



Office for Democratic Institutions and Human Rights

**REPORT ON THE EVALUATION (PRE-VETTING) OF
CANDIDATES FOR MEMBERS OF THE SUPERIOR COUNCIL
OF MAGISTRACY IN MOLDOVA**

1 JUNE 2022 – 1 August 2023

OSCE/ODIHR Report



Warsaw

Table of Contents

| | |
|---|----|
| 1. INTRODUCTION..... | 3 |
| 2. EXECUTIVE SUMMARY | 4 |
| 3. KEY RECOMMENDATIONS:..... | 7 |
| 4. BACKGROUND..... | 10 |
| 5. LEGAL FRAMEWORK..... | 11 |
| 6. FORMATION AND FUNCTIONING OF THE EVALUATION COMMISSION | 13 |
| 7. RULES OF PROCEDURE AND EVALUATION RULES | 17 |
| 8. TRANSPARENCY AND MONITORING..... | 19 |
| 9. CANDIDATE RECRUITMENT AND POOLS | 22 |
| 10. INFORMATION COLLECTION AND VERIFICATION | 24 |
| 11. CANDIDATE HEARINGS | 27 |
| 12. EVALUATION DECISIONS | 30 |
| 13. LEGAL REMEDY..... | 31 |
| 14. ELECTION AND APPOINTMENT OF SCM MEMBERS | 35 |

1. INTRODUCTION

1. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) provides support, assistance and expertise to participating States and civil society to promote democracy, rule of law, human rights and tolerance and non-discrimination. OSCE participating States have committed to ensuring judicial independence as a “*prerequisite to the rule of law and [...] a fundamental guarantee of a fair trial.*”¹ The establishment of credible processes for selection of members of self-administration bodies of judges and prosecutors is a fundamental component of judicial independence.
2. In line with ODIHR’s mandate to support participating States to strengthen rule of law, including judicial independence, on 4 April 2022, the People’s Advocate (Ombudsperson) of the Republic of Moldova requested ODIHR to monitor the newly established process for evaluation of candidates for membership on the Superior Council of Magistracy (SCM) and Superior Council of Prosecutors (SCP) and their specialized boards, and to provide a legal opinion on the legislation regulating this process.
3. ODIHR’s legal opinion (“ODHIR Opinion”) on the applicable legal framework was published on 28 September 2022.² It provides an assessment of the compliance of the legislation and regulations governing the evaluation process with international standards and OSCE commitments and notes some shortcomings and related recommendations. The assessment serves as a basis for ODIHR’s monitoring of the implementation of the current evaluation process, while the recommendations can inform possible future legislative initiatives for the broader evaluation or vetting of judges and prosecutors.
4. The ODIHR monitoring team, comprising of two national monitors and one international monitor, began its work on 1 June 2022, including monitoring all SCM candidate hearings before the *ad hoc* Independent Evaluation Commission (“the Commission”). Monitors strictly adhere to well-established OSCE/ODIHR monitoring principles of non-interference, impartiality, objectivity, confidentiality and professionalism. The Commission has facilitated the unhindered access of ODIHR monitors to follow the process to date.
5. The objective of ODIHR’s monitoring was to assess the transparency and fairness of the process of evaluation of integrity of candidates to the SCM. This report presents an independent assessment of the process of evaluation and election of the judge and layperson candidates for membership on the SCM and its compliance with OSCE commitments, international standards and guiding principles of judicial independence, as well as domestic legislation. Overall, ODIHR has monitored 29 hearings in respect of 22 judge candidates (eight women and 14 men) and seven layperson candidates (three women and four men). All of the judge candidates and all of the layperson candidates who did not pass the evaluation after being heard by the Commission, appealed the decision to the Supreme Court of Justice. On 1 August 2023, with considerable delay,

¹ See the [Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe](#) (Vienna Document, 1989), the [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#) (Copenhagen Document, 1990), [Charter of Paris for a New Europe](#) (Paris, 1990), [Document of the Moscow Meeting of the Third Conference on the Human Dimension of the CSCE, Moscow](#) (Moscow Document, 1991), and the [Brussels Declaration on Criminal Justice Systems](#) (MC.DOC/4/06 of 5 December 2006).

² [Opinion](#) on the Law on some Measures Related to the Selection of Candidates for the Positions of Members in the Self-Administration Bodies of Judges and Prosecutors, Moldova, OSCE Office for Democratic Institutions and Human Rights, 28 September 2022 (“ODIHR Opinion”).

the Supreme Court of Justice cancelled 18 decisions of the Evaluation Commission in respect of 14 judge and four layperson candidates to the SCM, ordering the Commission to re-evaluate their integrity.

6. This report covers the period from 1 June 2022 to 1 August 2023. The report includes recommendations that may serve to inform future external evaluation and vetting processes for judges and prosecutors in Moldova. In the process of finalizing this report, in accordance with the established methodology, ODIHR conducted consultations with Moldovan authorities in July and September 2023, soliciting comments from the Office of the People’s Advocate of Moldova and stakeholders responsible for the pre- vetting process with regard to the factual inaccuracies and errors contained in the report. ODIHR may complement the current report with additional analysis reflecting on the on subsequent developments in the process of evaluation of integrity of candidates to the SCM.
7. While there may be weighty public policy reasons for extraordinary evaluation or vetting given the potential damage to the independence and credibility of the justice system, vetting of sitting judges and prosecutors should be undertaken only when there is undisputable evidence that the situation cannot be remedied through ordinary accountability mechanisms, and on the proviso that such decision comes with broad political consensus, and solid procedural guarantees of fairness to avoid abuse. Vetting, due to its extraordinary nature, should only be undertaken once and should not be maintained as a permanent (or re-occurring) measure.

2. EXECUTIVE SUMMARY

8. In 2022, the Government of Moldova initiated a reform process aiming to evaluate all candidates for existing vacancies on the self-administration bodies for judges and prosecutors³ – SCM and SCP – and their specialized boards, as a first step toward systemic judicial reform to alleviate corruption in the justice system (so-called “pre-vetting”).⁴ The pre-vetting was done by an *ad hoc* Evaluation Commission comprised of national and international members. On 10 March 2022, the parliament adopted a law on assessing the financial and ethical integrity of candidates for self-governing bodies of judges and prosecutors (“pre-vetting law” or “the Law”⁵), which was the subject of an ODIHR Opinion.
9. Broad public consultations preceded the adoption of the Law, with CSOs as well as other relevant stakeholders included from the outset in the development of this key legislation. Nevertheless, the adoption of the Law did not include support of the political opposition.
10. ODIHR’s Opinion included a set of recommendations to bring the Law further in line with relevant international standards and good practice. Although the Commission developed its own internal

³ There are currently some 400 judges and 700 prosecutors in Moldova.

⁴ The Constitution establishes the SCM as the guarantor of independence of the judiciary (Article 121). According to Articles 123 and 125 of the Constitution, the SCM and SCP, respectively, have competence to decide on the appointment, transfer, removal from office, upgrading and imposing of disciplinary sentences against judges and prosecutors. Under the ordinary system for filling vacancies on these bodies, judge, prosecutor, and layperson candidates have to meet minimum eligibility requirements but are not otherwise required to be evaluated on competence, professionalism, or integrity prior to their selection for the post.

⁵ The full name of the law is Law of the Republic of Moldova “On some measures related to the selection of candidates for the position of members in the self-administration bodies of judges and prosecutors.”

regulations as prescribed by the Law, a number of gaps in the legislation still remained, including provisions that do not adequately elaborate the evaluation criteria.

11. The Law underwent amendments while the evaluation process was ongoing, such as amendments related to the candidates' right to provide additional information during the hearings. While this did not in practice affect the evaluation of most judge candidates, making such changes to the legislative rules in the midst of the evaluation of the candidates challenged the legal certainty of the process and has the potential of impacting the fairness of the process for all candidates. Out of 18 appeals of the rejected SCM judge candidates, 16 claimed the unconstitutionality of a provision introduced in the midst of the procedure that significantly narrowed the powers of the Supreme Court to overturn the Evaluation Commission's decisions. The Constitutional Court of the Republic of Moldova (the Constitutional Court) held that the provisions introduced did not guarantee sufficient review because they did not allow overturning of the Commission's decisions on grounds of serious procedural flaws affecting the fairness of the evaluation process, thus declaring relevant norms unconstitutional.
12. The Evaluation Commission was established in accordance with the Law, including an equal representation of national and international members; four out of six members were women. Positively, the three national members of the Commission voted for by the parliament enjoyed cross party support. However, civil society was not consulted in the nomination and appointment processes and full transparency was not offered, particularly in the selection of the international members. Moreover, the legislation does not envisage measures to ensure diversity among the members of the Commission.
13. The Commission approached the questioning of candidates at hearings in a consistent and systematic manner. The majority of issues examined concerned financial integrity with relatively few on ethical conduct. The candidates were largely treated in an impartial and fair way, meeting key international standards for such an evaluation process. The candidates were given access to the evaluation materials in advance of the hearings, and could also request clarifications, which was a positive measure. However, the nature of the issues that the Commission members tried to clarify through their questions was not always obvious and may have confused candidates, limiting their ability to effectively respond, some claiming unfair treatment.
14. With regard to transparency, ODIHR monitors identified two areas which would benefit from further improvement: enhancing the rules regulating procedure and decision-making process, which may potentially impact the outcome of the evaluation, and developing the policies aimed at better informing the public about the evaluation process and thus enhancing transparency and credibility of the reform. It should be noted that, positively, the Commission provided information to the public through various channels, including social media and its website. However, it did not provide public updates during the few months of collecting and verifying information (except brief information published prior to each hearing), which limited public's access to information with regard to the pre-hearing process. As per the Law, the Commission met in closed meetings, except for public hearings of the candidates, without providing the public with information about the nature and the outcome of such meetings. Publishing decisions and relevant conclusions from the meetings, or informing periodically the public about the ongoing work, would have benefitted the

transparency of the pre-hearing phase. As a positive measure, the Commission uploaded recordings of the hearings on its YouTube channel.

15. As a positive measure, the Law provides for confidentiality and security of personal data collected and Commission members were careful not to disclose data such as bank account numbers and real estate addresses. The Law does not, however, offer clear guidance on how to strike a balance between the private interest of a candidate and the public interest in a transparent evaluation process. Measures to limit the sources from which the information is obtained, as well as sanctions for possible violations of privacy are not provided. Furthermore, the Law and regulations of the Commission do not provide a solid legal basis for the protection of privacy of the evaluated candidates.
16. The work of the Commission suffered from significant delays resulting from unrealistic deadlines as established by the Law. Quite possibly, the Commission's ability to undertake its mandate in a timely and efficient manner was also affected by initial faulty estimates of the adequacy of staffing needs. In its Opinion, ODIHR indicated the need to allocate sufficient time, and recommended that the Commission should be provided with an opportunity to extend the time-limit for the collection and verification of information on the candidates, when necessary.⁶
17. As noted in the ODIHR Opinion⁷, the Rules of Procedure require the member of the Evaluation Commission, whose recusal is being considered by the Commission, to participate in the decision on recusal of a candidate and to vote on the respective evaluation decision in case a quorum cannot be met, which may raise questions regarding the integrity of the process. Moreover, the handling of self-recusals and recusal requests lacked transparency, with only the fact of recusals made public. The reasons for recusals decisions and the fact of turning down of recusal requests were not disclosed.
18. Overall, the hearing process was conducted in a peaceful and orderly manner despite occasional tense exchanges. However, the procedural rules lacked sufficient details regarding the format and conduct of the hearing process. Members of the Commission were generally well-prepared on the matters on which the candidates were questioned and the candidates were given ample opportunity to respond and to add anything before the questioning moved on to a new issue. However, ODIHR monitoring identified that one candidate was denied a hearing for not having provided earlier the requested information. The lack of publicly available written justification for such a decision raised questions with respect to the candidate's right to be heard.
19. Of the 23 judge candidates evaluated, only five passed, all first instance judges including three women, while 18 failed. Of the eight evaluated layperson candidates from the first round, three were approved, including one woman. The published evaluation decisions, of which the majority were unanimous, were reasoned and consistent, contributing to public trust in the impartiality and fairness of the evaluation process.
20. One month after the legal deadline for holding the election of the SCM judge members, the five pre-vetted judge candidates were elected to the SCM by the General Assembly of Judges – four as

⁶ ODIHR Opinion para. 62

⁷ ODIHR Opinion para. 70

members and one alternate. The three pre-vetted layperson candidates were appointed by the parliament. Due to the considerably high number of candidates who failed to pass the evaluation, five vacancies on the SCM remain unfilled - two for appellate court judge members (respectively one from the courts of appeal and one from the Supreme Court of Justice) and three for lay members.

21. In line with international standards, the Law permits an appeal to the Supreme Court of a negative evaluation by the Commission. However, contrary to ODIHR's recommendation,⁸ the Law does not provide for a suspensive effect of an appeal, thereby allowing for the continuation of the selection process of candidates despite ongoing appeals of other candidates. All judge candidates who failed the evaluation after being heard by the Commission and four of the unsuccessful lay members appealed the decisions. On 1 August 2023, with considerable delay and well past the 10-day time limit established by the Law, the Supreme Court of Justice cancelled 18 decisions of the Evaluation Commission in respect of 14 judge and four layperson candidates to the SCM, ordering a new evaluation of the integrity of these candidates by the Commission. At the end of the reporting period, two judge candidates' decisions were still pending. The decisions were published after the election and the appointment of new SCM members was completed, causing uncertainty with regard to the reform process. The vast majority of Supreme Court judges resigned in the midst of the appeal process, in connection with the adoption of a new law introducing vetting of sitting Supreme Court judges. ODIHR monitors will continue to follow the re-evaluation of integrity of candidates to the SCM in light of the Supreme Court of Justice's decisions and other important steps in the pre-vetting of SCM candidates.
22. Following the monitoring of the process of evaluation of integrity of candidates for the SCM, ODIHR's overall assessment concludes that the pre-vetting was generally conducted in an objective, fair and professional manner, with room for improvement in the Law and practice to guarantee fairness, credibility and transparency of the process.

3. KEY RECOMMENDATIONS:

23. Notwithstanding the positive aspects of the process identified above, as a result of ODIHR's in-depth review of the legal framework and monitoring, the following key recommendations are developed to improve further the process of evaluation of integrity of judges and prosecutors in the Republic of Moldova. The report includes a number of recommendations to introduce legislative changes, which are mainly tailored to benefit future evaluation and vetting of judges and prosecutors. However, revisiting the legislation regulating the ongoing vetting processes may also be justified when such changes are exceptionally required to ensure fairness and credibility of the process, or to remedy existing shortcomings equally benefiting all participants of a process.
24. The provided recommendations should be read together with the ODIHR Opinion:
 - a. To enhance transparency and credibility of the process of nomination and appointment of members of the Evaluation Commission or other similar bodies established in future, the

⁸ ODIHR Opinion, Par 75. ODIHR recommended that "publication of the evaluation report should be suspended pending final appeal and decision of the appellate body and the Law should be supplemented accordingly".

