumulated the majority of votes of the elected / appointed Board members shall be considered as elected.

(2) The Chairperson of the Selection Board shall:

- a) organize the Board's activity, distribute duties among its members;
- b) preside over meetings of the Board;
- c) convene meetings of the Board;
- d) sign the decisions and minutes of Board meetings;
- e) reads the decisions of the Board;
- f) resolve other issues related to the Board's activity.

(3) In case of vacancy of the Chairperson position or in the temporary absence of the Chairperson, his/her powers are exercised by the eldest member of the Selection Board.

Article 7. Rights and obligations of members of the Selection Board

(1) Members of the Selection Board are entitled to receive beforehand the material submitted to the Board for examination and study.

(2) Members of the Selection Board are obliged:

- a) to exercise their powers under the law;
- b) at the request of the Board Chair, to prepare the necessary materials for the meeting;
- c) to vote for or against on the issues included on the meeting agenda and to motivate their option;
- d) in case of disagreement with the Board decision, to motivate their option.

Article 8. Recusal and abstention

(1) A member of the Selection Board must state that s/he refrains from participation in Board's activity where this may cause doubts on the objectivity and impartiality of his/her decisions. For the same reasons, the person whose case is examined may request recusal of a member of the Selection Board.

(2) The recusal or abstention shall be grounded and exposed in writing prior to the examination of the candidate.

(3) Decision on recusal or abstention shall be adopted by the majority vote of the Board members present at the meeting and in the absence of the member whose recusal or abstention is being settled.

Article 9. Meetings of the Selection Board

(1) Selection Board shall be convened in meetings whenever is needed.

(2) Meetings of the Selection Board are public, they are deliberative if attended by at least 5 members.

(3) Selection Board shall examine within a month the materials submitted by the Secretariat of the Superior Council of Magistracy.

(4) Selection Board shall be governed by a Regulation approved by the Superior Council of Magistracy.

(5) Proceedings of the meetings of the Selection Board shall be registered in the minutes and audio recorded. Audio recording of the meeting shall be attached to the minutes. The minutes shall be made within 3 working days and signed by the meeting's chair and secretary.

Article 10. Adoption of decisions

(1) Decisions of the Selection Board shall be adopted by open vote of the majority of elected / appointed Board members, in the absence of those invited to the meeting, as well as in the absence of the person whose candidacy is examined .

(2) If the Selection Board examines in a sitting the candidacy of a Board member in order to appoint to the office of judge, to promote to a higher court, to appoint as court chair or deputy chair or to transfer to a court of the same level or a lower court, that person shall not attend the examination.

(3) Decisions of the Selection Board shall be issued in writing and must be motivated. If a member of the Board has a dissenting opinion to the decision issued, s/he expresses it in writing, stating the reasons, the document being attached to the dossier. Decisions shall be signed by the Board chairperson and members who attended the meeting. Board's decision shall be published on the website of the Superior Council of Magistracy within 5 working days from the date of adoption.

(4) The scanned copy of the original decision shall be sent by electronic mail to the person whose candidacy was examined the day after the adoption of decision.

Article 11. Challenging the decisions of the Selection Board

Decisions of the Selection Board can be appealed with the Superior Council of Magistracy, through the Board, within 10 working days from the date of their adoption, by the people on whom the Board adopted the decisions and only referring to the procedure of issuing and adoption.

Title II
PERFORMANCE EVALUATION OF JUDGES

Chapter 1
MAIN PROVISIONS

Article 12. The purpose and results of judicial performance evaluation

(1) The performance of judges shall be evaluated by the Board for judges' performance evaluation (hereinafter – *Evaluation Board*), the evaluation aiming at determining the knowledge and professional skills of judges, as well as the ability to apply theoretical knowledge and necessary skills in practice of the profession of judge, determining weak and strong aspects in the work of judges, boosting the trend of improving professional skills and increasing the efficiency of individual judges and at court level.

(2) Judicial performance evaluation results are used to:

- a) organize appropriate professional training of judges (setting directions for professional training, development and improvement of continuous training programs for judges, selection of the training forms);
- b) determine objectively the degree of judges' compliance to the position they hold or apply during their career;
- c) ensure an objective comparison between several judges for promotion;
- d) stimulate judges to improve their level of training and professional skills;
- e) improve court administration;
- f) formulate proposals for granting the qualification degree for judges.

