

DEMOCRACY AND HUMAN RIGHTS

JOURNALISTIC INVESTIGATIONS AND EVALUATION OF JUDGES: communicating vessels or parallel processes?

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Establishment of criteria for evaluating the judicial integrity, as well as the evaluation process, have been left at the discretion of the Superior Council of Magistracy (SCM). Thus, the degree to which the judicial integrity is assessed depends on the willingness of the SCM members to clean up the system of compromised judges.



Although the image and reputation of the judiciary depend also on the image of magistrates projected by the media, there is no provision in the internal regulations requiring the Superior Council of Magistracy and its subordinate bodies to consider the journalistic investigations involving judges.



The Superior Council of Magistracy usually ignores journalistic investigations, promoting in office judges with serious integrity issues and a compromised public image.

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INTRODUCTION

Ten years ago, the Republic of Moldova officially undertook to reform the judiciary. In the last decade, several strategies for reforming the justice sector have been developed and implemented. However, the reform actions have made it clear that the main mistake of the reformers has been that they have focused too much on changing the forms, ignoring or paying too little attention to the content.

The implemented reforms did not ensure a better quality of the main actors in the justice system. The main reason is that when admitting and promoting judges into the system, the evaluation criteria applied by the Judicial Performance Evaluation Board of Judges and the Selection and Career Board of Judges favour the judges with experience in spite of the fact that some of them have serious integrity issues. The integrity, being a criterion that weighs very little, becomes irrelevant when evaluating the magistrates. However, professionalism and experience do not necessarily imply the integrity of magistrates. And the lack of integrity often becomes an instrument of blackmail and control of professional and experienced judges. In addition, the admission and promotion of judges with integrity issues affects greatly the public perception of the justice system.

Instead, the integrity of judges has been a key topic of journalistic investigations. Over the past decade, the press has published dozens of investigations about the wealth, interests, business, influence and corruption scandals involving judges. To what extent did the specialized bodies of the Superior Council of Magistracy (SCM) and the SCM members take into account these journalistic investigations and the public image of certain judges when evaluating and promoting them into the function? How important is the collaboration between mass media and the SCM while evaluating the candidates to the judiciary? But also what is the weight of the integrity of a judge in the evaluation grid for admission and promotion in the system? The current

analysis aims at providing answers to these questions, but also solutions to improve the situation.

The analysis of the criminal cases initiated against judges shows that the relevant bodies react sporadically to the signals and criminal behaviour in the sector, but also to the journalistic investigations. The insignificant number of cases initiated by prosecutors must also raise concerns among the self-governing bodies, which have allowed access and retention of people with integrity issues, especially since these problems are usually reported by the investigative press long before the investigation of criminal cases. Indolence and lack of reaction and pro-activism on the part of the authorities responsible for rehabilitating their own system is one of the reasons behind the lack of trust in the judiciary and the perception of high corruption among judges.

The performance of the judicial self-governing institution – the SCM – and the adequate and timely reactions to the complaints of the litigants and to the journalistic investigations are defining in creating the perception regarding the integrity of the judicial system, its capacity of self-governing and self-cleaning.

The first part of this research presents an analysis of how the integrity of judges is evaluated by the Selection and Career Board of Judges; how the Judicial Inspection, the Disciplinary Board, and the SCM react to the journalistic investigations; the value of the judicial integrity of magistrates within the system as well as the signals coming from the society regarding the integrity issues of some judges.

The second part of the research analyses quantitatively and qualitatively how the SCM and its specialised bodies reacted to eleven journalistic investigations targeting thirty-three judges with serious integrity issues; what happened to those judges immediately after the publication of the investigations, but also over time; and how they have affected the image of the judiciary.

1

JUDICIAL INTEGRITY: INTERNAL EVALUATION AND JOURNALISTIC INVESTIGATIONS

What does integrity mean?

According to the new Explanatory Dictionary of the Romanian language: *INTEGRITATE* means *Integral nature*; a sense of dignity, justice, and conscientiousness, which serves as a guide in human conduct; honesty; honour; probity, incorruptibility.

The notions of 'institutional integrity' and 'professional integrity' defined by the Integrity Law no. 82 of 25.05.2017 were taken over and adapted to the situation of judges in the Integrity Guide adopted by the SCM Decision no. 318/16 of 03.07.2018¹ involving: *the institutional integrity of the court* – the professional integrity of all judges and other public officials within the court, cultivated, controlled and consolidated by the Superior Council of Magistracy, as well as zero tolerance to incidents of integrity admitted by judges and other categories of public officials; *professional integrity of judges* – the ability to carry out the professional activity in an ethical manner, free from inappropriate influences and manifestations of corruption, respecting the public interest, the supremacy of the Constitution of the Republic of Moldova and the law.

The only normative act that offers a broader interpretation of the notion of 'integrity of a judge' is the Regulation on the criteria, indicators and the procedure for evaluating the performance of judges², including criteria for assessing their integrity³.

The Moldovan legislation operated before with the notion of 'impeccable reputation' as a precondition for access to the position of judge or promotion to an administrative position

or to a higher court⁴. The judge's reputation was included later in the criteria for assessing the judicial integrity.

1.1. Judicial integrity and legal framework

The evaluation and verification of the integrity of judges is the competence and responsibility of three structures subordinated to the Superior Council of Magistracy: the Judicial Performance Evaluation Board, the Disciplinary Board, and the Judicial Inspection.