Law should require the parliamentary committee to provide a reasoning for their choice when recommending the national and international members. (*see Section 6*)

- b. The Law should stipulate for the consultation of civil society in the selection of the national members to the Evaluation Commission or other similar bodies that are or will be established in the reform process, and may consider introducing a modality for undertaking background checks of the members of the Commission and other similar bodies. (*see Section 6*)
- c. The Law should clearly stipulate the requirement to ensure gender equality and diversity in the composition of the Evaluation Commission or other similar bodies that are or will be established in the reform process. (*see Section 6*)
- d. To ensure legal certainty and fairness, the legislator should refrain from amending the applicable Law while the vetting is in progress, unless this is exceptionally required to ensure fairness and credibility of the process, or remedy existing shortcomings equally benefiting participants of a process. Similarly, the Evaluation Commission and other similar bodies are advised not to amend their regulations while the process is ongoing. All candidates should be assessed on the basis of the same rules and regulations. (*see Sections 5, 7, 11, 13*)
- e. The relevant authorities should consider undertaking thorough *ex-ante* and *ex-post facto* impact assessments of the legislation related to the evaluation of integrity of judges and prosecutors, in order to minimise the risk of changes in the legislation when future processes of evaluation of integrity are launched. (*see Sections 5, 7*)
- f. The legislator, the Evaluation Commission, and other similar bodies should set realistic deadlines and schedules, in order to ensure a transparent, credible process that contributes to building public trust. When setting deadlines, it is recommended to take into account the intensive and complex nature of the information collection and verification process and to allow for necessary flexibility. (*see Sections 5, 6, 10*)
- g. The Law and the regulations of the Evaluation Commission or other similar bodies should provide a more precise scope and meaning of the term “ethical integrity” to avoid an overly broad application. (*See Section 7*)
- h. To ensure transparency and reduce the potential risk of arbitrariness, the Law and relevant regulations should provide for an elaborated procedure for collecting information relevant to the evaluation of candidates’ integrity and clarify the conditions for the admissibility of evidence, the conditions for access to confidential information and anonymous evidence, and the possibility of candidates to submit counter-information. The Law should provide for the issuance of a reasoned decision on restriction of access to information from confidential sources. (*see Section 7*)
- i. The Law and the regulations of the Evaluation Commission and of other similar bodies should clarify the grounds, procedure and timing for a decision when a hearing of a candidate, or part thereof, may be held in closed session and require that any such decision be fully reasoned in writing based on clear criteria and be published. (*see Section 8*)

- j. To enhance transparency and bolster public trust in the evaluation process, the Law and/or the regulations may envisage that the Evaluation Commission or other similar bodies provide sufficient information about and from meetings, including those closed to the public, and that all the decisions should be reasoned and published on a timely basis. Moreover, they should consider undertaking more in-depth and effective media and public relations, ensuring adequate coverage of the entire process, reflecting on the work of the Commission. (*see Section 6,8*)
- k. To ensure transparency of the evaluation process in relation to potential conflicts of interest, the Law should require the publication of reasoned decisions on (self-) recusal of a member of the Evaluation Commission or other similar bodies, including in cases where the (self-) recusal was voted down. It may be considered to publish such decisions separately from the final evaluation, especially as the latter may remain confidential based on the request from a candidate. The decision should specify the date of recusal and whether it is based on self-recusal or a request to recuse, contain the grounds for the decision, and the result of the vote. (*see Section 8*)
- l. The SCM is advised to follow the requirements stipulated in the Law to publish on its website the application packages of the candidates to the SCM, which contain CVs and letters of motivation, the day following their submission. Both SCM and Parliament should consider taking steps to encourage applications from women, minorities, and people with disabilities for judge and lay person membership to the SCM. (*see Section 9*)
- m. To prevent undue interference into the privacy of candidates and third parties, the Law and the regulations of the Evaluation Commission and other similar bodies should clarify and limit the nature and type of documents, which the Commission can accumulate for the evaluation of the candidates' integrity. For example, information concerning the health of candidates should be explicitly excluded from the evaluation. (*see Section 10*)
- n. To ensure the right to privacy is respected, the Law and the Commission's regulations should clarify the procedure and measures for the protection of personal data. The Law should also provide for effective safeguards and remedies in case of violation of privacy, including by imposing appropriate sanctions and providing compensation. (*see Section 10*)
- o. In order to avoid conflicts of interest, it is recommended to clarify the selection procedure for the staff of the Evaluation Commission who undertake the background checks of candidates. (*see Section 10*)
- p. The Law and Evaluation Commission's regulations should clarify the grounds for the candidates' introduction of new or additional information relevant to their evaluation, and whether and on what grounds information may be introduced during or after the hearing. The legislation should also clarify when the Commission should make such an assessment and whether or not such decisions should be reasoned and issued in writing. (*see Section 11*)
- q. The procedural rules of the Evaluation Commission and other similar bodies should include effective safeguards to secure due process and fairness at hearings, in particular, to ensure that candidates are presented with issues and questioned in a manner that enables them to understand the specific accusations or allegations against them, including if these relate to

financial or ethical integrity and the specific legal or ethical norms relevant to the issue being examined. (*see Section 11*)

- r. To guarantee the right to public office, the legislator should consider revising the Law to provide that appeals of the evaluation decisions submitted by candidates will have a suspensive effect on the competition for public office. However, in order to mitigate negative effects of intentional delays, that may undermine implementation of the reform process, in addition to the time limit for the examination of appeals, the legislator may consider introducing adequate compensatory measures for those candidates who were denied the right to an effective appeal due to the failure of courts to hear a case within the legal deadline. (*see Section 13*)

4. BACKGROUND

25. For more than ten years, judicial independence has been a priority on the reform agendas of Moldovan authorities. In this time, judicial reforms to guarantee judges' independence and impartiality have been enacted, generally following relevant international standards and good practice. However, despite these efforts, serious claims of corruption, vested interests, ethical issues and lack of transparency in the judicial system continue to be made by the Moldovan public, civil society, international actors and media. Public trust in judges remains low.⁹
26. In August 2021, the Government of Moldova announced a plan to conduct thorough reforms of its judiciary and prosecution service to eradicate endemic corruption by evaluating the integrity of judges and prosecutors, with the aim to increase public trust in the system. The reform envisages extraordinary evaluation (vetting) of all judges and prosecutors and other officials in the justice system.
27. This prompted the adoption on 10 March 2022 of the “pre-vetting law”. The law introduces an ad hoc integrity evaluation procedure for applicants to existing vacant positions on the SCM and SCP that will determine their eligibility to compete in the respective elections or appointment processes.¹⁰
28. Civil society has generally been supportive of the pre-vetting initiative and related legislation, as well as the concept of a wider vetting process for sitting judges and prosecutors at all levels, provided that the process respects the independence of the judiciary and is conducted in a

⁹ According to [a civil society report](#), by the end of 2019, 65 per cent of Moldovans did not trust the judiciary and it has remained low in [recent years](#).

¹⁰ The SCM is composed of 12 members: six judges, including four first instance court judges, one court of appeal judge and one Supreme Court Judge (elected by their peers) and six laypersons (appointed by the parliament), who serve six-year terms. The procedure for the selection of the judge members by their peers, set out in the 1996 Act on the Superior Council of Magistracy and the Regulation on the Functioning of the General Assembly of Judges adopted on 28 April 2023, is in line with international standards. The SCP consists of 12 members of whom five are prosecutors (elected by their peers), four from civil society (one each appointed by the President, Parliament, Academy of Sciences, and Government), and three *ex-officio* members – the President of the SCM, Minister of Justice, and Ombudsperson. The pre-vetting law provides for evaluation of candidates for posts vacant as of the date the law enters into force or that become vacant within seven months of that date.

transparent manner.¹¹ At the same time, prosecutor and judges associations have publicly raised concerns about the legality, independence, and efficacy of the new external evaluation process.¹²

29. Elections for the existing vacant positions for judges and prosecutors on the SCM and SCP were scheduled to take place at the end of 2021 by the general assemblies of judges and prosecutors, respectively.¹³ As announced by the government, the elections were postponed due to the COVID-19 pandemic. The postponement corresponded with the government's initiative for external evaluation (pre-vetting) of the candidates as a pre-condition to election or appointment. The elections remained indefinitely postponed until the evaluations were finalized, with the expired terms of the SCM/SCP judge and prosecutor members extraordinarily extended until their successors were installed.

5. LEGAL FRAMEWORK

30. On 2 December 2021, the Ministry of Justice published the draft law on the evaluation (pre-vetting) of candidates to the SCM and SCP and their specialized bodies. At the government's request, the European Commission for Democracy through Law (Venice Commission) and the Directorate General of Human Rights and Rule of Law of the Council of Europe (Directorate General) jointly published an opinion on the draft.¹⁴ The Joint Opinion found that generally, the proposed process of checking the integrity represented a balanced procedure and put forward some recommendations to bring the draft further in line with international standards. The government revised the draft, addressing some of the proposals. The relevant national institutions assessed the draft, which was also subject to extensive public consultations held on 24 December 2021 and 26 January 2022. The parliament received proposals from public institutions, civil society, and concerned legal actors to amend the bill.¹⁵
31. The legislation was adopted in its third and final reading on 17 February 2022 amidst political division. In its second reading, the opposition boycotted the vote, while in its final reading, the opposition members either voted against or boycotted the vote. Following its adoption, the President of Moldova returned the law for review of its tight deadlines; certain deadlines were subsequently extended and the revised law was finally adopted on 10 March 2022.¹⁶
32. The pre-vetting law provides for the evaluations to be carried out by the *ad hoc* Evaluation Commission, granted various powers to carry out its mandate. The legislation includes provisions relating to both transparency and personal data protection applicable to different aspects of the evaluation process. It evaluates the financial and ethical integrity of the candidates through an

¹¹ For instance, see Institute for European Policies and Reform's "[Preliminary opinion](#) on the concept of the mechanism for external evaluation of judges and prosecutors" and [Justice Expert's Group Opinion](#) on the draft law on "pre-vetting" and the Centre for Analysis and Prevention of Corruption's "[Opinion](#) to the draft Concept of extraordinary evaluation of judges and prosecutors" and the "[Opinion](#) on the law which foresees the evaluation of the integrity of the candidates for the position of member in the SCM and SCP."

¹² For instance, see [statements](#) reported in the media.

¹³ The elections for the SCM and SCP members had been scheduled for 3 December 2021 and 19 November 2021, respectively.

¹⁴ The [Joint Opinion](#) was adopted during the Venice Commission's session of 10-11 December 2021. The Ministry of Justice requested the opinion on 17 November 2021 and forwarded the revised version of the law on 2 December 2021.

¹⁵ Some civil society organizations submitted comprehensive critiques of the draft law with their comments available on the Parliament's [website](#).

¹⁶ The President of Moldova [stated](#) that it was necessary to review the deadlines for the execution of certain actions and extend them, in order to ensure the completion of all established procedures, including the comprehensive verification of candidates based on the integrity criteria. The law came into force on 16 March 2022, the date it was published in the Official Gazette. It also introduces amendments, *inter alia*, to the 1996 Act on the Superior Council of Magistracy and the 2016 Act on the Prosecutor's Office, which regulate selection and appointment of members to the SCM and SCP.

information collection and verification process followed by public hearings.¹⁷ The burden of proof shifts to the candidate, and any serious doubts as to his or her integrity results in a failed assessment, while those who pass move on to the (s)election stage.

33. On 28 September 2022, ODIHR published its Opinion on the Law¹⁸ following the request of the People's Advocate (Ombudsperson) of the Republic of Moldova to monitor the evaluation of SCM and SCP candidates for membership. The ODIHR Opinion indicated that there may be weighty public policy reasons for this mechanism, however also pointed to the risks associated with the introduction of an *ad hoc* mechanism for evaluation of judge and prosecutor candidates to judicial and prosecutorial self-administration bodies. It was noted in the Opinion that such an extraordinary mechanism takes away some of the self-governance powers and may have an impact on the candidates' privacy and their reputation. ODIHR recommended that the Law and related Rules should provide clear, objective and transparent criteria to guide the evaluation process in a manner that upholds the rule of law and respects the independence of the judiciary and prosecutors, and be in line with the guiding principles that would be applicable to an extraordinary evaluation or vetting process.¹⁹
34. It is important to highlight that, among other recommendations, the ODIHR Opinion pointed out that the Law ought to clearly allow the Commission to strike a balance between the private interest of a candidate and the public interest in a transparent evaluation process.²⁰ Furthermore, it highlighted that the timeframe envisaged by the law may not be sufficient for the Commission to cover an inquiry into the candidates and close persons connected to him/her.²¹ It is also noted that the extent of the Commission's powers to obtain and request information may be excessive and recommended to strictly clarify the powers.²²
35. On 22 December 2022, the pre-vetting law was amended, introducing a number of technical and substantive amendments, which addressed some concerns mentioned in the ODIHR Opinion while also raising some new (to be further discussed), primarily reflecting the work of the Evaluation Commission and to address difficulties that could not have been foreseen at the time the Law was adopted.²³ The opposition boycotted the vote on the amendments.²⁴ Some of these amendments, at least partially, codified existing provisions found in the Rules of Procedures of the Evaluation Commission.²⁵ While the amendments regarding the submission of additional information in the

¹⁷ Article 8 of the pre-vetting law establishes the integrity criteria and sub-criteria.

¹⁸ [Opinion](#) on the Law on some Measures Related to the Selection of Candidates for the Positions of Members in the Self-Administration Bodies of Judges and Prosecutors, Moldova, OSCE Office for Democratic Institutions and Human Rights, 28 September 2022 ("ODIHR Opinion").

¹⁹ ODIHR Opinion, para. 32. Furthermore, on 22 March 2022, an opposition member of the parliament launched a constitutional challenge of the whole law and on 7 April 2022, the court declared parts of two provisions unconstitutional and held the remainder of the complaint inadmissible.

²⁰ ODIHR Opinion, para. 74.

²¹ ODIHR Opinion, para. 58.

²² ODIHR Opinion, para. 45.

²³ The Explanatory Note stated that "the need for these changes stem from the Commission's current practice and from the fact that at the time of the adoption of [the pre-vetting law], it was practically impossible to prevent all the difficulties encountered in practice." See also ODIHR Opinion, para. 44.

²⁴ In its first reading, 52 ruling party members voted in favor and seven members of the Bloc of Communists and Socialists (BCS) members voted against, with the remaining opposition boycotting the vote; in its final reading, 58 ruling party members voted in favor and all opposition factions boycotted the vote.