Article 13. Forms of judicial performance evaluation

(1) The evaluation of judges' performance shall be conducted in two forms:

- a) regular evaluation;
- b) extraordinary evaluation.

(2) A judge is subject to regular performance evaluation every 3 years. If s/he is granted the qualificative "insufficient", the judge shall be subject to extraordinary evaluation within the deadline set by Evaluation

Board. Granting the qualificative "insufficient" in two consecutive extraordinary evaluations constitute a ground for the Superior Council of Magistracy to initiate the procedure for dismissing the judge.

(3) A judge shall be subject to extraordinary performance evaluation either on his/her own initiative or when s/he gets the qualificative "insufficient" in regular evaluation.

(4) A judge shall be subject to extraordinary evaluation also in the case when s/he is:

- a) appointed till age-limit;
- b) promoted to a higher court;
- c) appointed as court chair or deputy chair;
- d) transferred to a court of the same level or a lower court.

(5) In the cases under par. (4) let.b)-d), the extraordinary evaluation shall not be carried out if during the last 2 years the judge was subject to regular evaluation.

(6) The judge's performance evaluation is initiated:

a) by the chair of the court in which the judge who is to undergo evaluation works - in the cases under para. (2);

b) by the judge requesting the performance evaluation, or by members of the Superior Council of Magistracy, ex officio or at the proposal of the judicial inspector, or by the court chair - in cases under para. (3);

c) by members of the Superior Council of Magistracy or by the chair of the court in which the judge works, indicating the reasons why the evaluation is necessary - in the cases under para. (4).

Article 14. Judicial performance evaluation procedure

(1) The purpose of the judicial performance evaluation is to make a complex analysis of professional activity and personal qualities of judges, to improve their professional performance, to increase efficiency of courts and public confidence in the judiciary, to maintain and strengthen the qualities of judicial system.

(2) The procedure and detailed criteria for judicial performance evaluation are established by the regulation of the Superior Council of Magistracy, which shall be published in the Official Gazette of the Republic of Moldova and on Council's website.

(3) The procedure of judicial performance evaluation must observe the principle of legal correctness, the principle of legitimate expectations and other fundamental principles, to create conditions for an objective and multidimensional evaluation of judges' professional activity. The legal framework on performance evaluation of judges shall provide expressly and in details:

- a) limits of extending the judicial performance evaluation process;
- b) methodology, procedure and duration of judicial performance evaluation;
- c) evaluation criteria and performance indicators of judges; activity;
- d) sources of information and means of collecting information needed for judicial performance evaluation.

Chapter 2 EVALUATION BOARD

Article 15. Composition and length of the term of office

(1) Evaluation Board is established under the Superior Council of Magistracy and aims to ensure the performance evaluation of judges.

(2) Evaluation Board operates in the following composition:

- a) 5 judges of the courts of all levels, as follows: 2 judges from the Supreme Court, 2 judges of the courts of appeal and 1 from courts;
- b) 2 representatives of civil society.

(3) Member judges of the Evaluation Board maintain their salary at their work place, but having a reduced workload depending on work tasks within the Board. Board members from among civil society benefit, for each meeting attended, of an allowance equivalent to one twentieth (1/20) of the salary of a judge from the Supreme Court.

(4) The term of office of members of the Evaluation Board is 4 years. A member of the Board cannot be appointed for 2 consecutive terms.

Article 16. Election and appointment of members of the Evaluation Board

(1) Members of the Evaluation Board from among judges are elected / appointed as follows:

- a) 3 are elected by the General Assembly of Judges;
- b) 2 are appointed by the Superior Council of Magistracy.

(2) Members of the Evaluation Board from among civil society representatives are appointed by the Superior Council of Magistracy, being selected through public competition, organized by the Council.

(3) Members of the Evaluation Board from among civil society must have an impeccable reputation and good standing in society. To verify these qualities, the information about the candidates proposed for appointment will be published on the website of the Superior Council of Magistracy.

(4) Members of the Evaluation Board from among civil society representatives are obliged to comply with the restrictions specified in Article 8 para. (1) let. b) and c) and para. (3) of the Law on the Status of Judges.

(5) If a member of the Evaluation Board is not able to exercise his/her functions, the body that elected or appointed him/her shall ensure, within 30 days, the election or appointment of a new member of the Board for the remaining term.

(6) Members of the Superior Council of Magistracy, members of the Disciplinary Board, members of the Judicial Evaluation Board and inspection-judges may not be elected in the composition of the Evaluation Board.