The Judicial Performance Evaluation Board evaluates judges every three years on the basis of three main criteria: efficiency of the activity, quality of the activity, and professional integrity. At the same time, judges may be subjected to an extraordinary evaluation at the initiative of the members of the Superior Council of Magistracy, at the proposal of the Judicial Inspection or of the president of the court in which the judge operates, indicating the reasons why the evaluation is necessary.

The criteria for evaluating the integrity applied by the Evaluation Board are: observance of professional ethics; professional reputation; presence of disciplinary offenses; existence of violations of the ECHR found by the ECtHR in respect of judgments adopted in the last 6 years⁵.

The Disciplinary Board examines the disciplinary violations, some of which are directly related to the integrity of the judge:

- interference in the administration of justice by another judge;

1 Judicial integrity guide <https://www.csm.md/files/Hotaririle/2018/16/318-16.pdf>

2 Regulation on the criteria, indicators and procedure for evaluating the performance of judges, approved by the SCM Decision no.202/8 from 05.03.2013 https://www.legis.md/cautare/getResults?doc_id=111988&lang=ro#

3 *Ibidem*, pct.11 of the Regulation on the criteria, indicators and procedure for evaluating the performance of judges, approved by the SCM Decision no.202/8 from 05.03.2013

4 Art.6, paragraph 1, Law on the status of the judge, nr.544 din 20.07.1995, https://www.legis.md/cautare/getResults?doc_id=125036&lang=ro#

5 Item 11, Regulation on the criteria, indicators and procedure for evaluating the performance of judges, approved by the SCM Decision 202/8 from 05.03.2013 https://www.legis.md/cautare/getResults?doc_id=111988&lang=ro#

- illegal interventions or exploitation of the position of judge in relation to other authorities, either for the settlement of claims, claiming or accepting the settlement of personal or other interests, or for the purpose of obtaining undue benefits;
- non-compliance with the provisions of art. 7 paragraph 2 of Law no. 325 of 23 December 2013 on the evaluation of institutional integrity;
- other acts which undermine the professional honour or probity, or the prestige of justice to such an extent that confidence in justice is affected, which, according to their gravity, cannot be qualified only as violations of the Code of Ethics and Professional Conduct of Judges⁶.

The Judicial Inspection has several competencies related to the verification of the integrity of magistrates:

- verifies the notifications and petitions addressed to the SCM in connection with the activity or ethics of judges (violations of the provisions of the Code of Ethics of the judge) and the violation of professional obligations in relations with litigants;
- conducts verification for the SCM to decide on its consent to the initiation of criminal prosecution, search, detention, enforcement, arrest as a preventive measure, prosecution of criminals or misdemeanours;
- conducts verification of the grounds for rejection by the President of the Republic of Moldova or, as the case may be, by the Parliament of the Republic of Moldova, of candidates for appointment as a judge, for promotion to the position of Chairman or Vice Chairman⁷ of the Court or promotion to hierarchically superior courts.

Another tool for verifying the integrity of judges provided by Law no. 269 of 12 December 2008 on the application of testing to the simulated behaviour detector provides for the polygraph testing of all candidates in the competition for appointment to the position of judge. However, 9 years after the introduction of the **polygraph test**, no judge was subjected to any test. The reasons for the delay cited by the SCM members are the lack of a simulator and a certified expert to perform the tests. The Superior Council of Prosecutors has managed to solve this problem, concluding from the beginning a collaboration contract with the National Anticorruption Center (NAC) so that the candidates for the position of prosecutor are tested by the NAC expert.

The main role in evaluating and verifying the integrity of judges is played by the **Superior Council of Magistracy**. The institution must act as a filter to ensure that only honest and professional magistrates can access, stay and be promoted in the system. In order to exercise these obligations, according to the law, the Superior Council of Magistracy has the following powers:

- makes proposals to the President of the Republic of Moldova or, respectively, to the Parliament for appointment, promotion to a higher court, transfer to a court of the same level or to a lower court, appointment to the position of chairman or vice-chairman of court or dismissal of judges, the chairmen and vice-chairmen of the courts;
- approve the regulations on the criteria and procedure for selecting candidates for the post of judge, for promotion to the post of judge in a higher court, for appointment to the position of chairperson or vice-chairperson of the court and for transferring the judge to a court of the same level or a lower court;
- appoints the members of the Selection and Career Board of Judges and of the Judicial Performance Evaluation Board, according to its powers;
- examines appeals against decisions of the Selection and Career Board of Judges and of the Judicial Performance Evaluation Board;
- adopts decisions on citizens' petitions on issues related to the ethics of judges;
- examines the appeals of the decisions issued by the Disciplinary Board;
- based on the decision of the Disciplinary Board, submits to the President of the Republic of Moldova or, as the case may be, to the Parliament, proposals regarding the dismissal from the position of chairperson or vice-chairperson of the court or regarding the dismissal from the position of judge.

The SCM also has the role of evaluating the impeccable reputation of the candidates for the position of judge, chairperson or vice-chairperson of the court. The paragraph 1 of the law stipulates that "it is considered with no impeccable reputation and thus cannot aspire to the position of judge the person who:

- a) has a criminal record, including closed, or has been acquitted of a criminal offense by an act of amnesty or pardon;
- b) was fired from the law enforcement bodies for compromising reasons or was released, for the same reasons, from the positions specified in paragraph 2;

⁶ Art.4 paragraph 1, Law on Disciplinary Liability of Judges, no.178 from 25.07.2014, https://www.legis.md/cautare/getResults?doc_id=125045&lang=ro#