²⁵ For example, Article 17(4) of the Rules of Procedures prohibits a candidate to present information or documents during the hearing if the Commission had earlier requested them, unless justified. In December 2022, Article 12 (4) (d) of the Law, stating that the candidate has the right to provide additional information to clarify the suspicions against him/her, was amended limiting it to only allowing to provide additional

hearings did not in practice affect the evaluation of most judge candidates, as they were introduced after all but one judge candidate was evaluated by the Commission, **making such changes to the legislative rules in the midst of evaluating the candidates challenged legal certainty and has the potential of impacting the fairness of the process for all candidates.**

36. The most recent legislative initiative was put forward as late as on 10 July 2023 through the parliament's adoption of an interpretation which emphasizes that the Evaluation Commission is not to be considered a public authority but rather be granted a special status. Consequently, the Commission is exempted from a set of complex obligations that public authorities have in line with the Administrative Code.
37. **In conclusion, it is important to undertake thorough *ex-ante* and *ex-post facto* impact assessment of the legislation on evaluation of integrity of judges and prosecutors in order to minimise the risk of changes in the legislation in the middle of the process.**

6. FORMATION AND FUNCTIONING OF THE EVALUATION COMMISSION

38. The Evaluation Commission is composed of six members appointed by parliament - three Moldovan citizens appointed on nomination by the parliamentary factions, according to the principle of proportionality²⁶ and three foreign citizens appointed on the proposal of Moldova's international development partners active in the fields of judicial reform and anti-corruption.²⁷ Members are each approved by a 3/5 parliamentary vote.²⁸ **The eligibility criteria for the members are established by the Law, which does not specifically provide for gender equity and diversity on the Commission.**²⁹ However, despite the lack of guarantee for gender equality on the Evaluation Commission, in practice, four of its six members are women – two international and two national members.
39. **Prior to their appointment, members were not subject to background checks or evaluation of their own integrity** despite the Commission's special mandate, a measure that had been earlier recommended by some civil society organizations. **The pre-vetting law does not provide for any level of transparency in the selection of the international members.**
40. The Law barred sitting judges or prosecutors, or those who held such positions within the last three years, to become national members. As noted in the Opinions of ODIHR and the Venice Commission/Directorate General, this approach lacks justification and is at odds with international standards that require that judge and prosecutor members of judicial self-administration bodies be

information "if s/he was in impossibility to present them previously". This amendment significantly restricted the rights of the candidates to provide additional information in the hearings in comparison with the situation of candidates before the amendments of the Law.

²⁶ Based on the parliament's current composition, the ruling party faction proposed two national nominees and the main opposition faction proposed one.

²⁷ Pursuant to the pre-vetting law, on 21 March 2022, the Ministry of Justice adopted a list of the development partners as follows: The embassies of France, UK, Germany, Sweden, the Netherlands, Lithuania, and USA, EU Delegation in Moldova, Council of Europe's Office in Moldova, World Bank in Moldova and the UN in Moldova.

²⁸ In the current parliament, this qualified majority of votes is held by the ruling party and, as such, appointment of the members to the Evaluation Commission did not require any votes from the opposition.

²⁹ ODIHR Opinion, para. 41

elected by their peers.³⁰ This exclusion was criticized by one of the Moldovan judges' association, which considered that the absence of judge and prosecutor representatives in the Evaluation Commission posed "a risk that decisions may not be impartial and may be seen as deeply politically motivated".³¹

41. **The nomination and appointment processes for the national members of the Commission were not inclusive of civil society and the selection of the members, particularly the international members, did not offer sufficient transparency.** Specifically, neither of the parliamentary factions had an open call for the national candidates and civil society groups were not consulted on these candidates.³² Information about the process of selection of international nominees, criteria for selection for the pool of experts, or relevant consultations is not publicly available. As per the Law, the development partners jointly submitted six nominees for parliament's consideration, from which three were appointed.
42. The selection process for national members offered some transparency. On 31 March 2022, the three national candidates nominated by the parliamentary factions were individually heard by the Parliament's Legal, Appointments and Immunities Committee. The session, attended by all 11 members – representing both the ruling party and the opposition - was broadcast online. However, overall, the Committee did not appear focused on ensuring that each candidate met the eligibility criteria.³³ Two of the three national nominees received seven votes in favour and the third received ten votes in favour, while one of the three was voted against by several opposition members.³⁴ The parliamentary committee's published decisions that recommended the three national nominees only confirmed that each met the eligibility criteria, but did not refer to the individual's qualifications or merits to justify that the criteria were met.
43. The parliamentary committee decided on, but did not hear the six international nominees.³⁵ **Its published decision on the three international nominees recommended to parliament for appointment lacked the requisite reasoning.** The Committee's report on its examination of the six nominees did not include any explanation for recommending the three final candidates, and lacked any reference to the candidates fulfilling the eligibility criteria. While the pre-vetting law requires the Committee to recommend the three candidates amongst the six who received the most votes, the report only refers to the voting results on the three recommended candidates who were each unanimously voted by the seven present Committee members.
44. The plenary's selection of the Commission members lacked genuine consideration and the international nominees lacked opposition's support. On 4 April 2022, the plenary considered the

³⁰ The Explanatory Note does not provide any justification for the exclusion of judges and prosecutors on the Evaluation Commission or the reason for the three-year period.

³¹ See [statement](#) reported in the media.

³² It is not known whether either of the parliamentary factions took other candidates into consideration or only considered the candidates they proposed to the parliament.

³³ The nominees were asked about their professional experience and their vision of the pre-vetting process. Some questions were related to specific eligibility criteria, while others concerned the mandate of the Evaluation Commission and the effect of its decisions. One nominee was asked about his proficiency in the English language (one of the eligibility criteria), as his CV referred to beginner level English. The candidate's assurance that he understood English was apparently taken at face value to fulfill the language criteria.

³⁴ Some committee members abstained from certain votes.

³⁵ On 4 April, without being heard, the six international nominees were decided on by the Parliament's Legal, Appointments and Immunities Committee during a break in the plenary at which the members of the Evaluation Commission were to be appointed. The Committee's session was not broadcast live, despite the general practice to do so, and no recording or minutes of the meeting were made public.

parliamentary committee's six recommended national and international nominees.³⁶ The members of parliament had an opportunity to address the national nominees who were all present, although no questions were asked to or about them.³⁷ The plenary did not have an opportunity to question the international nominees who were absent.³⁸ The nominations were voted on without debate, although a discussion ensued about the appropriateness of having foreigners on the Commission.³⁹ The three international nominees, voted as a slate, received the majority vote. However, no opposition members voted in favour of their appointment, an apparent indication that participation of the international community in the evaluation process did not have cross-party support.⁴⁰ As a positive development, the three national nominees, favourably voted by a significant majority, received a level of cross-party support.⁴¹ The opposition publicly stated that the establishment of the Evaluation Commission was a way for the ruling party to capture or takeover the justice system.⁴²

45. Funded by international development partners and the national government, the Evaluation Commission functions as an independent body and its secretariat reports exclusively to the Commission and its chairperson.⁴³ According to media interviews with some members, the Commission did not face any overt political pressures or other undue influence but members felt indirect pressures to speed up the evaluation process.⁴⁴ Members made statements to the effect that an accurate evaluation process is more important than political or public expectations to speed up the process.⁴⁵ The pre-vetting law requires members to avoid any conflict of interest in accordance with the Commission's regulations. Some members self-recused in the evaluation of certain candidates.

46. The Commission convened its inaugural meeting on 12 April 2022. At the meeting, one of the international members (male) was unanimously selected amongst the members as the Commission's chairperson. The first full-Commission in-country meetings took place in June 2022.⁴⁶ Under the pre-vetting law, all Commission meetings, except for the public hearings, are held in closed sessions. **The timing, number and nature of the closed meetings were not made public and the agendas and conclusions from the meetings were not published. Although not**

³⁶ The parliament's 4 April approval of the Evaluation Commission's nominal composition was several days past the legal deadline. Article 15(3)(a) of the pre-vetting law provides that the nominal composition is to be decided within 15 days of the Law coming into force, with an effective deadline of 31 March. The decision on the nominal composition was published on 7 April. Only the ruling party voted in favor of the decision.

³⁷ There were two questions to the Chairperson of the Legal, Appointments, and Immunities Committee and the Speaker, which related to the Evaluation Commission as a body, rather than the nominees.

³⁸ During the discussions, an opposition member pointed out that the international candidates were not present (not even online) and that the members therefore did not have an opportunity to ask them questions.

³⁹ One opposition member questioned the constitutionality of having foreign citizens as members of the Evaluation Commission.

⁴⁰ The BCS boycotted the vote and the Sor Party members abstained.

⁴¹ Each national nominee received between 85-87 votes (out of 101 members of parliament), with the main opposition party largely backing all of them together with the ruling party. One national appointee is a former Supreme Court judge and former SCM member; one is a legal professional specialized in human rights with experience in the civil society sector; one is a former legal advisor in the Office of the Mayor of Chisinau (who stepped down to take up the post on the Evaluation Commission as the Law precludes persons holding public service posts to sit on the Commission). In a meeting with ODIHR monitors, one civil society representative (out of four interviewed) raised concerns that certain members of the Evaluation Commission have links to the government and political parties.

⁴² See [statement](#) reported in the media.

⁴³ The national members are financed by the Government of Moldova and the international members are financed by the European Union Delegation and the Netherlands. Government funding of the Commission's national members and activities is through the budget of the Ministry of Justice, with programmatic support for the secretariat provided by the US Embassy and the European Union Delegation. The staff are directly hired and financed by USAID Moldova through Dexis Consulting Group.

⁴⁴ As one Commission member noted in a [20 November 2022 media interview](#): "There is no direct pressure from politicians, but it is enough to read the press, and everyone says it is too slow."

⁴⁵ For instance, in a [media interview on 2 December 2022](#), the chairperson noted that the Commission felt external pressures to work faster but that it prioritizes the quality of the decisions.

⁴⁶ The international members did not work full-time in Moldova during the evaluation process but had periodic working visits.

necessarily required by international norms, publishing relevant information from and about closed meetings would have enhanced the transparency of the process.

47. In accordance with the Law, the Commission makes its decisions in meetings with a majority quorum (of four persons), and by majority voting. For decisions other than on the evaluation of a candidate, a tie vote is broken in accordance with rules that take into account the votes of both international and national members. Tie votes on evaluation decisions are decided against the candidate. ODIHR's Opinion however suggested establishing the presumption in favour of the candidate.⁴⁷
48. The Commission faced some staffing challenges from the time of its initial establishment and well into its mandate, unable to identify qualified and available persons to fill all of the established posts on a timely basis.⁴⁸ This appeared to impact, to some extent, the Commission's ability to undertake its mandate in a timely and efficient manner. It is also questionable whether initial estimates of the number of staff needed were adequate considering the labour-intensive and complex nature of the work and tight legal deadlines, potentially impacting the timely progress of the work.⁴⁹ The ODIHR monitoring team was informed by the Commission that, though not mandatory, all staff members were subject to 'clear' background checks prior to their being hired.⁵⁰
49. The pre-vetting process was fraught with significant delays compared with the unrealistic timelines envisaged initially by authorities, with the anticipated timelines announced by the government and Evaluation Commission changing throughout the process.⁵¹ **While the authorities expected an expedited process, it did not take into account the challenges of setting up an Evaluation Commission and evaluation process, nor the time necessary to conduct proper assessment of the candidates.** Furthermore, the Commission appeared to struggle to effectively plan and schedule the process, taking into account operational needs and the time-sensitive, labour-intensive and technically complex nature of the exercise. In the end, pre-vetting of the initial set of SCM member candidates was finalized nearly one year after the Commission's establishment. Moreover, the Commission did not offer the public timely justifications for the considerable delays, with the protracted process garnering intense criticism from civil society and the political

⁴⁷ ODIHR Opinion, para. 68. In the case of a tie vote, the Commission must repeat the examination of the information about the concerned candidate and take another vote the following day. In the case of a repeated tie vote, the candidate is deemed not to have passed the evaluation.

⁴⁸ In early June 2022, two months after the Commission was formed, only about one-quarter of the secretariat posts had been filled. In separate meetings with civil society representatives and ODIHR's monitoring team in May and June 2022, respectively, the Commission noted the challenges it faced with filling staff positions, including technical posts, and asked for assistance in identifying suitable applicants. In an [interview](#) on 20 November 2022, one of the members noted that the secretariat remained incomplete due to staffing challenges. She further noted that lawyers appeared reluctant to apply for posts with the secretariat due to lack of confidence in the evaluation process or due to concerns of being associated with it.

⁴⁹ The secretariat includes some 20 managerial, technical and administrative positions, with about half of them technical posts. Key staff underwent a two-week intensive training on technical aspects of the evaluation process, including conducting open-source data research and asset and wealth investigation.

⁵⁰ The checks were conducted by the National Anti-Corruption Center. A clear background check was considered to be one that requires no additional or protracted analysis or investigation on the part of Dexis as the implementer of USAID's funding support for the secretariat. Some applicants were rejected because they failed the background check.

⁵¹ With the pre-vetting law adopted in February 2022, the government expected the evaluations of the SCM and SCP candidates to be completed in April 2022. However, with amendments to the legislation the following month, including extension of various deadlines in the process, the Evaluation Commission was only formed in April, with the government then expecting the process to be finalized by the end of June 2022. The Commission first announced the anticipated start for the information collection phase to be in April 2022, then May 2022, and eventually July 2022 when that process actually commenced. In June 2022, the Commission announced the expected start of the public hearings to be in July 2022, later updated to August 2022, and that the newly-formed SCM was expected to be operative in September 2022. Eventually, the hearings for the SCM judge candidates commenced in October 2022 and were completed in January 2023, while the hearings of the layperson candidates took place in March 2023.

sphere.⁵² The lack of timely explanation for the delays, by formal communications, may have undermined public confidence in the process and, in turn, one of its aims to increase public trust in the judiciary.⁵³ Under the original version of the pre-vetting law, the Evaluation Commission was to cease its work by 31 December 2022.⁵⁴ With the Commission having completed less than half of its mandate by the end of 2022, the completion date was first extended by six months to 30 June 2023, and then eventually extended until the completion of the examination by the Supreme Court of Justice of the last appeal filed against the decision of the Evaluation Commission.⁵⁵

7. RULES OF PROCEDURE AND EVALUATION RULES

50. As required by the Law, the Evaluation Commission adopted its internal regulations - [Rules of Procedure](#) and [Evaluation Rules](#). While elaborating on key issues in the evaluation process, the regulations were not fully developed.
51. The Rules of Procedure regulating the Commission and secretariat were adopted on 22 April 2022. Amongst other matters, they provide for selection of the chairperson and his/her authorities, protection of personal data, meetings and decisions, voting, conflict-of-interest, communications, and a comprehensive code of conduct for Commission members and staff, that includes the principles of integrity, independence, impartiality, objectivity, fairness, respect for human rights and freedoms, professionalism, transparency and accountability. Some provisions contribute to transparency of the process. The provisions are relatively limited with respect to the secretariat's structure, functions and responsibilities. These rules were amended several times, as late as December 2022.⁵⁶ While amendments to the rules during ongoing processes such as vetting, can be done on an exceptional basis to ensure fairness of the process, or remedy existing shortcomings, **changes to the rules affecting the evaluation process while it was underway challenged legal certainty and fairness in the process.**
52. According to international standards and good practices, for the selection of judges and ordinary performance evaluations,⁵⁷ an evaluation should be based on objective and clearly defined criteria pre-established by law. On 2 May 2022, it adopted Evaluation Rules, subsequently amended on 30 May.⁵⁸ To some extent, these rules elaborate the evaluation criteria, particularly the criterion of

⁵² For example, see statements from [civil society representative](#) and [political arena](#) reported in the media.