Article 17. Competence of the Evaluation Board

(1) Evaluation Board shall:

- a) examine the dossiers of judges subjected to evaluation, documents submitted by candidates and those concerning the candidates;
- b) organize and conduct interviews with the judges subjected to evaluation;
- c) adopt decisions on judges subjected to evaluation;
- d) nominate the Board members responsible for observation over the activity of evaluated judges in the court hearings;
- e) provide the Selection Board with the decisions on judges subjected to evaluation in the cases provided for in Article 5 para. (3).

(2) In the process of judicial performance evaluation, the Evaluation Board should be objective, to observe the principles of fairness and reasonableness and take grounded decisions.

Article 18. Chairperson of the Evaluation Board

(1) The Chair of the Evaluation Board shall be elected by open vote at the first meeting of the Board. The candidate who accumulated the majority of votes of the elected / appointed Board members shall be considered as elected.

(2) The Chairperson of the Evaluation Board shall:

- a) organize the Board's activity, distribute duties among its members;
- b) preside over meetings of the Board;
- c) convene meetings of the Board;
- d) sign the decisions and minutes of Board meetings;
- e) reads the decisions of the Board;
- f) resolve other issues related to the Board's activity.

(3) In case of vacancy of the Chairperson position or in the temporary absence of the Chairperson, his/her powers are exercised by the eldest member of the Evaluation Board.

Article 19. Rights and obligations of members of the Evaluation Board

(1) Members of the Evaluation Board are entitled to receive beforehand the material submitted to the Board for examination and study.

(2) Members of the Evaluation Board are obliged:

- a) to exercise their powers under the law;
- b) at the request of the Board Chair, to prepare the necessary materials for the meeting;
- c) to vote for or against on the issues included on the meeting agenda and to motivate their option;

d) in case of disagreement with the Board decision, to motivate their option.

Article 20. Recusal and abstention

(1) A member of the Evaluation Board must state that s/he refrains from participation in Board's activity where this may cause doubts on the objectivity and impartiality of his/her decisions. For the same reasons, the judges subjected to evaluation may request recusal of a member of the Evaluation Board.

(2) The recusal or abstention shall be grounded and exposed in writing prior to the examination of the candidate's dossier.

(3) Decision on recusal or abstention shall be adopted by the majority vote of the Board members present at the meeting and in the absence of the member whose recusal or abstention is being settled.

Article 21. Meetings of the Evaluation Board

(1) Evaluation Board shall be convened in meetings whenever is needed.

(2) Meetings of the Evaluation Board are public, they are deliberative if attended by at least 5 members. The Board meetings shall be obligatory attended by judges to be evaluated, and they also may be attended by the persons who requested the initiation of the judicial performance evaluation procedure.

(3) Evaluation Board shall examine within a month the materials submitted by the Secretariat of the Superior Council of Magistracy.

(4) Evaluation Board shall be governed by a Regulation approved by the Superior Council of Magistracy.

(5) Proceedings of the meetings of the Evaluation Board shall be registered in the minutes and audio recorded. Audio recording of the meeting shall be attached to the minutes. The minutes shall be made within 3 working days and signed by the meeting's chair and secretary.

Article 22. Adoption of decisions

(1) Decisions of the Evaluation Board shall be adopted by open vote of the majority of elected / appointed Board members, in the absence of those invited to the meeting, as well as in the absence of the evaluated judge.

(2) If the Evaluation Board subjects to evaluation a Board member, s/he shall not participate in examination of that issue on the meeting's agenda.

(3) Decisions of the Evaluation Board should include:

a) description of the judge's work during the period under evaluation;

b) professional, administrative or organizational shortcomings in the activity of the judge if they exist, and Board's recommendations on avoiding or excluding these deficiencies;

c) any other information that is important in the opinion of the Board.

(4) Decisions of the Evaluation Board shall be issued in writing and must be motivated. If a member of the Board has a dissenting opinion to the decision issued, s/he expresses it in writing, stating the reasons, the document being attached to the dossier. Decisions shall be signed by the Board chairperson and members who attended the meeting. Evaluation Board's decision shall be transmitted to the Superior Council of Magistracy and, where appropriate, to the Selection Board the day after the expiry of the decisions' contestation deadline. Board's decision shall be published on the website of the Superior Council of Magistracy within 5 working days from the date of adoption.

(5) The scanned copy of the original decision shall be sent by electronic mail to the person who was subjected to evaluation the day after the adoption of decision.