⁷ Decision of the Superior Council of Magistracy no. 506/24 of 13 November 2018 on the amendment of the Regulation on the organization, competence and functioning of the Judicial Inspection, https://www.legis.md/cautare/getResults?doc_id=112154&lang=ro

c) behaves inconsistently with the rules of the Code of Ethics for Judges or engages in activities incompatible with the rules of this Code;

d) was disciplinary sanctioned for non-compliance with the provisions of article 7 paragraph 2 of the Law no. 325 of 23 December 2013 on the evaluation of institutional integrity;

e) is prohibited from holding a public office or an office of public dignity, deriving from a statement of the National Integrity Authority.”⁸

The assessment of the condition of the candidate having an irrefutable reputation is given in the competition held in the Plenary Session of the Council with the presentation by the reporting member of the detailed information about the candidate and his/her activity. In this regard, the Regulation on the organization and conduct of competition for the post of judge, vice-chairperson and Chairperson of the Court provides that “Information on a person’s reputation shall be obtained from the data presented by the competent authorities to the person concerned. The SCM is entitled to use all legal means to verify the reputation of the participant in the contest. “Thus, indirectly, media sources are not excluded.”⁹

However, based on its practice of conducting contests, the SCM usually omits references to journalistic investigations, which affects the impeccable nature of its reputation (see confirmations in this regard in the case studies according to which after investigative journalistic investigations with serious unveiling, judges have been promoted to administrative positions or to higher courts).

1.2. Integrity vs Professionalism

A simple analysis of the conditions provided by Law on the evaluation of the integrity of judges shows that the establishment of the criteria on the basis of which the judicial integrity is evaluated has been left at the discretion of the SCM. The Council is the only authority able to supplement or reduce the criteria for evaluating the integrity of judges, and to increase or diminish the weight of these criteria. Discretion makes that the degree to which the judge’s integrity is evaluated depends only on the existence or lack of will on the part of the SCM members to clean up the system of judges lacking integrity, who undermine the image of the justice system.

Currently, for the evaluation criteria of the professional integrity of judges by the Judicial Performance Evaluation Board, a maximum score of 14 points is offered out of a total of 94 points for evaluating the activity of a judge of first instance or appeal, or out of a total of 78 points in the case of the evaluation of the judges of the Supreme Court of Justice¹⁰.

The Regulation on the criteria, indicators and procedure for evaluating the judges’ performance, developed by the SCM in 2013, provides at the same time 40 points (out of a total of 80 points) for the criteria of efficiency and quality of judges’ work, ie for experience and professionalism.

The integrity of judges is less relevant for the evaluation than the efficiency with which the judge drafts decisions and resolves cases (PIGD) – 14 points for integrity vs. 18 points for the speed of solving cases and drafting the decisions.

The evaluation criteria of the judicial integrity refer to the image that the judge has within the system, rather than in society. The evaluation of the ‘professional reputation’ takes into account the opinion of the chairperson of the court and the holding by the judge of administrative positions or promotion of judges’ interests. Although there is an indicator in the Regulation regarding the evaluation by civil society, the mechanism by which this evaluation is made is not clear¹¹. At the same time, the Regulation stipulates that the professional reputation indicator is assessed “by means of other sources such as the media”¹². Thus, together with the opinion of the chairperson of the court and the holding of positions in the administration and promotion bodies of judges’ interests, the professional reputation of the judge estimated from media sources accounts for a total of 7 points (or less than 10 percent) of the total of 94 points in the case of a judge of first instance or appeal, or out of a total of 78 points in the case of the evaluation of the judges of the Supreme Court of Justice.

Established as described above, the integrity assessment criteria discourage integrity whistle-blowers from the justice system and ‘defuse’ any attempt to bring in reform forces from within the system. These criteria make judges loyal to the court chairpersons and make them more vulnerable to their influence. Since its adoption in March 2013, this Regulation has been amended twice – in November 2013 and in March 2018. These amendments were intended to reduce the weight of the integrity score in the total judicial evaluation score and limit the evaluation of the judicial integrity to the perception and attitude inside the system.

⁸ Article 6, paragraph 4, Law on the status of the judge no.544 from 20.07.1995, https://www.legis.md/cautare/getResults?doc_id=125036&lang=ro#

⁹ Item 3.16 of the Regulation on the organization and conduct of the competition for filling the positions of judge, vice-chair and chair of the court, adopted by the Decision of the Superior Council of Magistracy no. 612/29 of 20 December 2018, https://www.legis.md/cautare/getResults?doc_id=112382&lang=ro

¹⁰ Annex no.1 of the Regulation on the criteria, indicators and procedure for evaluating the performance of judges, approved by the Decision of the SCM no.202/8 of 05.03.2013 https://www.csm.md/files/Acte_normative/Legislatia/Interne/2018/Regulament_criterii_evaluare_modificat.pdf

¹¹ *Ibidem*, Item 11 lit.c of the table.

¹² Item 11, paragraph 2 of the Regulation on the criteria, indicators and procedure for evaluating the performance of judges, approved by SCM Decision no. 202/8 of 05.03.2013 https://www.legis.md/cautare/getResults?doc_id=111988&lang=ro#

By the amendments of November 2013 made to the Indicator 11.2 'Professional Reputation', the phrase "general opinion in society about the judge as well as the authority of the judge among other judges" was replaced by the phrase "general opinion about the judge, as well as the authority of the judge in the justice sector". Also, the changes operated by the SCM targeted the score for each criterion, increasing the number of points awarded for the criteria of 'Quality of activity' and 'Efficiency of activity' and decreasing the number of points awarded for integrity indicators¹³. The 2018 changes did not address the integrity criterion.