In response to the public criticism, in a 20 November 2022 interview, one Commission member highlighted the various reasons that the process had been protracted, including the need to adopt a series of regulations, staffing challenges, an abundance of information to be collected and verified, the need to translate documents into English for the non-Moldovan Commission members, etc.

⁵³ See the preamble of pre-vetting law.

⁵⁴ Article 15(1) of the Law had provided that the Law ceases to be in force on 31 December 2022.

⁵⁵ The first extension was introduced into the pre-vetting law on 22 December 2022. The final extension was introduced through transitional provisions in Law No 147 of 9 June 2023 on the Selection and Evaluation of Judge's Performance Article 25 para 7(4).

⁵⁶ Amendments to the Law were adopted 22 December 2022, amendments to the Rules of Procedure were adopted on 12 May 2022, 11 July 2022, and 23 December 2022, while those to the Evaluation Rules were adopted on 30 May 2022, 22 December 2022, and 27 February 2023.

⁵⁷ See, for example, standards cited in the ODIHR Opinion, footnote 74: UN HRC General Comment no. 32 (2007), para. 19; 2010 CoE Recommendation CM/Rec (2010)12, para. 44; ODIHR Kyiv Recommendations (2010), para. 21; 1999 Universal Charter of the Judge, Articles 4-1 and 5-1; 1998 European Charter, paras. 2.1. and 2.2.; 2010 Venice Commission's Report on the Independence of the Judicial System Part I, para. 27; CCJE Opinion no. 10 (2007) on Judicial Councils, paras. 50-51; and CCJE Opinion no. 17 (2014) on Judges' Evaluation, para. 9. 75 See e.g., UNODC, Commentary on the Bangalore Principles of Judicial Conduct (2007), paras. 101.

⁵⁸ The Evaluation Rules were adopted one week past the 20-day legal deadline, effectively 24 April 2022, for adoption of regulations on the functioning of the Commission and its Secretariat. The Evaluation Rules were last amended on 23 December 2022 with a minor technical change. These rules elaborate the main stages of the evaluation process, holding of public hearings, decision-making, evaluation criteria, and assessing the gravity of any findings concerning the candidate's integrity, as well as the manner in which the Commission will evaluate and take decisions on the candidates' integrity.

financial integrity and specifically the concept of undeclared wealth.⁵⁹ **However, as noted in the ODIHR Opinion, the regulations leave wide discretion for the Commission’s decision-making.**⁶⁰ In this case, the criterion for evaluation of integrity that the “candidate has not seriously violated rules of ethics and professional conduct” is vague and leaves room for interpretation. **Therefore, while recognizing that the term “ethical integrity” may be widely used, it is important to define more precisely the scope and meaning of the term, and introduce criteria that would help to identify reprehensible behaviour, thus avoiding an overbroad, erroneous or inconsistent application of the term.**⁶¹ Moreover, the standards of information collection (process, evidence, admissibility etc.) are currently missing and should be set out clearly in the Law or the Commission’s Rules, to ensure transparency and reduce possibilities for, or the appearance, of arbitrariness.

53. To some extent, the rules elaborate conflict-of-interest provisions for Commission members and requests for recusal.⁶² However, as noted in the ODIHR Opinion, the rules run counter to conflict-of-interest principles in that recused members are required to vote on any matter where a quorum cannot be met, including on the decision of their own recusal.⁶³ This also includes possible voting on an evaluation decision for a candidate with whom the member has a conflict-of-interest, which potentially undermines the integrity of the process, particularly if that member casts the decisive vote.⁶⁴ This is also problematic as recused members are effectively barred from accessing non-public information and are required to refrain from gathering information related to the respective candidate.
54. The Rules of Procedure guarantee the confidentiality of sources of information about candidates’ integrity, which can be private citizens, civil society organizations, and others. While in certain circumstances valid reasons may exist to protect sources, they are not required to submit and justify requests for confidentiality and the Commission is not obliged to provide reasoned decisions to maintain confidentiality. As noted in the ODIHR Opinion, **such absolute guarantee of confidentiality of sources may prejudice candidates in their ability to refute collected information integral to their evaluations, while exercising their right to review the information and counter it, and to respond to questions arising from it.**⁶⁵ The Opinion recommended further regulation on it.⁶⁶

⁵⁹ Under Article 8(4) of the Law, undeclared wealth is wealth acquired in the last 15 years that does not correspond to the declared revenues. An annex defines the method to calculate undeclared income for the purpose of assessing a candidate’s financial integrity. The rules also provide that only if a candidate meets all “indicators” do they satisfy the criterion of ethical or financial integrity and that in assessing compliance with these indicators, the Commission must take into account the gravity or severity, the surrounding context, the willfulness of any integrity incident, and as to minor incidents, whether there has been sufficient passage of time without re-occurrences. Sub-indicators for determining gravity are further established.

⁶⁰ See ODIHR Opinion paras. 51-55.

⁶¹ See ODIHR Opinion, para. 53.

⁶² Article 10(6) of the Rules of Procedure requires the Commission to adopt guidelines on conflicts of interest concerning the secretariat; however, no such guidelines were made public.

⁶³ ODIHR Opinion, para. 70 and recommendation I.

⁶⁴ A possible interpretation of the interaction of Article 10(4)(d) of the Rules of Procedure and Article 13(3) of the pre-vetting law appears to require recused members to vote on all evaluation decisions, which further runs counter to conflict-of-interest principles.

⁶⁵ The Evaluation Rules also allow anonymous submissions of information from external sources provided that it meets a certain threshold. However, the Commission did not adopt any special regulation on it.

⁶⁶ ODIHR Opinion, para. 47.

55. The regulations do not elaborate on the legal grounds and process for making decisions to hold a (part of a) hearing closed.⁶⁷ It is unclear whether the Commission can make such a decision on its own initiative or whether it must be based on a request by a candidate.⁶⁸ **The absence of a clear framework on the criteria and process for requesting and holding a closed hearing may potentially result in arbitrary decision-making on such a key decision.**⁶⁹
56. A rule prohibits candidates from introducing information or documents during a hearing if the Commission had earlier requested the respective material and the deadline for submission has expired. The material may still be introduced at the hearing if the Commission considers the delay justified. However, the rules do not elaborate the process for granting such exception. Given the time-line and overall steps in the evaluation process, the ODIHR Opinion advised to clarify when such information may be introduced.⁷⁰ One candidate questioned the legality of the rule when the Commission, citing the rule, refused to hear the candidate as he had not responded to any of the pre-hearing questions (discussed below). Subsequently, the rule was, in part, incorporated into the Law.⁷¹ This change took effect part-way through the candidate hearing process and prior to the adjudication of appeals, including an appeal lodged by the above-noted candidate.
57. A key provision in the Rules of Procedure granted Commission members the authority to individually exercise various powers foreseen in the pre-vetting law,⁷² particularly within the information collection phase. As a positive measure, these individualized powers were removed from the Rules of Procedure, although done in the midst of the evaluation process.⁷³
58. The general requirement for open voting by the Commission as provided in the pre-vetting law (except in specified cases), is not adequately elaborated in the regulations, including a lack of clarity regarding recording the individual votes in reasoned decisions.⁷⁴ In addition, while the rules prescribe that the decisions contain the relevant facts, reasons and conclusion, they do not establish any criteria in order to ensure substantive and consistent decisions. Furthermore, a timeline for adoption of the evaluation decisions, including for a “delayed” adoption in order to receive additional information or clarification, is not established.

8. TRANSPARENCY AND MONITORING

59. While overall the evaluation process was transparent, additional measures could have been taken to enhance further openness of the process. The Commission’s Rules of Procedure require the

⁶⁷ Article 12(2) of the pre-vetting law provides that the Commission can hold (parts of) hearings closed if the interest of public order, privacy or morality are undermined”. Article 3(2) of the Evaluation Rules states that the “mere possibility of disclosure of the candidate’s or another person’s personal data shall not be sufficient to close the hearing or its part”. ODIHR Opinion, para. 66 noted that while the aforementioned rule would not allow for granting of the request for a closed hearing on any general privacy-related ground, respect of the candidate’s right to privacy would warrant a certain flexibility and safeguards in the relevant provisions.

⁶⁸ The rules are silent on this and, in any case, do not require the Commission to justify a decision to hold a (part of a) hearing closed if taken on its own initiative.

⁶⁹ ODIHR Opinion, para. 65.

⁷⁰ ODIHR Opinion, para. 49.

⁷¹ The 22 December 2022 amendment, initiated by the Commission, revised Article 12(4)(d) of the pre-vetting law which had granted candidates the right at hearings “to submit in written form additional data and information which he/she deemed necessary, in order to remove suspicions of his/her integrity”. The amendment restricted the provision to only information which the candidate was previously unable to present.

⁷² Article 15 of the Rules of Procedure.

⁷³ The amendment to the Rules of Procedure was adopted on 23 December 2022 prior to the last candidate being heard.

⁷⁴ Article 11(5) of the Rules of Procedure provides that the chairperson will “announce” how each member voted but does not provide for how and when the votes will be announced or whether this is simply recorded in the written evaluation decision.

Commission to publish its regulations, announce information about public meetings, and provide regular up-dates about its work. Soon after its establishment, the Commission created a Facebook page.⁷⁵ Key developments in the evaluation process and relevant documents were made public, such as the Rules of Procedure and Evaluation Rules, decisions, templates of forms, hearing schedules, interviews, etc. However, during the information collection and verification phase, public information was very limited. The Facebook page was not always up-to-date, particularly in the early stages, and there were delays in posting of key documents.⁷⁶ Lack of regulations to prescribe timeframes for announcements and publications of public information, as well as limited human resources at the early stage of the process, may have contributed to such delays. Technical problems with uploaded documents were also frequent.⁷⁷

60. With delay, the Commission's [website](#) was launched in September 2022, just prior to the start of the hearing process, which provided an effective mechanism to post official documents and recordings, keeping the public informed in an accessible manner.⁷⁸ However, the website was not always up-to-date.⁷⁹ In addition, decisions on recusals and on holding closed hearings were not published (discussed below).
61. On 16 June 2022, some two months after the Commission's formation, it held its only press conference to introduce its members and mandate and to provide updates on its work and next steps.⁸⁰ The Commission held two meetings with invited representatives of civil society and media to provide information about the evaluation process and its developments and to discuss collaboration.⁸¹ While bolstering transparency, the meetings were mainly aimed at encouraging participants to assist in collecting information related to the candidates' integrity. As a positive measure, the Commission was open to hearing recommendations for the evaluation process and to answer queries from meeting participants.
62. On 16 July 2022, the Commission announced an initiative to introduce its six members to the public through a series of biographical video interviews posted online. The members spoke about their professional experiences, the principles that drive their work, and their mission within the Commission. While this can be seen as a positive initiative to keep the public informed, **the use of interviews should not have replaced other formal means of providing public information**

⁷⁵ The [Facebook page](#) has a relatively modest public following. While the number of followers steadily increased as the evaluation process progressed, by 12 January 2023, in the midst of the process, the page had 866 followers (and 543 'likes'). Reactions to posts are largely supportive of the Commission's mandate.

⁷⁶ For example, amendments to the Rules of Procedure adopted on 12 May 2022 were posted on 18 May 2022 and amendments adopted on 11 July 2022, were posted on 20 July 2022. Statements about the Commission's external meetings, such as with the SCM, were posted more than two weeks later. A post about the Commission's request for candidates to submit the asset declaration form (and link to the template form) was apparently backdated by several days. Decisions were often posted several weeks after issuance.

⁷⁷ The initial lists of candidates were posted in an inaccessible format. Other key documents were uploaded in a format that was not user-friendly. For instance, the Rules of Procedure and Evaluation Rules were posted in image format rather than in Word or PDF version. Statements with hyperlinks were posted in image format, making the links unusable. Some posted decisions had technical irregularities, such as mistakes in the number or date of the decision.

⁷⁸ At its meetings with civil society organizations, media, and candidates, the Commission referred to its plan to launch a website in mid-July 2022, delayed to mid-September 2022. The Commission's initial regulations authorized, but did not mandate, the Commission to maintain an internet presence, including on social media. However, amendments in December 2022 to the pre-vetting law and the Commission's regulations introduced references to publishing on the Commission's website.

⁷⁹ For instance, the hearing schedules which had been announced on the Commission's Facebook page were not included on the website's calendar in a timely manner. Not all candidate withdrawals and refusals of the candidate to publish the evaluation decision were posted in a timely manner. Furthermore, the changes in the Rules of Procedure of December 2022 was not announced.

⁸⁰ The press conference was livestreamed on the Commission's Facebook page and [YouTube channel](#) and by an online media outlet; some 350 persons in total viewed the press conference online.

⁸¹ The meetings were held on 31 May and 9 June. The invitations to the meetings did not include an agenda or specify the topic of the discussion.

(such as regular press conferences and press releases) which would have benefited the work of the Commission and maintained a consistent level of public communication. The Commission members should not be required, individually or as a group, to engage with media and the public, however as an institution, **it should provide maximum transparency and openness to the public.**

63. Notably, the Commission did not provide public updates during the few months of collecting and verifying information on the candidates. While the Commission was rightly cautious in handling private and/or sensitive data of the candidates, the lack of publicly available information about the nature of the ongoing work limited the transparency to the public of a key phase of the evaluation process.
64. When announcing the hearings of the individual candidates, the Commission published brief information about each candidate, as well as some statistics from the information collection and verification phase, such as the number of questions, sub-questions and requests for documents that the Commission had submitted to the candidate.⁸² This provided a level of *post-facto* transparency concerning the activities of the pre-hearing stage. After each hearing was completed, the Commission posted an announcement, which included brief information on the specific topics/issues that the candidate was questioned on. However, an overview was not provided for some of the candidates and the level of detail of the overviews were not consistent across all candidates. This garnered some public criticism that alluded to differential treatment by the Commission, which illustrated the importance of treating candidates in a strictly similar manner.⁸³
65. The hearings of the candidates were accessible to the public, which is in line with good practice and a key transparency measure, but the lack of publicly available information for some matters, including those considered in closed meetings, **limited transparency of the broader evaluation process.**⁸⁴ Moreover, **there was a lack of clarity with respect to the grounds and reasons for the Commission to exercise its discretion under the pre-vetting law to hold closed candidate hearings, or part thereof.** The Commission decided to hold parts of two candidates' hearings in closed session. Firstly, it was unclear whether these were closed on the Commission's initiative or at the request of the candidate.⁸⁵ Secondly, although there may be legitimate grounds for closed hearings, **the explanations for these decisions were not provided.**⁸⁶ **Further elaboration of the legal provisions for holding closed hearings and formalization of the decision-making process** would help avoid perception and risk of arbitrary decision-making.
66. As a positive transparency measure, the Commission uploaded all audio-video recordings of the hearings to its website and YouTube channel, usually within 24 hours, and provided respective

⁸² However, this information was not posted for the first three candidates. At the start of each hearing, the chairperson read aloud the number of rounds of pre-hearing questions and number of questions/sub-questions and requests for documents that had put to the candidate.