Article 23. Decision on performance evaluation

(1) Following the judge's performance evaluation, the Evaluation Board shall take, as appropriate, one of the following decisions:

a) decision on passing the performance evaluation, granting one of the qualificatives: "insufficient", "good", "very good" or "excellent";

b) the decision on the failure of performance evaluation.

(2) The decision of the failure of judge's performance evaluation or, as appropriate, of the court' chair / deputy chair shall be adopted by the Evaluation Board when:

- a) an obvious judge's mismatch with the position held is found;
- b) court's chair / deputy chair fulfils improperly the management functions.

(3) If circumstances under para. (2) let. a) and b) are found, the decisions of Evaluation Board constitute a ground for the Superior Council of Magistracy to initiate the procedure of dismissing the person for judge office or from the office or court; chair / deputy chair.

(4) When certain grounds for disciplinary sanctions against judge evaluated are identified, the Evaluation Board shall postpone the evaluation procedure of the judge concerned and notify the Superior Council of Magistracy to examine the opportunity of initiating the disciplinary proceedings. Judge's performance evaluation procedure shall be resumed after receiving a response from the Superior Council of Magistracy on refusal to initiate disciplinary proceedings or, where appropriate, after completion of disciplinary proceedings against the evaluated judge, except for the case when the judge concerned is dismissed from office.

Article 24. Challenging the decisions of Evaluation Board

Decisions of the Evaluation Board can be appealed with the Superior Council of Magistracy, through the Board, within 10 working days from the date of their adoption, by the judges on whom the Board adopted the decisions and only referring to the procedure of issuing and adoption.

Title III

**ENSURING THE ACTIVITY OF BOTH
THE SELECTION BOARD AND THE EVALUATION BOARD**

Article 25. Ensuring the activity of both the Selection Board and the Evaluation Board

(1) In order to exercise their duties, the Selection Board and the Evaluation Board have the right to request from the court chairs, the Ministry of Justice, other public authorities, legal persons under public or private law any necessary documents and information.

(2) Court chairs, Ministry of Justice, public authorities, legal persons under public or private law are obliged to provide the selection and evaluation boards, within the deadline set by them, with the documents and information requested. Selection and evaluation boards are obliged to observe the confidentiality of documents and information, under the law.

(3) The material and technical basis of the selection and evaluation boards shall be provided by the Superior Council of Magistracy.

Article 26. The secretarial activity

(1) The work of the Secretariat of both the Selection Board and the Evaluation Board shall be accomplished by employees of the Secretariat of the Superior Council of Magistracy.

(2) The Secretaries of both the Selection Board and the Evaluation Board shall be appointed from among the employees of the Secretariat of the Superior Council of Magistracy by the Head of the Secretariat.

Article 27. Information on the activity of both the Selection Board and the Evaluation Board

Selection Board and Evaluation Board shall present annually to the Council of Magistrates the information on activities fulfilled, that are subsequently published on its website.

Title IV

FINAL PROVISIONS

Article 28.

This Law shall enter into force on the expiry of 3 months from the date of publication.

Article 29.

Upon entry into force of this Law, the following shall be repealed:

Law no.949-XIII of 19 July 1996 on the Board for qualification and attestation of judges (republished in the Official Gazette of the Republic of Moldova, 2003, no.170-172, art.693);

Article IV of the Law no.247-XVI of 21 July 2006 on amending and supplementing some legislative acts (Official Gazette of the Republic of Moldova, 2006, no.174-177, art.796);

Article V of the Law no.306-XVI of 25 December 2008 on amending and supplementing some legislative acts (Official Gazette of the Republic of Moldova, 2009, no.30-33, Article 77).

Article 30.

(1) Before the entry into force of this law, the Superior Council of Magistracy shall:

- a) adopt the legal acts provided for in this Law;
- b) bring its legal acts in conformity with this Law.

(2) The Board for selection and career of judges and the Judicial Performance Evaluation Board shall be established within 3 months from the date of publication of this Law.

(3) Upon entry into force of this Law, the Qualification Board shall terminate its activity and shall be de jure dissolved.

(4) Within 2 years of the entry into force of this Law, judges of all courts shall be subject to performance evaluation under this Law, according to a schedule approved by the Superior Council of Magistracy.

SPEAKER OF PARLIAMENT

Marian LUPU

Chişinău, July 5, 2012.

No.154.