There is no express provision in the Regulation on the criteria, indicators and procedure for evaluating the performance of judges, nor in the Regulation on the organization and conduct of competition for the post of judge, vice-chair and chair of the court, which obliges the Evaluation Board and respectively, the SCM Plenum to take into account the journalistic investigations targeting the judge, the public scandals in which the judge was involved, the reaction of society and of other state institutions to the decisions adopted by a judge who prejudiced the image of the judiciary, endangered the state security or created conditions for raider attacks. The Regulation stipulates that the professional reputation can be evaluated based on "a. Opinion of the chair of the court; b. The judge holds positions in the administration or promotion bodies of judges' interests; c. Evaluation by civil society; d. Other sources, such as the media¹⁴."

The Law on Disciplinary Liability of Judges indirectly provides journalistic material among the grounds for sanctioning magistrates, stating: "acts that harm the professional honour or probity, or the prestige of justice to such an extent that it affects confidence in justice, committed in or out of office, which, according to their gravity, cannot be qualified only as violations of the Code of ethics and professional conduct of judges"¹⁵. However, according to the annual reports of the Disciplinary Board, the practice of disciplinary sanctioning of judges demonstrates that the criterion with reference to journalistic investigations revealing issues of integrity of judges is practically not applied¹⁶.

Despite the fact that the image of the judiciary is damaged especially by the integrity issues of certain judges, and the expectations of the society, the commitments of the governments of the last ten years and the recommendations of the development partners of the Republic of Moldova point to the need for cleaning the system of corrupt and politically controlled persons, the Superior Court of Magistracy – through the criteria and score established in the Regulation on the evaluation of judges' performance, as well as the established practice of disciplinary sanctioning of judges – continues to give priority to the efficiency of the judge's activity (40 points) and the quality of activity of the evaluated magistrate to the obvious detriment of professional integrity (14 points).

¹³ https://www.csm.md/files/Hotaririle/2013/34/796_34.pdf

¹⁴ https://www.csm.md/files/Acte_normative/Legislatia/Interne/2018/Regulament_criterii_evaluare_modificat.pdf

¹⁵ Article 4, paragraph 1, letter p, Law on disciplinary liability of judges, no.178 din 25.07.2014, https://www.legis.md/cautare/getResults?doc_id=125045&lang=ro#

¹⁶ The annual reports of the Disciplinary Inspection can be consulted here i: <https://www.csm.md/ro/organe-subordonate/colégiul-disciplinar/colégiul-disciplinar/rapoarte-semestriale-si-aniuale.html>

2

JOURNALISTIC INVESTIGATIONS AND THE EVALUATION OF INTEGRITY

Even though it is not expressly provided for in the Regulation on Criteria, Indicators and Procedure for Assessing Judges' Performance (except for a vague reference to other sources, such as the media), nor in the Regulation on the Organization and Functioning of the SCM, consultation of journalistic investigations for the judicial evaluation or for conducting contests for admission to the system, appointment until reaching the age limit or promotion, organized by the SCM, is a necessity. In most cases, although well documented and proven, the journalistic investigations are ignored by the judicial self-governing body and its boards. Hence the public perception that the SCM defends the interests of corrupt judges and opposes the cleaning up of the system.

2.1. How the SCM reacts to journalistic investigations

Twelve journalistic investigations into thirty-four magistrates and the reactions by the SCM and its specialized bodies have been analysed in this research.

The journalistic investigations analysed are as following:

1. **"The Palace and Family Business of the Chair of the Botanica Court"**¹⁷, *the Ziarul Ziarul de Garda*, 3 May 2013 (Judge Ion Druta)

CONSEQUENCE: The judge was first promoted to the Supreme Court of Justice (SCJ), then as chair of the SCJ.

2. **"The palace and the relations of a judge from the SCJ with the German company Happy Dog"**¹⁸, *the Ziarul*

¹⁷ <https://www.zdg.md/investigatii/ancheta/palatul-si-afacerile-de-familie-ale-presedintelui-judecatoriei-botanica/>

¹⁸ <https://www.zdg.md/investigatii/ancheta/casa-si-relatiile-unei-judecatoare-de-la-csj-cu-firma-germana-happy-dog/>

de Garda, 14 March 2014 (judge at the SCJ Tamara Chișcă-Doneva)

CONSEQUENCE: The judge was later promoted as vice-chair of the SCJ.

3. **"The company car, the fortune and the cases of the family of the chair of the Straseni Court"**¹⁹, *the Ziarul de Garda*, 20 March 2014

CONSEQUENCE: The judge resigned.

4. **"The mother of millions of the judge Melniciuc"**²⁰, *the Ziarul de Garda*, 24 September 2014

CONSEQUENCE: The judge was proposed by the SCM for promotion to the position of Vice Chair of the Chisinau Court, but rejected by the President of the Republic of Moldova.

5. **"At the SCJ, with Porsche, a luxury house and a businessman husband forgotten in the statements"**, *the Ziarul de Garda*, 6 March 2015 (Judge Mariana Petic)

CONSEQUENCE: The judge was promoted to the SCJ.

6. **"18 billion USD has been laundered since 2010 through the judiciary in the Republic of Moldova"**²¹, *the Ziarul Național*, 27 November 2015

CONSEQUENCE: Criminal cases have been initiated against the judges involved. Recently, five of them have been reinstated in the judiciary.