⁸³ Compared to the [information provided](#) after the hearings of all other candidates, the level of details in the post-hearing overview [posted](#) on the Commission's Facebook page for the last candidate, who had a rather contentious hearing, stood out with regards to number of issues raised in the hearing. This generated a number critical comments from the public, including claims that posting such level of details may have affected the reputation of the candidate.

⁸⁴ In accordance with the pre-vetting law, in addition to the evaluation decisions, the Commission made all decisions related to the evaluation process in closed meetings, including adoption of regulations, decisions on recusals, decisions to close parts of hearings, amongst others.

⁸⁵ At one of the hearings, the Commission chairperson announced that part of the session would be closed "in agreement with the candidate", but it was not made clear on whose initiative.

⁸⁶ Presumably, the parts of these hearings were closed due to privacy of the candidate and/or third parties; in one of these hearings, the chairperson vaguely referenced private matters when announcing that part of the hearing would be closed. Article 3(2) of the Evaluation Rules provides that a candidate can submit a reasoned request for an in-camera hearing and that the Commission will decide upon such request with a reasoned decision.

links on its Facebook page. Despite the uniqueness and significance of the hearings, viewership was relatively limited.⁸⁷

67. The Commission’s rules provide a process for members to self-recuse from the evaluation of a particular candidate or for candidates to request the recusal of a specific member with reasons in writing. In both such cases, the rules oblige the Commission to vote and make a formal decision on the recusal. Only information that certain members of the Evaluation Commission were recused was public. **The date on which the member recused, whether it was based on self-recusal or a candidate’s request, the grounds for the decision, and the result of the vote, were not publicly disclosed.**⁸⁸ Providing details about the recusals would enhance transparency and contribute to building public trust in the process. The monitoring did not identify any information about the recusals which were voted down, **leaving the process opaque.**
68. In parallel with the formal evaluation process, some civil society organizations and the media undertook their own systematic assessments of the integrity of the judge candidates. Early on, many online investigative reports and videos presented critical analyses of the ethical and financial integrity of individual candidates, with concerns raised about most of them.⁸⁹ Video reports garnered thousands of public views.⁹⁰ Other civil society groups focused their commentary on the evaluation process itself and neutrally presented the candidates.
69. Mainstream media reported on key developments in the evaluation process but in-depth coverage was lacking, leaving the main message as that of a protracted process.

9. CANDIDATE RECRUITMENT AND POOLS

70. The applicable laws establish the minimum eligibility criteria for the judge and layperson members of the SCM and its specialized bodies. The original deadline announced by the SCM for candidates to apply for the most recent vacant judge member positions was in late 2021. The peer election to be held by the General Assembly of Judges was scheduled for 30 days after the application deadlines and subsequently postponed.⁹¹ The postponed election was then indefinitely put on hold due to the continuing COVID-19 pandemic. Under the pre-vetting law adopted in early 2022, the deadline for submission of applications for the vacant posts was extended to 27 March 2022.⁹²

⁸⁷ On average, each recording of the judge candidate hearings was viewed 350 times, after being posted for at least one month on the two platforms. The recordings on YouTube were viewed between 64 – 280 times and the recordings on the Commission’s website were viewed between 112 – 354 times.

⁸⁸ The fact of a recusal was noted at the start of the respective hearing and in the evaluation decision. Candidates who requested recusal were provided a written decision but the decisions were not published. It is unknown whether formal decisions were issued on the self-recusals, as per the rules, but none were published. In a 20 November 2022 media interview with one Commission member, she provided generic examples of why a member may recuse and then in connection with her own self-recusal, vaguely noted that she had “expressed myself publicly on certain issues [in relation to that candidate]”.

⁸⁹ Some civil society organizations collaborated with media outlets that published investigative reports on the candidates and others published their own reports which were shared with investigative journalists.

⁹⁰ For instance, video exposés posted by the NGO Watchdog on its Facebook page collected thousands of views and hundreds of reactions and comments. One video, for example, was viewed more than 80,000 times within three weeks of being posted.

⁹¹ The election by the General Assembly of Judges was first scheduled for 1 October 2021, with a legal deadline for application submissions 30 days prior, on 1 September 2021. The election was subsequently postponed to early December, with the deadline for applications extended to 3 November 2021. The main reason given for the postponement was recent legislative amendments related to the composition of the SCM and selection of its members.

⁹² Under Article 15(10) of the pre-vetting law, applicants could formally withdraw their candidacy up to seven days after the 27 March deadline, without being subject to the evaluation procedure.

71. The original candidate pool for the SCM judge member vacancies included 21 candidates, with two withdrawals and five new applicants following the first extension of the submission deadline, and two withdrawals and six new applicants following the second extension of the deadline. This resulted in a final list of 28 judge candidates. When the pre-vetting law was adopted, the Ministry of Justice took steps to explain to judges the new legislation for evaluating candidates to the SCM and encouraged them to apply for the SCM vacancies.⁹³
72. On 24 March 2022, within the legal deadline, the parliament announced an open competition for the six vacant posts for layperson SCM members. Due to a low number of applications, the initial four-week deadline was twice extended, up to 3 June 2022. Following verification of their eligibility by a parliamentary committee, 12 applicants were submitted to the Evaluation Commission for an integrity assessment, expected to take place following assessment of the SCM judge candidates.⁹⁴ Among the layperson candidates were private lawyers, academics, and civil society representatives, of which one-third (4) were women. **The vacancy notices did not actively encourage applications from women, minorities or persons with disabilities.**
73. The final candidate list for the SCM judge member positions included 28 judge candidates.⁹⁵ On 29 March 2022, the SCM, posted on its website the names on the final candidate list, but, contrary to the Law, did not publish the candidates' full application packages, which included CVs and motivation letters on its website.⁹⁶ **This limited transparency in the evaluation process, delaying the public's access to information about the candidates who were seeking posts and under evaluation.**⁹⁷ As required by law, the SCM forwarded the candidates' application files to the Evaluation Commission for an integrity assessment.
74. Among the 28 SCM judge candidates, 10 were women (36 per cent), significantly less than the proportion of women among all judges in Moldova.⁹⁸ This may be indicative of a need to effectively encourage women judges to run for posts on the judiciary's self-administrative body. Most judge candidates were trial court judges (22) from across the country, with three Court of Appeal and three Supreme Court judges also participating in the competition. The judge candidates' average age was 48 years old (based on publicly available information for half of the candidates), with an average of 13 years judicial experience among all of the SCM judge candidates. This represented a candidate pool of average experience, particularly for a judicial self-administration body.

⁹³ See such initiative [reported](#) in the media.

⁹⁴ On 17 January 2023, the Evaluation Commission announced that it had started the evaluation process for the layperson candidates to the SCM. Although not formally announced, the layperson candidates had apparently been requested earlier to submit the required asset declaration form.

⁹⁵ In total, some 100 judges and prosecutors applied to be members of the SCM or SCP or to sit on one of the specialized boards. The candidates to the boards are expected to be evaluated after the candidates for membership on the SCM and SCP are evaluated.

⁹⁶ The requirement to publish the CVs/applications of SCM candidates is set out in Article 3(5) of the Law on the SCM. The law requires publication of the applicant documents on the website on the next working day after the application deadline. The SCM published the full application packages of the candidates who had applied for the vacancies prior to the final extension of the application deadline, but not of those candidates who applied after the application deadline was extended under the pre-vetting law.

⁹⁷ The full dossiers of the positively evaluated candidates were, however, published by the SCM on 23 February 2023 after it convened the General Assembly of Judges for the election.

⁹⁸ According to a [civil society report](#), in 2018, 48 per cent of judges in Moldova were women. Despite the significant percentage of minority citizens in Moldova (some 25 per cent according to the National Bureau of Statistics), the SCM judge candidate pool appeared to include one person representing a national minority.

75. Following withdrawals, in total, 23 judge candidates and eight layperson candidates remained subject to substantive evaluation.⁹⁹ Withdrawn candidates were deemed by law to have failed the evaluation regardless of the reason for the withdrawal, which may be seen as unjustifiably affecting their reputation.¹⁰⁰ This is especially so as the Commission’s online candidate list indicates next to the withdrawn candidate’s name the result as “failed”, without indication that it was based on a withdrawal.¹⁰¹

10. INFORMATION COLLECTION AND VERIFICATION

76. To fulfil its mandate, the pre-vetting law grants the Evaluation Commission the power to collect and verify any information relevant to the evaluation of the candidate, with access to any systems that contain relevant data, and the power to request relevant information from individuals or legal entities.¹⁰² A 10-day deadline applies to the Commission’s requests for information, subject to sanctions for non-compliance.¹⁰³ The pre-vetting law provides a non-exhaustive list of sources of information to be verified in order to ascertain the financial integrity of a candidate, including tax declarations, sources of income, loans, and gifts of property. The ODIHR Opinion points out that **this scope of power to obtain and request information may be excessive** and, in line with good practice, recommended to strictly clarify the Commission’s powers.¹⁰⁴ As a positive measure, Commission members and staff are required to maintain confidentiality and security of any personal data collected, **although respect to the right to privacy is not explicitly referred to in the pre-vetting law and sanctions for unauthorized disclosure are not provided for.**

77. **The Commission’s regulations do not provide a clear and objective basis for the collection and verification of information related to the candidates’ integrity, as noted in the ODIHR Opinion.¹⁰⁵ The Commission’s Regulations should also include rules and measures for the protection of personal data.¹⁰⁶** In addition, mandatory measures are needed to ensure a verifiable record of the investigations, especially information and findings that will serve as the basis of negative evaluations.¹⁰⁷ The verifiable record of investigation may be a safeguard against arbitrary and inconsistent practices. The evaluation decisions alone do not constitute an investigation record in this respect. The Commission did not make publicly available any adopted guidelines regarding the maintenance of a verifiable record of collected information.

⁹⁹ Four judge candidates (three men and one woman) and two layperson candidates (one woman and one man) formally withdrew from the process prior to the hearings, while a fifth judge candidate (man) and two layperson candidates (both men) were deemed failed for failure to submit the required asset declaration to the Commission within the legal deadline.

¹⁰⁰ All withdrawn candidates were deemed to have failed the evaluation under Article 13(1) of the pre-vetting law, as they had withdrawn past the one-week withdrawal deadline, effectively 3 April. One of the withdrawn/failed candidates posted on her Facebook page that her withdrawal was due to the potential of a perceived conflict-of-interest in being elected an SCM member while her husband had recently been elected as president of the national union of bailiffs. Similarly, one judge candidate and two layperson candidates were deemed to have failed the evaluation due to failing to submit the requested declaration within the legal deadline.

¹⁰¹ The reasoned decisions which are linked to the candidate list indicate that the failed result was based on a withdrawal. However, one withdrawn candidate refused publication of the decision and next to his name on the candidate list it indicates failed and refusal to publish decision.

¹⁰² The only limitation that the Evaluation Commission may not access is state secrets.

¹⁰³ However, the pre-vetting law does not establish any specific sanctions.

¹⁰⁴ ODIHR Opinion, paras 45-46. For example, the Law does not explicitly exclude the gathering of information concerning the health status of judges, which should be protected by the right to respect for private life.

¹⁰⁵ ODIHR Opinion, para. 47.

¹⁰⁶ In practice, the Commission apparently put in place safeguards for private data protection, including password-only access to public databases and software for tracking searches.

¹⁰⁷ ODIHR Opinion, para. 50.

78. To ensure fairness and transparency, the rules should guarantee that any conflict of interest related to staff members of the Commission is adequately addressed and that all candidates are to be subjected to the same checks¹⁰⁸, while taking into account any specific circumstances a given candidate may have. Although purportedly developed, **the Commission did not make publicly available any adopted guidelines or measures aimed at addressing potential conflict-of-interest of staff members, especially those responsible for the collection and verification of data, and measures to ensure that staff members maintain data protection.**¹⁰⁹
79. In consultation with the candidates, and as required by the Law, at the start of the process, the Commission developed a form for candidates to declare information about their assets and personal interests, including expenses, over the past five years, as well as a list of close persons working in the judicial system, prosecutor's office and public service. As a positive measure, on 2 June 2022, the Commission forwarded the candidates a draft of the asset declaration form in order to provide an advance opportunity to familiarize themselves with the information requested and to start collecting the information ahead of the formal request, particularly in light of the strict seven-day submission deadline.¹¹⁰ Candidates were also invited to provide feedback on the draft and to submit questions. As a positive initiative, on 16 June 2022, the Commission held an online meeting with the candidates to provide updates on the form and discuss procedural issues related to the information collection phase.¹¹¹
80. On 8 July 2022, the Commission formally requested the SCM judge candidates to submit the form and the aforementioned list of close persons by the 15 July 2022 deadline.¹¹² The form was published online. On 28 July 2022, the Commission announced that all but one candidate had submitted the form.¹¹³ On 21 June 2022, the Commission invited the SCM judge candidates to complete a voluntary ethics questionnaire by the 5 July 2022 deadline.¹¹⁴ On 14 July 2022, the Commission denied in writing an information request from a civil society representative for a nominal list of those candidates who submitted the questionnaire. The reasons cited for the denial were that, it was a voluntary submission and that, to disclose the information could affect public perception of the candidates while the evaluation process is ongoing.¹¹⁵ The refusal garnered some online criticism from civil society and the legal community.¹¹⁶ On 28 July 2022, the Commission announced that 25 (of the then 27 remaining) judge candidates completed the questionnaire.

¹⁰⁸ Article 6 of the European Convention on Human Rights and Fundamental Freedoms, and ODIHR Kyiv Recommendations (2010) par 22.

¹⁰⁹ In a [media interview on 20 November 2022](#), a Commission member stated that the Commission put in place "a series of measures on who has access to what kind of data". However, these measures were never publicly disclosed.

¹¹⁰ ODIHR Opinion, para. 61.

¹¹¹ About two-thirds of all candidates to the SCM and SCP and their specialized bodies attended the meeting. Commission members did not address questions about the asset declaration form, instead referring candidates to a yet to be published consolidated table of the candidates' written questions to the draft with corresponding answers or to the instructions accompanying the form. The table, published on 6 July, included some 15 questions and comments regarding the form's questions and indicated that a number of specific amendments would be made to the form based on the candidates' questions/comments.

¹¹² The final version of the asset declaration form, accompanied by instructions and a sample completed form, addressed some of the earlier feedback provided by the candidates.

¹¹³ As noted earlier, the candidate who did not submit the form was deemed by law to have failed the evaluation.

¹¹⁴ The Commission had provided the candidates with an advance preview of the ethics questionnaire for consultations prior to formally sending it out. The questionnaire was posted online for public viewing.

¹¹⁵ The [request and denial](#) were posted online by the requesting civil society organization.

¹¹⁶ See criticisms [posted in social media](#) and as [reported in the media](#).

81. During the information collection and verification phase, the Commission gathered data from over 20 public and private Moldovan institutions, which varied depending on the candidate profile.¹¹⁷ These included, among others, tax authorities, anti-corruption bodies, border police, and private banks.¹¹⁸ In addition, for specific candidates, the Commission referred questions to certain public and private institutions in foreign countries.¹¹⁹ The Commission also actively called on civil society, media, and the general public to submit information related to the candidates' financial and ethical integrity, with such information subject to verification by the Commission. Accepting such submissions from the public is considered a positive measure.
82. The Commission engaged in an intensive series of questions and answers and requests for documents with each candidate. Candidates were given relatively short deadlines to respond.¹²⁰ Questions were based on an analysis of the candidates' asset declaration forms and information and documents received from third party individuals and institutions. When candidates were scheduled for a hearing, the Commission posted online how many rounds of questions each candidate had been subjected to and the number of questions and requests for documents put to them.¹²¹ On average, judge candidates underwent three rounds of questions, with an average of 27 questions and 66 sub-questions tailored to the specific candidate and an average of some 30 requests for documents.¹²² The specific questions put to the candidates and their responses were not, however, made public.
83. The Law had provided 30 days from receipt of the asset declarations to complete the entire process of information collection and verification, with the possibility to extend by up to 15 days in complex cases or where there were delays in receiving requested information.¹²³ **In light of the intensive and complex nature of the investigation process, this 45-day period appeared to be unduly short, potentially impacting the credibility of the process.**¹²⁴ The fact that the Commission continued collecting and verifying additional information and documentation from the candidates for several months, and that legislative amendments abolishing deadlines for information collection from public and private sources were introduced at later stage, are indicative that the timeframe initially envisaged by the Law was insufficient.¹²⁵

¹¹⁷ As a positive measure, early in its mandate, the Evaluation Commission held meetings with relevant national authorities to discuss cooperation, particularly on the collection and verification of information on the candidates

¹¹⁸ According to a statement of the Commission chairperson during a 2 December 2022 media interview.

¹¹⁹ In a media interview on 26 September 2022, shortly before the hearing process began, the chairman stated that the Commission had not received sufficient information and/or timely responses to their requests from foreign sources and that it would continue its efforts to obtain such information.

¹²⁰ According to a statement of the Commission chairperson during a media interview of 2 December 2022, candidates were usually given 4-5 days to respond. In an appeal case against the decision of the Commission, a candidate claimed that he had been given several hours for submission of certain financial documentation and that a fixed 3-day deadline fell over the weekend when banks were closed.

¹²¹ At the start of each hearing, the Commission chairperson also announced this information, together with the dates of the requests and dates of the responses, and whether the responses were full or partial.

¹²² The candidates underwent up to four rounds of questions; the number of questions and sub-questions posed ranged from 6 - 49 and 18 - 145, respectively. Some candidates were asked to submit very few documents, with a maximum of 59 documents requested from one candidate. This phase overlapped with the hearing process, with some candidates undergoing rounds of questions after the hearings started. The final rounds of questions were completed in December 2022.

¹²³ With a 15 July 2022 deadline to receive the declarations, 14 August 2022 was the deadline to complete the information collection and verification, with 29 August 2022 as the possible extended deadline in justified cases. On 28 July 2022, two weeks after the deadline of 15 July 2022 for starting the information collection and verification process, the Commission announced that it had started the evaluation process.

¹²⁴ ODIHR Opinion, para. 62, recommended that sufficient time be allocated taking into account the scope of the assessments. It further recommended that the Commission be provided an opportunity to extend the established time limit for the further collection, verification and analysis of the data. The Commission publicly disclosed the dates for each set of questions/requests sent to the candidates for information/documents in its decisions, and this shows that the requests for some candidates were dated past the 45-day deadline, even into September/October 2022.

¹²⁵ Following the candidates' submission of the asset declarations, the Evaluation Commission obtained additional information from the candidates over a period that lasted between 3 - 5 months, depending on the candidate.

84. Under the Law, candidates may request to review the collected materials within three days prior to the scheduled hearing.¹²⁶ However, there are no provisions of the exact modum of this kind of request.

11. CANDIDATE HEARINGS

85. The pre-vetting law requires the Evaluation Commission to invite all candidates to be publicly heard, with their guaranteed right to give oral explanations.¹²⁷ A provision that allows candidates to submit additional written information at their hearings was amended in the midst of the hearing process, limiting it to information that the candidate was unable to previously present to the Commission. Thus, one judge candidate who was heard after the amendment was subject to different legislative rules than all other candidates heard under the initial version of the pre-vetting law. **Such change to the legal framework, although positive in principle, in the midst of the evaluation process may have unfairly impacted the rights of candidates and challenged legal certainty of the process.**

86. The hearing process of the judge candidates, which was to start effectively by 29 August 2022, began with a six-week delay and lasted from 7 October 2022 to 12 January 2023.¹²⁸ Although the law does not establish a concrete deadline for holding the candidate hearings, they are to be held after examining the collected information. Twenty-two judge candidates were heard, while one requested not to be heard.¹²⁹ Seven layperson candidates were heard by the Commission during the week of 1 – 7 March 2023, while one requested not to be heard. The basis for determining the order of the candidates' hearings was not made public. The average length per hearing of the judge candidates was 83 minutes, with the length varying widely due to the nature of the hearings, akin to a court proceeding.¹³⁰ No other persons were heard, even though candidates were often questioned about information possessed by third parties, especially family members.¹³¹

87. The public and media representatives were permitted to observe the hearings in person, however, public notice was as short as two days and very few people attended.¹³² Although candidates had a right to have legal counsel present, none did.

¹²⁶ The 22 December 2022 amendments to the pre-vetting law obliges the candidates to maintain confidentiality of any personal data contained in the reviewed evaluation materials.

¹²⁷ Candidates are not required to attend the hearing in which case they are to be evaluated solely on the basis of information gathered. The law also empowers the Commission to hear third parties holding relevant information about a candidate's integrity. However, the Commission informed the ODIHR monitoring team that it does not consider itself empowered to summon third parties and did not intend to hear third parties.

¹²⁸ Hearings were held in blocks with two to four candidates per hearing day. The hearings of the judge candidates were scheduled on 7 and 27-28 October 2022, 30 November 2022, 1-2 and 14-16 December 2022, and 12 January 2023. The staggered nature of the hearing process was apparently due to the information and collection phase overlapping with the hearing phase.

¹²⁹ Article 12(3) of the pre-vetting law provides that a hearing is to be held in the absence of the candidate who refuses to be heard. The Evaluation Commission did not hold such hearings, apparently as it is unclear what the nature of such hearing would be and the purpose it would serve in the absence of the candidate. The pre-vetting law provides that the Commission is to evaluate such candidate based on the information and documents collected and the candidate's written responses to questions in the pre-hearing phase.

¹³⁰ At the start of each hearing, the chairperson announced that the expected duration of the hearing was around one hour. The shortest hearing was 9 minutes and the longest 212 minutes.

¹³¹ In response to certain lines of questioning, some candidates noted that they themselves did not have a right to access official information on the income of their family members and were uncomfortable discussing personal finances with their relatives.

¹³² The hearings were held at the National Institute of Justice. On 5 October 2022, the Commission announced that for reasons of public health, admission of media representatives and the public was limited to 20 people, according to the sequence of notifications. ODIHR observers attended all hearings. The only media representative who attended was a national radio journalist who observed some hearings. Two representatives of civil society organizations were present at most hearings. No members of the public attended, although one candidate observed another candidate's hearing and an advisor to the Minister of Justice attended one hearing. The venue was accessible to persons who use wheelchairs.

88. The format and conduct of the hearing process were not regulated in detail in the Rules of Procedures¹³³ and, would have benefited from further elaboration as a complete set of rules and a code of conduct would have served to reinforce the principles of an objective, fair, and orderly hearing process, respect for judicial independence and private life, and an appropriate level of transparency.
89. As a measure that contributed to smooth proceedings, thirty minutes before each hearing, candidates were given a package of written materials that included summaries of the facts related to the issues that the candidate would be questioned on, as well as any documents that would be referred to. Each Commission member had the same materials. Nevertheless, in some cases, confusion over the facts and documents led to protracted discussions. Throughout the proceedings, Commission members were careful to protect the personal data of the candidates and third parties, taking measures not to disclose data such as bank account numbers and real estate addresses.¹³⁴ As noted earlier, part of two hearings were held in closed session.
90. Throughout the hearing process, the commission worked in a collegial and professional manner, subject to isolated instances. All members were present at all hearings, except in cases of recusal, and remained throughout the proceedings.¹³⁵ The Commission's hybrid nature appeared to enhance the quality of the hearings.¹³⁶ Notably, members were generally well-prepared, clearly knowledgeable about the matters on which the candidates were questioned which stemmed from their intensive information collection and verification process. Candidates were given members' full attention and provided ample opportunity to respond to the questions and to add anything before the questioning moved on to a new issue.
91. Hearings were conducted in a solemn, peaceful, and orderly manner. There were, however, isolated instances of tense exchanges between members and candidates, which included aggressive comments by candidates and certain accusations against the Commission, its members, and secretariat.¹³⁷ Although the questions posed in each hearing were tailored to each candidate's real-life circumstances, the Commission approached the questioning in a very consistent and systematic manner. The majority of issues examined related to financial integrity, with relatively few matters on ethical conduct.¹³⁸ However, candidates were not questioned on each and every issue regarding the candidate's integrity as identified in the pre-hearing phase.¹³⁹ It was clear that the bulk of the enquiry on the candidates' integrity was conducted before the hearing took place, with the hearings

¹³³ These include providing candidates and the public advance notice of the hearings; interpretation of proceedings into English/Romanian; the possibility to hold (part of) hearings in closed session; audio and video recording of the hearings and, if possible, livestreaming (the latter repealed on 23 December 2022); protection of private data; opportunity for the public and media to attend with prior notice; the right of the candidate to have legal counsel present; an opening statement by the chairperson followed by members' questions; an opportunity for the candidate to give a brief final statement; a requirement for all present to follow proper order, subject to warning and exclusion; closed deliberations.

¹³⁴ For instance, when posing questions about multiple bank accounts, the Commission members would label them bank account #1, #2, #3, etc.

¹³⁵ One international member participated in some of the hearings via an online video platform. Two national members self-recused from three different hearings, one at each; one candidate's two recusal requests submitted in writing at the pre-hearing stage were rejected; one candidate's verbal request at his hearing to recuse the chairperson was rejected on the spot, however later the chairperson abstained from voting during the decision making.

¹³⁶ Due to the Commission's hybrid nature, the proceedings were simultaneously translated; headsets were provided for members, candidates, and observers. It is noted that in responding to members' questions, some candidates made explicit reference to having to explain the 'cultural' context in Moldova in order for the foreign members to understand certain behaviors or actions taken by the candidate.

¹³⁷ For instance, a few candidates accused the Commission and/or its secretariat of being discriminatory, biased, incompetent, and/or not transparent.

¹³⁸ Questioning related to the following general issues: abuse of, and unjust enrichment from, various preferential programs for judges to access housing and loans; failure to declare bank accounts, loans, use rights and assets of the candidate and their family members or commenting on the judge's own cases/judgements.

¹³⁹ For instance, it was observed that not all judge candidates were thoroughly questioned on their judgements which had been overturned by the European Court of Human Rights.

used only to address remaining concerns. Although it was apparent that an intensive examination of each candidate had been undertaken, the lack of sufficient public communication about the collection of information phase limited the overall transparency of the evaluation process.

92. Candidates were largely treated in an impartial, fair and consistent manner, meeting key international standards for such an evaluation process. The Commission denied however one candidate a hearing, who had refused to provide information or respond to questions at the pre-hearing stage, grounded on its rule prohibiting additional information from being presented at hearing without justification.¹⁴⁰ **The decision to refuse the candidate a hearing was provided verbally at the public session. It was reported that the Commission further provided written justification to the candidate in the final evaluation decision, which was issued two months after the hearing, and not made public due to the request of the candidate.**¹⁴¹ The candidate unsuccessfully appealed the Commission’s decision.¹⁴² **The refusal to hear a candidate in such a quasi-judicial process may raise questions with respect to the right to be heard**¹⁴³ particularly if a candidate is eventually given a negative evaluation. Therefore, it may be advisable to consider publishing procedural decision having an impact on a final outcome of the evaluation separately from the final evaluation (which candidates may request not to publish). This measure may enhance credibility and transparency of the process for a general public. This is furthermore important, as it was observed that **the Commission provided opportunities for other candidates to give additional information at their hearings with regard to questions that had previously been asked in the pre-hearing phase, without having to provide justification.**
93. **The lack of clarity of the issues as presented to the candidates introduced an element of unfairness in the hearing proceedings.** In this respect, it was often unclear whether a certain line of questioning was related to a suspected breach of financial integrity or ethical integrity. Although the candidates were given access to the case material in advance, it was not always clear to the candidates what the specific nature of the allegations or concerns were, and which legal or ethical norm they were being suspected of violating.¹⁴⁴ **The candidates were thereby disadvantaged when exercising their right to respond to specified issues of concern or allegations against them, especially as the proceedings were akin to a judicial hearing.** In some instances,

¹⁴⁰ Article 12 (4) (a) of the Law envisages the candidates’ right to have a hearing and offer oral explanations. Article 17(4) of the Rules of Procedures prohibits a candidate to present information or documents during the hearing if the Commission had earlier requested them, unless justified. The Law at the time when this particular candidate was evaluated envisaged in Article 12 (4) (d) that the candidate has the right to provide additional information to clarify the suspicions against him/her. Only in December 2022, after the candidate’s evaluation, the law was amended with the text “if s/he was in impossibility to present them previously”. The candidate had not responded to any of the questions or requests for documents in the pre-hearing stage, claiming he was too busy, and stated his availability to provide answers at the hearing. At the hearing on 27 October 2022, the chairperson asked for a justification for the failure to produce written answers. The candidate claimed that he is not bound to respond to the Commission’s questions prior to the hearing and is entitled to know the specifics of the Commission’s doubts of his integrity, not just to be asked questions. The chairperson announced that the hearing would not proceed based on the above-noted rule and lack of justification. The candidate claimed that the rule violated his right to be heard under the pre-vetting law and called for the chairperson’s recusal on grounds that he had not consulted with the other members on not holding the hearing. Noting that the decision not to proceed had been made by the Commission prior to the session, the chairperson did not recuse, but later decided to abstain from voting on the decision.