¹⁹ <https://www.zdg.md/investigatii/ancheta/masina-de-serviciu-averea-si-dosarele-familiei-presedintelui-judecatoriei-straseni/>

²⁰ <https://www.zdg.md/investigatii/ancheta/mama-de-milioane-a-judecatorului-melniciuc/>

²¹ <https://anticoruptie.md/ro/investigatii/justitie/prin-intermediul-sistemului-judecatoresc-din-r-moldova-au-fost-spalate-18-miliarde-de-dolari-din-2010-incoace-ii>



7. “Judge Sternioala hid his luxury home”²², *the Ziarul de Garda*, 3 June 2016

CONSEQUENCE: The control of the Judicial Inspection resulted in no sanctions. The judge was promoted to the Judicial Performance Evaluation Board within the SCM.

8. “Discounted apartments in the block earmarked for judges for the mother and relatives of Judge Oleg Melniciuc”²³, *Anticorupție.md*, 29 November 2016

CONSEQUENCE: The judge was proposed for promotion, but was rejected by the president. A criminal case was initiated against him 6 months after the appearance of the journalistic investigation.

9. “Judges of the stolen billion”²⁴ *Anticorupție.md*, 12 July 2017

CONSEQUENCE: The Judicial Inspection carried out an unsuccessful inspection.

Angela Catana – promoted to the position of interim vice-chair of the Chisinau Court;

Anatolie Minciuna – promoted to the SCJ.

10. “How justice turned the judges who cancelled the election results into millionaires”²⁵, *the Ziarul de Garda*, 29 June 2018

CONSEQUENCE: Vladislav Clima was promoted to the position of Chair of the Chisinau Court of Appeal.

11. “Shor’s judge”²⁶, *Rise Moldova*, 22 April 2021

CONSEQUENCE: Control was initiated by the Judicial Inspection without any finality.

12. “Properties and business of the family of the chair of the Chisinau Court of Appeal: luxury house, commercial spaces and business in agriculture”²⁷, *Anticorupție.md*, 28 July 2021 (Judge Ana Panov)

CONSEQUENCE: Lack of reaction.

As a result of the above journalistic investigations, only one judge – Mihai Gavriliță, ex-chair of the Straseni Court – has resigned from the system. In three cases, the SCM has notified the Judicial Inspection, but the controls did not establish any irregularities (the judge Sternioala case, the case of the judges of the stolen billion and the case of Shor’s judge). All the other investigations were ignored

²² <https://www.zdg.md/investigatii/ancheta/judecatorul-sternioala-si-ascuns-casa-de-lux/>

²³ <https://anticoruptie.md/ro/investigatii/justitie/apartamente-la-pret-reduc-pentru-mama-si-rudele-magistratului-oleg-melniciuc-in-blocul-destinat-judecatorilor>

²⁴ <https://anticoruptie.md/ro/investigatii/justitie/judecatorii-miliardului-furat>

²⁵ <https://www.zdg.md/editia-print/cum-i-a-fa-CC%86cut-justitie%CC%A6ia-milionari-pe-judeca%CC%86torii-care-au-anulat-alegerile/>

²⁶ <https://www.rise.md/articol/judecatorul-lui-sor/?lang=ru>

²⁷ <https://anticoruptie.md/ro/investigatii/integritate/proprietatile-si-afacerile-sefei-de-la-curtea-de-apel-chisinau-casa-de-lux-spatii-comerciale-si-afaceri-in-agricultura>

by the SCM and its boards. Seven of the thirty-four judges involved in the above-mentioned investigations were promoted, including to administrative positions in the Court of Appeal and the Supreme Court of Justice. Another judge (Oleg Melniciuc) was proposed for promotion by the SCM, but was rejected by the President of the Republic of Moldova.

With regard to nineteen judges, about a year after the publication of the investigations, the prosecutors initiated criminal cases on the facts of the investigations. None of those judges were subject to disciplinary action for violating the judicial ethics and damaging the image of the system.

In March 2013, following the publication of several journalistic investigations into the fortunes and integrity issues of several judges, the SCM adopted a statement condemning the press for “exerting pressure on the judiciary, and especially on persons holding senior positions in the judiciary, through published information”²⁸. Similar statements were made by the SCM members in the following years.

2.2. Case studies

In order to better illustrate how the SCM and its boards reacted to the press investigations, we have analysed in detail the attitude of the judicial self-governing body to the investigations that targeted five judges with important positions in the judiciary.

CASE STUDY NO. 1

On 28 July 2020, the SCM held a contest for the election of the new chair of the Chisinau Court of Appeal. The competition was preceded by several investigations and press reports targeting the integrity issues of the candidates.

The journalists from *Anticoruptie.md* wrote about the public scandals, the exaggerated wealth and the controversial decisions adopted by some of the candidates in the contest. The portal wrote about Vladislav Clima on 20 July 20, that he was part of the panel that upheld the ruling of the court of first instance to cancel the results of the 2018 early local elections and that he would own properties exceeding his family's income²⁹.

The *Ziarul de Garda* newspaper published an investigation a few days earlier about the properties of millions of Vladislav Clima. Articles on Clima's integrity issues were published by several media outlets at the time³⁰.

Vladislav Clima has been a subject of media investigations since 2014. It has been reported that he was the subject of an asset and income audit by the National Integrity Commission in 2014³¹, and in 2019, the Minister of Interior, Andrei Nastase, requested the initiation of criminal investigations against Clima for a decision that would have allowed a money laundering operation in Metalferos³².

Despite the journalistic investigations and the international scandal caused by the cancellation of the results of the June 2018 early local elections, Vladislav Clima obtained in November 2018 an ‘excellent’ rating in the evaluation made by the Judicial Performance Evaluation Board³³. The members of the College also gave the maximum score on the integrity criteria. “During his activity, Judge Vladislav Clima did not commit any compromising acts and he complied with the norms of the Judge's Code of Ethics,” reads the reasoned decision of the Evaluation Board. The selection board also gave him the maximum score. The decision adopted shows that following the interview of the candidate it was established that he has no integrity issues³⁴.