¹⁴¹ The candidate exercised his legal right to refuse the publication of the evaluation decision and it is not publicly known what justification was provided to the candidate.

¹⁴² In its 6 February 2023 judgement, the Supreme Court of Justice dismissed the appeal on merits, and although it referenced both procedural and substantive issues, it relied on a provision in the pre-vetting law that precluded the court from overturning evaluation decisions for procedural irregularities. One week later, that legal provision was deemed unconstitutional as it unduly restricted the court’s powers to ensure sufficient review.

¹⁴³ Based on statements of the Chairperson and other member, the fact that the candidate had not submitted any responses in the pre-hearing phase appeared to be the defining factor for being denied a hearing.

¹⁴⁴ For example, one member would introduce the topic as “the Mercedes-Benz car you (or your family member) purchased in 2012”, but although such factual context was provided, it was unclear what the candidate was being specifically suspected of, e.g., unknown source of income, capital gains tax evasion, etc. In some other cases, it was not clear whether the issue was related to financial or ethical integrity, especially as some ethical issues involved financial transactions, e.g., purchasing a car at a preferred price from a lawyer who appears in front of that judge.

candidates' responses revealed confusion over the issue or explicitly noted that they were not clear what issue the questioning related to or what they were being accused of.¹⁴⁵

12. EVALUATION DECISIONS

94. At the start of each hearing, the chairperson announced that, as a general rule, its evaluation decision would be issued within 30 days. However, in practice, some decisions with reasoning were issued up to seven weeks after the hearing and forwarded to the candidate and published up to one month after issuance, which amounted to significant delays in the finalization of decisions. It is noted though that the reasoned decisions had to be drafted/translated in both Romanian and English which would have contributed to some delay between issuance of the decision, forwarding it to the candidate, and its publication (or publication of the result). The Commission did not offer the public explanation for these delays, raising questions with respect to the transparency of the decision-making process. On 7 February 2023, the Commission announced that decisions for all 28 judge candidates had been finalized and a similar announcement was published on 30 March 2023 regarding the 12 layperson candidates.
95. The lack of deadlines for issuing, and notifying candidates of the evaluation decisions resulted in protracted delays, potentially weakening public trust in the process. The Commission's deliberations, which are to be conducted in private, took place immediately after each hearing and on a later date when the decision was formally adopted. The legal framework does not provide a timeline for adoption of the decision following a hearing and while the Rules of Procedures provide that a decision may be delayed if additional information/clarification is requested following a hearing, an extended deadline is not established.
96. In line with international good practice, the pre-vetting law requires the evaluation decisions to be adopted by majority vote and to reason the decisions.¹⁴⁶ The Law prescribes an open voting process and the regulations oblige the chairperson to announce the votes, providing transparency of the voting process. However, the regulation does not elaborate how and when the vote of each member will be announced or require each member's vote to be recorded in the written evaluation decision.¹⁴⁷ In practice though, the published decisions included the result of the vote, whether unanimous and if not, which members dissented.
97. Only five SCM judge candidates passed the substantive evaluations, while eighteen (78 per cent) failed after being heard by the Commission. Among those decisions published, four included one dissenting member.¹⁴⁸ Of the five successful candidates, three were women, significantly above the proportion of women candidates substantively evaluated.¹⁴⁹ With an average of nine years of judicial experience, the successful candidates were less experienced than the average twelve years of judicial experience amongst all substantively evaluated candidates. All approved candidates

¹⁴⁵ In a few instances, the members themselves appeared to be unclear as to the specific nature of the allegation that they were examining on, which further affected candidates' ability to respond.

¹⁴⁶ Members cannot abstain from voting on a decision. The rules provide for written dissenting opinions, which, if applicable, are to be published with the evaluation decision. See ODIHR Opinion, para. 71.

¹⁴⁷ ODIHR Opinion, para. 69.

¹⁴⁸ The dissenter was the same national member in all four decisions that failed the respective candidate. As required by the rules, the dissenting opinions were published with the respective reasoned decisions in cases where the candidate allowed the decision to be published.

¹⁴⁹ Sixty per cent of the successful judge candidates were women, while thirty-nine per cent of all substantively evaluated judge candidates were women.

were first instance court judges, while all higher court judge candidates, including three from the Supreme Court of Justice, failed the evaluation.

98. In terms of the SCM layperson candidates, only three candidates passed the substantive evaluation, while five out of eight candidates failed. All published decisions, including those of the successful candidates, were unanimously adopted by the participating members of the Commission. Out of the three successful candidates, one was a woman. The appointed layperson members have legal professional experience in civil society, public institutions, and private practice; two currently sit on specialized bodies of the SCM.
99. The Law states that reasoned decisions are published only if the candidate has not submitted an objection to publish within 48 hours of receipt of the decision.¹⁵⁰ Those decisions that are published are to be “de-personalized, except for the candidate’s full name”. The published decisions had limited redaction, with only technical private data such as bank account numbers and real estate addresses struck out, thereby favouring transparency of the process. The result of the votes, including names of any dissenters, were not published unless the reasoned decision was published, even though the regulations appear to guarantee a transparent voting process.¹⁵¹
100. All five successful judge candidates and the three successful layperson candidates allowed the reasoned decision to be published. However, eight of the eighteen failed judge candidates (44 per cent) and two out of five layperson candidates that failed on the merits refused publishing.¹⁵² Published decisions were well-reasoned and consistent and applied fair and logical reasoning in their findings and conclusions, contributing to public trust in the impartiality and objectivity of the evaluation process. Publishing decisions pending determination of appeals is problematic as it could adversely affect the judges’ reputation and public trust in the judiciary, even if the decision is eventually overturned.¹⁵³ Nevertheless, some failed candidates allowed the applicable decision to be published pending determination of their appeals. The Commission published all of the applicable evaluation results within the mentioned 48-hours after notifying the candidate. Within the legal deadline established by Law, the SCM also published all the applicable decisions.¹⁵⁴

13. LEGAL REMEDY

101. The pre-vetting law grants candidates the right to appeal the evaluation decision within five days of receipt. The appeal is to be submitted to the Supreme Court of Justice, at which a special fixed panel composed of three judges (and one substitute judge, in case of recusals) examines the case within ten days.¹⁵⁵ Based on a Constitutional Court ruling, the special panel is exclusively appointed by the President of the Supreme Court of Justice, with the approval of the President of Moldova repealed.¹⁵⁶ As noted in the ODIHR Opinion, the impartiality and independence of the panel may be

¹⁵⁰ Article 13 (7) of the pre-vetting law and ODIHR Opinion, para. 73.

¹⁵¹ Article 11(5) of the Rules of Procedure states that the chairperson shall announce the vote of all members on each decision.

¹⁵² In addition, four judge candidates and four layperson candidates who failed due to withdrawal or non-submission of the asset declaration allowed the decisions to be published, while one judge candidate refused publication.

¹⁵³ ODIHR Opinion para.75.

¹⁵⁴ The pre-vetting law does not require the Evaluation Commission, to publish the reasoned decisions, if applicable, but in practice it did so. The SCM did not publish an evaluation result if the respective decision was not published, which left the information on its website incomplete.

¹⁵⁵ The evaluation decisions each included a reference to the right to appeal and the corresponding deadline, but did not mention the venue for appeal. ODIHR Opinion, para. 79 recommended that the procedural rights of a candidate who lodges an appeal be specified in the pre-vetting law.

¹⁵⁶ See [Constitutional Court’s decision](#) of 7 April 2022. The original version of the provision that empowered the President of Moldova to approve the composition of the panel of judges was deemed unconstitutional and repealed on grounds that it did not comply with the constitutional principles of separation of powers and independence of judges.

better achieved by a random allocation of appeals to different panels formed among all Supreme Court judges, especially as the judges are likely to personally know many of the appellants which could lead to recusals.¹⁵⁷

102. Certain limits on the appellate court’s powers challenge the right to effective legal remedy.¹⁵⁸ The original version of the pre-vetting law did not limit the grounds on which the court could overturn the evaluation decision. However, a December 2022 amendment provided that the appeal can be upheld only where the court finds the existence of circumstances (related to the candidate’s financial and ethical integrity) that could result in a positive evaluation. Although somewhat ambiguous, the provision related to substantive, but not procedural, errors. While defining the limits of scope of appeals adjudication is not in and of itself problematic, excluding consideration of violations of procedural due process or potential discrimination, may undermine the right to effective legal remedy.¹⁵⁹ **Moreover, contrary to good practice, this substantive amendment affecting the evaluation process was adopted while the evaluation of the SCM candidates was ongoing,** although it was introduced before the Commission issued its first negative decisions.¹⁶⁰ Subsequently, the amendment was deemed unconstitutional (discussed below).¹⁶¹

103. **Given that the candidate’s right to access a position in the public service is at stake, the ODIHR Opinion advised that the appeal should have a suspensive effect on the evaluation decision and that the candidate be able to participate in the competition until the decision is confirmed by the court.**¹⁶² In order to mitigate negative effects of intentional delays, in addition to the time limits for examination of appeals, the legislator may consider introducing adequate compensatory measures for candidates who were denied the right to an effective appeal due to the failure of courts to hear a case within the legal deadline.

104. However, according to the Law¹⁶³ the lodging of an appeal does not suspend the decision of the Evaluation Commission or the elections or competition in which the concerned candidate is participating, as the case may be. If the appeal is upheld, the judge panel orders the Commission to reopen the evaluation procedure for that candidate although it is not required to instruct the Commission to remedy specific shortcomings in the evaluation. If the Commission’s new decision positively evaluates the candidate, he or she may lose the right to participate in the competition if those proceedings have already been finalized, thus rendering the appeal procedure moot.

105. All eighteen failed SCM judge candidates and four failed layperson candidates appealed their evaluation decisions to the Supreme Court of Justice within the five-day deadline.¹⁶⁴ Fostering

¹⁵⁷ ODIHR Opinion, para. 78.

¹⁵⁸ OSCE participating States have committed to providing an effective means of redress against administrative decisions. The Copenhagen Document, 1990, para. 5.10 states: “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.”

¹⁵⁹ [Council of Europe Recommendation CM/Rec \(2010\)12](#), para. 48; [Consultative Council of European Judges Opinion no. 10](#), para. 39; [Universal Charter of the Judge](#) (1999, as last updated in 2017), Articles 5-2 para. 3; [2012 European Network of Councils for the Judiciary Dublin Declaration](#), Indicator no. I.10; and [2016 Cape Town Principles](#), Principle 17.

¹⁶⁰ The Evaluation Commission issued its first negative decisions on 4 January 2022, several days after the amendment was adopted and more than two months after these candidates were heard. With this sequence of events, it appeared that the Commission may have delayed the issuance of its first negative decisions until adoption of the amendment limiting the court’s powers on appeal.

¹⁶¹ See [Constitutional Court’s decision](#) of 14 February 2023.

¹⁶² ODIHR Opinion, para. 79. The Venice Commission and Directorate General’s Joint Opinion, para. 38.

¹⁶³ Article 14(6) of the pre-vetting law

¹⁶⁴ The Evaluation Commission posted links to the court’s decisions but did not announce when a candidate had appealed the respective decision. Information about the appeals process, including the filing of appeals and scheduling of hearings, was posted on the Supreme Court’s website.

transparency, the court held public hearings in each of the cases. However, in many of the cases, first hearings were scheduled several days past the ten-day legal deadline for adjudication. Moreover, the hearing process in all cases was significantly protracted - bogged down by technical issues - while the panel's decisions granting requests for suspension of hearings appeared to be rather lax and some extensions unnecessarily lengthy, taking the finalization of all cases well past the requisite ten-day deadline.¹⁶⁵ In two cases, panel judges self-recused, while all 24 recusal requests and a few self-recusals were rejected. **Information about the decisions made with respect to procedural aspects of the appeals, such as recusals, rescheduling, and postponements were not provided in a timely manner, limiting the transparency of the process.**¹⁶⁶

106. Six of the eighteen appeals from the judge candidates claimed unconstitutionality of the provision in the pre-vetting law, introduced in December 2022 that restricted the powers of the Supreme Court to overturn a decision of the Evaluation Commission to those cases in which the court finds the existence of circumstances that could lead to the candidate passing the evaluation.¹⁶⁷ Hearings in these cases were put on hold pending determination of the matter by the Constitutional Court, which issued its decision on an expedited basis.¹⁶⁸ Following a public hearing on 14 February 2023, the Constitutional Court concluded that the contested provision did not guarantee “sufficient review” and deemed it unconstitutional, on grounds that it limited the court to examining the substance of the decision, but not procedural issues which can be a central issue for legal contestation. The Constitutional Court ordered legislators to amend the provision accordingly.¹⁶⁹ All of the appeals, except one, were finalized subsequent to the Constitutional Court's decision and, therefore, in consideration of both substantive and procedural issues.¹⁷⁰ Consequently, the case, which was finalized on appeal before the judgment of the Constitutional Court, was treated differently.

107. In February – March 2023, in the midst of the appeal process, the majority of all Supreme Court judges (more than 75 per cent), including the acting president, resigned *en masse*, leaving only five sitting justices by the end of March.¹⁷¹ This included resignations of all three members and the

¹⁶⁵ In all cases, hearings were serially rescheduled or continued to future dates for various technical reasons, including evidentiary documentation issues in part related to the Evaluation Commission's failure to provide appellants with timely and full disclosure of the materials in their evaluation files. The court accepted the vast majority of requests by appellants to reschedule and suspend hearings, including excessive or unreasonable demands, and initiated some on its own. In some cases, the unavailability of a panel judge led to suspension of hearings, while several hearings were postponed due to a party's lawyer being unavailable or unprepared. Early in the process, a few hearings were suspended for two weeks, one to replace a self-recused judge, another to allow a party to make a supplementary submission, and one to allow the court to decide whether to refer a constitutional issue.

¹⁶⁶ Various judge candidate appellants lodged recusal requests. In one submission, the Evaluation Commission requested the recusal of one panel judge from 15 ongoing cases due to an adverse finding by the National Integrity Agency related to her financial integrity; the request was denied on grounds that the finding was pending appeal.

¹⁶⁷ Article 14(8)(b) of the pre-vetting law. Some appeals claimed procedural unfairness on the part of the Evaluation Commission that allegedly prejudiced the candidate in their efforts to prove, in the face of “serious doubts”, that they met the integrity criteria.