Also the SCM plenum found that Clima has an impeccable reputation, giving him 93 points out of 100 and declaring him the winner of the competition for the position of chair of the Chisinau Court of Appeal³⁵. One of the SCM members who voted in favour of Vladislav Clima has explained later that she chose him for his professionalism.

Three members of the SCM had a separate opinion on this case, explaining: “We are of the opinion that the Superior Council of Magistracy disregarded the principles of moral qualities and professional reputation, selecting a person with an image compromised by his work as a judge”³⁶. The separate opinion refers to the criticism of society regarding certain decisions taken by Vladislav Clima and not to the journalistic investigations that targeted him.

²⁸ <https://stiri.md/article/social/consiliul-superior-al-magistraturii-in-razboi-cu-presa>

²⁹ <https://anticoruptie.md/ro/stiri/doi-magistrati-controversati-lupta-pentru-functia-de-presedinte-al-curtii-de-apel-chisinau>

³⁰ <https://nordnews.md/doi-judecatori-implicati-in-scandaluri-ar-putea-finumiti-presedinti-ai-curtii-supreme-de-justitie-si-curtii-de-apel-chisinau/>

<https://www.zdg.md/editia-print/cum-i-a-fa%CC%86cut-justit%CC%A6ia-milionari-pe-judeca%CC%86torii-care-au-anulat-alegerile>

³¹ <https://press.try.md/item.php?id=143418>

³² <https://tv8.md/2019/06/28/doc-nastase-cere-dosar-pe-judecatorul-clima-dupa-ce-a-dispus-incasarea-unor-bani-din-offshore-pentru-o-firma-capusa-legata-de-metal-feros/>

³³ <https://www.csm.md/files/Hotaririle%20CEvaluare/2018/12/108-12.pdf>

³⁴ <https://www.csm.md/files/Hotaririle%20CSelectie/2020/05/36-05.pdf>

³⁵ <https://www.csm.md/files/Hotaririle/2020/18/211-18.pdf>

³⁶ <https://www.csm.md/files/Hotaririle/2020/18/211-18-opinia.pdf>

CASE STUDY NO.2

The same happened in the case of the former judge of the Supreme Court of Justice, Oleg Sternioala. The magistrate was targeted in several journalistic investigations that referred to his properties that exceed his income, to the influences he exerted in the system to promote certain judges who are his relatives, but also to some dubious decisions made. However, Sternioala has always been rated as 'excellent' and promoted in the system.

In June 2016, *the Ziarul de Garda* published an investigation about Sternioala's hidden house worth 7 million MDL³⁷. A few days after the investigation, Sternioala was evaluated by the Judicial Performance Evaluation Board as 'excellent'³⁸.

Also this time, at the *integrity* category, the decision of the Board noted that the judge has an impeccable reputation, did not commit compromising acts and ensured honour and prestige to the position of judge.

The journalistic investigations into Sternioala's undeclared assets worth millions of MDL were also ignored by the Selection and Career Board of Judges, which, on 27 November 2017, gave Sternioala the maximum score in the competition for the position of Vice Chair of the Civil, Commercial and Administrative Litigation Board of the SCJ³⁹.

On 4 November 2019, Sternioala was detained by prosecutors in a criminal case of money laundering of particularly large proportions. However, during the same period, the Evaluation Board again evaluated Sternioala as 'excellent' in a new evaluation⁴⁰. The decision of the Board does not refer at all to the actions of the prosecutors or to the media investigations into the undeclared and unjustified assets of the magistrate, nor to the hidden affairs of the Sternioala's family with a person involved in the *theft of the billion*⁴¹.

On 13 December 2019, while the press was writing about the existence of two criminal cases against Sternioala – for 'illicit enrichment' and 'money laundering of particularly large proportions' –, the SCM adopted a decision on Sternioala's resignation (of honour) from the system. "In accordance with article 26 paragraph 1 of the above-mentioned Law, the resignation of the judge shall be considered a resignation of honour if, in the exercise of his/her duty and outside the service relations, he/she has not committed

acts that discredit justice or compromise the honour and dignity of judges", reads the SCM decision⁴².

For his resignation of honour, Sternioala received a single resignation allowance from the system in the amount of 309 thousand MDL. The SCM members have completely ignored the public scandal, the suspicions of corruption and the negative image that Sternioala had at that time in the society.

CASE STUDY NO. 3

Exactly the same thing happened in the case of the Chair of the Supreme Court of Justice, Ion Druta. Although he was under criminal investigation in two cases for illicit enrichment and interference in the administration of justice, the SCM accepted his request for resignation of honour on 13 December 2019, which allowed him to receive a single resignation allowance amounting to over 400 thousand MDL.

Druta was targeted in several journalistic investigations that referred to the assets exceeding the magistrate's income⁴³, but they were never taken into account in the magistrate's evaluation. In 2015, following the journalistic investigations and broadcasts about the illegalities admitted by the panel of judges, including Ion Druta, during the examination of the *Aroma Floris* case, the General Prosecutor's Office took note of that and requested the SCM to issue a permit for the criminal investigation of the magistrate, but the CSM has declined the request⁴⁴. At the same time, the SCM overturned the ruling of the Disciplinary Board no. 18/3 of 27.05.2015, by which Druta had been sanctioned with a reprimand. In 2016, the Disciplinary Board again reprimanded him for a ruling through which he had caused particularly large damages to the state budget. The Board was notified by the Ministry of Finance after the investigative press wrote about the ruling by which the institution was obliged to pay compensations to an economic agent hired to demolish the Republican Stadium. Also this time the SCM has cancelled the ruling to sanction the magistrate. As a result, on 17 June 2016, the Evaluation Board evaluated the chair of the SCJ as 'excellent'.

In the evaluation based on the integrity criterion, the decision of the Board notes that "Judge Ion Druta has an impeccable professional reputation, and during his activity he did not commit any compromising acts, he respected the norms of

³⁷ <https://www.zdg.md/investigatii/ancheta/judecatorul-sternioala-si-ascuns-casa-de-lux/>

³⁸ <https://www.csm.md/files/Hotaririle%20CEvaluare/2016/03/37-3.PDF>

³⁹ <https://www.csm.md/files/Hotaririle%20CSelectie/2017/22/130-22.pdf>

⁴⁰ <https://www.csm.md/files/Hotaririle%20CEvaluare/2019/13/112-13.pdf>

⁴¹ <https://www.jurnal.md/ro/news/364a742556902875/afacerea-ascunsa-a-familiei-sternioala-investigatie-jurnalul-saptamanii.html>

⁴² <https://www.csm.md/files/Hotaririle/2019/32/435-32.pdf>

⁴³ <https://www.zdg.md/investigatii/ancheta/palatul-si-afacerile-de-familie-ale-presedintelui-judecatoriei-botanica/>

⁴⁴ <https://anticoruptie.md/ro/dosare-de-coruptie/cazul-aroma-floris-csm-nu-a-dat-curs-solicitarii-de-a-i-cerceta-penal-pe-trei-judecatori->

the Judge's Code of Ethics and the legal provisions, and ensured the honour and prestige of the position held"⁴⁵.

In 2018, the investigations regarding the fortune and the scandalous rulings by Ion Druta were ignored by the Selection Board of Judges, which gave him 124 points in the evaluation from the maximum score of 125 points⁴⁶, as well as by the SCM that promoted him as Chair of the Supreme Court of Justice.

Ion Druta, like Vladislav Clima, was among the judges who in June 2018 cancelled the results of the local elections in Chisinau. Although the ruling was harshly criticized by the society, experts and the international community (the latter announced the blocking of the promised assistance to the Republic of Moldova) and was later cancelled, the judges who delivered the decision never became subject to any disciplinary procedures.

CASE STUDY NO. 4

Oleg Melniciuc, a judge with the Chisinau Court since 2004, has been in the center of several press scandals since the first years of his activity and the subject of several journalistic investigations targeting his family's assets, the rulings issued, and his unethical behaviour. However, the magistrate was never disciplinarily sanctioned and all the evaluations carried out by the Evaluation Board rated him as 'very good' or 'excellent'. For example, on 13 June 2014, the Judicial Performance Evaluation Board rated Melniciuc as 'very good', stating under the integrity criterion that the judge has an impeccable reputation, shows polite behaviour and an attitude full of tact and kindness, and is respected by his colleagues". In February 2012, Melniciuc was harshly criticized by society for calling the journalists 'mangy'⁴⁷. In assessing the reputation of the magistrate, the Evaluation Board never considered the journalistic investigations about his assets.

In 2014, *the Ziarul de Garda* newspaper published an investigation about the properties of millions registered to the name of Oleg Melniciuc's retired mother⁴⁸. In 2016, the Center for Journalistic Investigations published another investigation on how Melniciuc's relatives became owners of the discounted apartments built for the Rashcani Court employees⁴⁹. Neither

⁴⁵ <https://www.csm.md/files/Hotaririle%20CEvaluare/2016/04/46-4.PDF>

⁴⁶ <https://www.csm.md/files/Hotaririle%20CSelectie/2018/03/14-3.pdf>

⁴⁷ <https://anticoruptie.md/ro/investigatii/justitie/judecatorul-oleg-melniciuc-spalat-si-promovat-din-nou>

⁴⁸ <https://www.zdg.md/investigatii/ancheta/mama-de-milioane-a-judecatorului-melniciuc/>

⁴⁹ <https://anticoruptie.md/ro/investigatii/justitie/apartamente-la-pret-reduc-pentru-mama-si-rudele-magistratului-oleg-melniciuc-in-blocul-destinat-judecatorilor>

the SCM nor its boards took note of those investigations.

Asked by journalists, the chair of the SCM, Victor Micu, has declared back then about the investigations targeting Melniciuc: "At the moment, I cannot say anything pro or against, because I have no evidence and I do not believe in some general statements. When there is evidence, the case will be examined if it reaches the SCM."

On 31 October 2016, the Selection Board evaluating Melniciuc for the position of Vice chair of the Chisinau Court, established that "in terms of the integrity of the candidate, the Board considers it necessary to mention that in accordance with SCM ruling no. 878/35 of 17 November 2015, Judge Oleg Melniciuc was considered compatible with the interests of the civil service"⁵⁰. One month earlier, the Evaluation Board had evaluated him as 'excellent'⁵¹.

In November 2016, the SCM declared Oleg Melniciuc winner of the competition for the position of vice-chair of the Chisinau Court. The reasoned decision is missing on the SCM website.

After the President of the Republic of Moldova, Igor Dodon, declined the appointment of Melniciuc due to integrity issues and returned the file to the SCM, in half a year, on 2 May 2017, the SCM, after consulting the Information Note of the Judicial Inspection (which did not find any violations) and the arguments invoked by the Presidency, decided to reject Melniciuc's candidacy for the position of Vice chair of the Chisinau Court.