¹⁶⁸ The Constitutional Court issued its decision two weeks after the first referral. Although the law allows the Supreme Court to continue the appeal proceedings until the plea stage while the Constitutional Court considers the issue, it decided to put the cases on hold. At the same time, proceedings in those cases that did not challenge the provision's constitutionality were not halted, despite the direct impact that the Constitutional Court's decision would have on the resolution of all of the appeals.

¹⁶⁹ The court ordered that a ground be added that allows the Supreme Court of Justice to satisfy an appeal where it finds “that serious procedural flaws occurred that could affect the fairness of the process”. On 9 June 2023, the parliament added the ground via transitional Article 25 para. 7(3) of a new Law regarding the selection and performance of evaluation of judges.

¹⁷⁰ Subsequently, in eleven cases, the constitutionality of several other provisions was challenged, including among others, the “serious doubts” standard of proof for the evaluation that the appeal does not suspend the election of SCM members, and the shifting of burden of proof to the candidate. However, the Constitutional Court denied admissibility of the joined claims, on grounds that they did not relate to any fundamental rights.

¹⁷¹ The resignations of 19 of the 24 Supreme Court judges (and one Chisinau Court of Appeal judge), submitted over a ten-day period in February and one more in mid-March 2023, took effect on various dates throughout March and early April 2023. The resignations garnered [harsh criticism](#) from the civil society sector and legal professionals, and prompted efforts on the part of the [government](#) to negotiate their retraction. On 31 March 2023, the Commission for Exceptional Situations issued a decree postponing for 30 days the effective resignation of seven of the judges, which was lifted early on 10 April 2023. On the same date, based on Law No. 65 of 30 March 2023, the SCM posted an extraordinary competition for

alternate member of the special judge’s panel adjudicating the appeals of the Evaluation Commission’s decisions. Two of the remaining judges were appellants, one of whom was appointed as president of the court, who could not sit on the appellate panel due to conflict-of-interest.¹⁷² The resignations mid-way through the examinations of almost all of the appeals and resultant multiple re-compositions of the judge’s panel impacted the efficacy of the appeal process, as it caused lengthy delays and required multiple restarts of all examinations, including in several cases with imminent decisions.¹⁷³ At the same time, five SCM judge members resigned, including its acting president, leaving a lack of quorum on the SCM pending filling of the vacancies.¹⁷⁴ While the judges did not make public their reasons for resignation, it was widely perceived as a backlash against the impending adoption of legislation for the extraordinary evaluation of sitting Supreme Court judges who face the possibility of losing their posts.¹⁷⁵

108. On 10 July 2023, in the midst of the appeal process, and after the Supreme Court had issued its first two (dismissal) decisions, the parliament adopted in the final reading a law on the interpretation¹⁷⁶ of certain norms of the Law, stating that the Evaluation Commission is not a public authority in the sense of the Administrative Code. This interpretation, aimed at clarifying the legislator’s intention to grant the Evaluation Commission special status with limited grounds for overturning its decisions, was adopted without any public consultation only two days before the Supreme Court was scheduled to issue decisions in most of the pending appeals, after which the issuance of the decisions was (indefinitely) postponed by the court. Of those issued to date, the decisions appear well-reasoned, focusing on the special standards established by the pre-vetting law, as well as the procedural rights of the candidates. However, the delays due to the protracted technical proceedings and *en masse* resignations adversely impacted the opportunity for any candidates with successful appeals to be re-evaluated by the Commission in time and to participate in the scheduled elections of judges or competition of lay candidates to the SCM, as the case may be, and to be potentially appointed.

109. On 1 August 2023, the Supreme Court of Justice issued judgements overturning 18 decisions of the Evaluation Commission concerning 14 judge candidates and four non-judge candidates to the SCM and ordering their re-evaluations by the Commission. The decisions were grounded in both substantive and procedural irregularities as reasoned by the court. At the end of the reporting period, 20 out of the 22 appeals had been finalized by the Supreme Court, with all except two accepted. At the end of the reporting period, two SCM judge candidates’ appeals were pending decisions. All

temporary transfer of 12 lower-court judges to the Supreme Court and the SCM launched a competition to fill 20 regular posts on the Supreme Court, subsequently extending the deadline to 9 June 2023. On 2 May 2023, seven judges were temporarily transferred, with one assigned to the special judges panel and on 11 May, a call to fill the remaining temporary vacancies was re-announced.

¹⁷² Also, the court’s new president ordered the deputy president to recompose the panel for her own appeal case on grounds that it should not be examined by a panel that she herself had constituted.

¹⁷³ The resignations of the original panel judges took effect on 1 March and 20 March 2023, while resignation of the panel’s chairperson took effect on 31 March 2023. Immediately following the resignations, some hearings were suspended for two weeks on technical grounds, scheduled to take place only after the panel members’ resignations took effect on 1 March 2023, while one new case was first scheduled three weeks after submission. The panel was officially recomposed six times between 2 March – 4 May 2023, with multiple periods of up to six weeks during which no hearings were held.

¹⁷⁴ The five SCM members included four of the resigned Supreme Court judges and one resigned Court of Appeal judge. Following the resignations, only one judge member (a Supreme Court judge) and one layperson member remained on the SCM.

¹⁷⁵ At the time, the draft law on the extraordinary evaluation of Supreme Court judges provided that any judge who resigns after the law enters into force and before being evaluated or who receives a negative evaluation cannot return to the judicial system for seven years or work in any legal profession for five years and loses the right to the judges’ pension.

¹⁷⁶ A small group of members of the parliament [registered](#) the draft law on 29 June 2023. The draft law was adopted in the first reading the following day. The adopted interpretation is in line with the argumentation that was repeatedly presented by the lawyers of the Evaluation Commission during the hearings before the Supreme Court of Justice.

final decisions, were issued with considerable delay and well-beyond the ten-day legal deadline and after the appointment and the election of new SCM members took place. As of the end of the reporting period, the Evaluation Commission had not re-evaluated the 18 SCM candidates whose evaluations had been overturned by the court.

14. ELECTION AND APPOINTMENT OF SCM MEMBERS

110. Candidates who pass the integrity evaluation are permitted to run in the election for vacant judge posts on the SCM, held by the General Assembly of Judges, or the competition for vacant laypersons positions, as the case may be. Under the final clauses of the pre-vetting law, within seven days of the Evaluation Commission issuing its decision on the last judge candidate for membership on the SCM, the SCM is to convene the General Assembly of Judges, to schedule the holding of the election. The elections should take place not later than 35 days after the convening.
111. The judge candidates who passed the evaluation were given the opportunity to campaign, including through a popular TV program on which approved candidates could discuss their platforms. They also jointly visited courts to privately campaign their fellow judges. There were five candidates competing for four places as four of six posts are reserved for trial court judges and the five candidates campaigning were all in fact, trial court judges.
112. Following completion of the vetting of all SCM judge candidates by the Evaluation Commission, on 14 February 2023, the SCM convened the General Assembly of Judges for 17 March 2023, for the election for the vacant SCM judge posts. On 16 March 2023, the parliament adopted a law amending the procedure for electing members of the SCM and SCP, with 58 ruling party votes in favour.¹⁷⁷ It provides that if a simple majority quorum of the General Assembly is not met, the quorum for a repeated General Assembly should be reduced to one-third. In addition, it regulates the situation in which the General Assembly cannot be convened due to the expiry of the mandate of the SCM and SCP members, the lack of a quorum on the councils, or in the event of a state of emergency. Under these conditions, the General Assembly of Judges would be convened and opened by the president or interim president of the SCM. In the case of a vacancy in that position, the Minister of Justice would convene and open the General Assembly of Judges.
113. The General Assembly of Judges was held as announced on 17 March 2023 with some 330 out of 425 judges attending and the required quorum met.¹⁷⁸ At the beginning of the session, the judges voted in favour of a proposal to include in the agenda a discussion about the possibility of postponing the elections of the SCM members.¹⁷⁹ Despite the alleged lack of a legal basis for doing so, and differences of opinions among judges on the issue,¹⁸⁰ the judges voted to interrupt the meeting and to reconvene the General Assembly of Judges on 28 April 2023, one month past the legal deadline

¹⁷⁷ The law is aimed to "exclude the situation of the perpetuation of interims or the vacancy of the position of member of the SCM, SCP and specialized colleges, which can be caused by the failure to meet the quorum necessary for the general assembly to be deliberative"

¹⁷⁸ The [draft agenda](#) included only two items, in which one of them was the election of new judge members of the SCM

¹⁷⁹ The main argument for postponing was to allow the election to take place after the appeals of the unsuccessful were finalized.

¹⁸⁰ Among the views expressed was the lack of legal basis to postpone the elections of SCM members because of the pending appeals as the appeals do not have suspensive effect. Moreover, some of the unsuccessful candidates expressed that they did not wish their appeals to prevent the election of those candidates who had successfully passed in order for the SCM to become functioning. On the other hand, others argued that the election could not take place due to the SCM not having formally adopted regulations to reflect the latest legislative changes. On 6 April 2023, the SCM [published](#) the draft amended regulations on the functioning of the General Assembly of Judges on its website with a deadline for comments set to 21 April 2023.

for holding the election.¹⁸¹ The decision to postpone the General Assembly of Judges was heavily criticised by the President of the Republic of Moldova, who shortly after made a statement saying that this was to be interpreted as another attempt of the judges to block the cleansing of the judiciary and to put obstacles in the way of restoring justice in Moldova and she announced that she would convene the Supreme Council of Security in relation to the extraordinary situation in the judiciary.¹⁸²

114. The meeting in the Supreme Security Council took place on 20 March 2023, three days after the interruption of the elections. The Council members recommended to speed up the creation of the SCM through the parliament's appointment of the pre-vetted layperson members and that the SCM should be functioning within 30 days.¹⁸³

115. The General Assembly of Judges resumed as planned on 28 April 2023 with 320 out of 401 judges participating.¹⁸⁴ It was decided to proceed with the elections despite the still ongoing stalemate in the Supreme Court of Justice and the fact that the appeals were still pending. A proposal to include in the ballots the names of the candidates whose appeals were not yet processed was voted down.¹⁸⁵ During the General Assembly of Judges, including on the voting day, the five successful candidates were given the opportunity to present themselves and their visions about their work in the capacity as potential future SCM members.¹⁸⁶ All judges received a ballot by registering their participation in the election of the five pre-vetted candidates. All five candidates were elected by secret voting¹⁸⁷. The SCM facilitated access of ODIHR monitors and the media to both days of the General Assembly of Judges and the meeting was livestreamed as well as published and broadcasted on several different online news websites.

116. On 27 March 2023, the relevant parliamentary committee interviewed the three lay candidates who had passed the evaluation, based on a special regulation and standardized list of questions which contributed to the fairness of the process. The committee subsequently voted to recommend all three candidates for parliamentary approval.¹⁸⁸ Ten days after the meeting of the Supreme Security Council, on 30 March 2023, the parliament voted to appoint the three layperson candidates¹⁸⁹ following questioning by some deputies on relevant issues, such as combatting corruption in the

¹⁸¹ It was emphasized during the session that the interruption of the General Assembly of Judges does not mean a postponement of the meeting, but rather a break in which the Assembly would continue with the next item on the agenda. The legal framework does not foresee or have a provision to announce a break or postpone the meeting (except for the lack of quorum).

¹⁸² The President's statement was posted on her [Facebook page](#) and she [announced](#) to the media that she would convene the Supreme Council of Security already on Monday 20 March 2023.

¹⁸³ See the Council's [recommendation](#).

¹⁸⁴ The SCM [confirmed](#) as late as 27 April 2023 that the General Assembly would take place as planned on 28 April 2023.

¹⁸⁵ The proposal meant that, if elected, those candidates who had passed the pre-vetting could start performing their duties immediately, while those unsuccessfully-evaluated candidates would only be able to do so after receiving a positive verdict from the Supreme Court of Justice and then passing the repeated pre-vetting process. One of the arguments presented in the discussions was the lack of legal basis for such procedure.

¹⁸⁶ Some online news outlet also provided an introduction of the five candidates competing to become members and shared the decisions of the Evaluations Commission on the candidates.

¹⁸⁷ In accordance with the Law on the SCM, the four candidates receiving the highest score (respectively 220 votes (man), 215 votes (woman), 185 votes (man) and 158 votes (woman) were elected as SCM members, while the candidate (woman) receiving the least votes (148 votes) was elected an alternate member. On 16 May, the SCM announced a competition to fill the two remaining vacancies on the SCM – one for a court of appeal judge and one for a Supreme Court judge

¹⁸⁸ The Parliament's Legal, Appointments and Immunities Committee decided (with seven out of the eleven Committee members attending, all ruling party, voting in favor) to put forward all three pre-vetted candidates to the plenary and the session was scheduled later the same day.

¹⁸⁹ On 6 April 2023, the parliament launched a competition to fill the three remaining vacancies for layperson candidates on the SCM, with a 5 May 2023 deadline. The parliament subsequently submitted nine candidates to the Evaluation Commission for evaluation. The Commission [announced](#) on 12 July 2023 that the hearings of the nine candidates were scheduled for 14 – 21 July 2023. On 14 July 2023, the Commission informed that one of the candidates withdrew from the competition, reducing the total number of layperson candidates to be heard in the second round to eight.

judiciary.¹⁹⁰ The parliamentary committee meeting and the plenary session were live streamed on the Parliament's website, which ensured some transparency, however, the agenda in which the voting of the SCM layperson members was included, was published on the website only the previous day. Access to the session in the plenary and the Committee was facilitated.

117. **The pre-vetting law lacks legal clarity** on whether the unsuccessfully-evaluated judge candidates from the courts of appeal and the Supreme Court whose appeals and re-evaluation remain pending **will be automatically included as candidates in the elections** for the two remaining judge vacancies on the SCM, if their appeals and any re-evaluation decided in their favour before the evaluation process is finalized. Likewise, **such legal uncertainty exists for the non-judge candidates whose re-evaluation are pending**, whether they are to be compulsorily included in the parliamentary competition for appointment of the three remaining layperson posts, if their appeals and any re-evaluation will be approved in time. In addition, the pre-vetting law lacks clarity on whether the re-evaluation decisions are subject to appeal.

¹⁹⁰ The candidates were asked varying number of questions, between 1 – 10. The plenary voted separately for each of the three candidates and only two MPs from the opposition participated. For one of the candidates (woman), out of 65 MPs, 63 lawmakers [voted](#) in favor, while one BCS member abstained and one BCS member voted against. For another candidate (male), out of 64 MPs, 62 [voted](#) in support of the candidate, while two BCS members abstained. The last candidate (male) [received](#) 63 votes (all from the ruling party), with no MPs abstaining or voting against. The new SCM members were appointed on the same day as the Commission [announced](#) that the last decision of the layperson member had been published and that this process was completed.