In 2017, prosecutors opened a criminal case against Melniciuc for 'illicit enrichment'. The criminal investigation is based on the above-mentioned journalistic investigations. Even though he is currently under criminal trial, Melniciuc continues to work in the Chisinau District Court after the SCM's decision to suspend him was overturned by the court. Melniciuc has still not been subject to disciplinary sanctions.

CASE STUDY NO. 5

In July 2017, immediately after the publication of the article entitled "Judges of the stolen billion", which targeted several magistrates from the courts of first instance and appeal who issued rulings that harmed the interests of the Savings Bank, Social Bank and Unibank, which were under liquidation, the Superior Council of Magistracy announced in a press release that it had taken notice of the investigation. The SCM ordered the Judicial Inspection to verify all the circumstances invoked in the article. One day before

⁵⁰ <https://www.csm.md/files/Hotaririle%20CSelectie/2016/16/151-16.pdf>

⁵¹ <https://www.csm.md/files/Hotaririle%20CEvaluare/2016/07/87-7.PDF>

the meeting, another press release entitled "Invitation to participate" appeared on the SCM website, according to which the author of the investigation, journalist Mariana Rata, was invited to participate in the discussions "about the correct information of the public and the direct information". At the meeting, the members of the SCM invoked some alleged omissions in the investigation, after being notified by a magistrate regarding an error admitted by the author. Although the author of the investigation acknowledged that the error was unintentional and had been immediately removed, the members of the SCM displayed an ostentatious position in relation to that situation. The

non-governmental media organizations issued a joint statement criticizing the Council's attitude and hinting that the SCM had in fact tried to convey a message to the journalists to not investigate the work of the judiciary. The media NGOs pointed out then that the error took place in conditions of limited access to the court documents published on the of National Courts Portal.

The investigation of the Judicial Inspection following the journalistic investigation focused only on the case of the magistrate who notified the SCM, not on the other circumstances related in the article.

3

CONCLUSIONS AND RECOMMENDATIONS

The analysis of the legal framework on the 'integrity of judges' reveals multiple drawbacks. No legal act clearly defines the notion of 'integrity of the judge' leaving room for interpretation. The criteria for evaluating the integrity of magistrates are general, superficial and do not ensure the assessment of judges according to the expectations of society and the way it perceives the notion of integrity.

The mechanism of internal verification by the Judicial Inspection of judges suspected of lack of integrity is lacking transparency. The Inspection does not make public the control documents regarding concrete judges (in 2021 the Inspection did not publish any control act on the *csm.md* website in general). The self-notification of the Judicial Inspection based on journalistic investigations or public denunciations is done in an arbitrary way, without making clear the reasons why in some cases the Inspection starts controls, while in others it ignores the information appeared in the public space.

There is a vague provision in the Regulation on the criteria, indicators and procedure for assessing the performance of judges which recommends that the SCM and its boards take into account, while assessing judges, their image in society, the journalistic investigations and public evidence about the integrity issues of certain magistrates.

The current analysis and its case studies show that both the Judicial Performance Evaluation Board and the Superior Council of Magistracy almost completely ignore the journalistic investigations, evaluating the judges as 'excellent' and promoting judges with serious integrity issues, which is detrimental to the image of the system, and, in time, they end up being criminally investigated for the facts previously reported by the press investigations.

None of the judges investigated criminally considered in this analysis has been targeted in a disciplinary procedure or sanctioned for the acts that led to the damaging of the image of the judicial system. This is the reason why most of them managed to leave the system by resigning and benefiting from single allowances of hundreds of thousands of MDL.

The Superior Council of Magistracy has repeatedly shown a hostile attitude towards journalists and media outlets that have published investigations about judges, criticizing and

attacking them. Consequently, the press and the public have the perception that the SCM plays the role of the lawyer for corrupt judges with serious integrity issues instead of being a guarantor of judges' independence and ensuring a good image of the judiciary.

In these circumstances, it is advisable for the institutions of the justice sector to undertake the following actions:

- Correct the evaluation criteria for assessing the integrity of judges. The new integrity criteria should be developed in consultation with experts, civil society and investigative journalists.
- Review the weight of integrity criteria in all judges' evaluation criteria, in order to increase their importance in the evaluation of magistrates.
- Include the obligation for the members of the Judicial Performance Evaluation Board of the SCM to take into account the public image that the judge under evaluation for promotion has, but also the journalistic investigations that target him.
- Provide well-reasoned decisions by the Evaluation and Selection Boards of Judges as well as by the SCM during admission and career promotion.
- Increase transparency of the SCM by limiting the cases of examination of the issues on the agenda in the deliberation and indicating the number of votes for and against in the rulings of the SCM. Provide well-reasoned decisions by the SCM regarding the career of judges and the application of sanctions.
- Provide appropriate and prompt feedback on signals regarding the integrity issues of the justice sector representatives.
- Strengthen the role of the Judicial Inspection, including in investigating disciplinary violations by judges.
- Publish the results of the controls of the Judicial Inspection regarding concrete judges.

- Strengthen the mechanisms for investigating and remedying ethical misconduct within the institutions of the justice sector.
- Strengthen the communication and interaction capacities of the SCM and its subordinate bodies, but also of the courts, with the representatives of the media and the general public.
- Make adjustments to the regulatory and institutional framework and apply properly the anti-corruption tools such as the polygraph testing and protection of whistleblowers.

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JOURNALISTIC INVESTIGATIONS AND EVALUATION OF JUDGES: COMMUNICATING VESSELS OR PARALLEL PROCESSES?



In recent years, the investigative press has published dozens of investigations about compromised judges with integrity issues involved in public scandals or acts of corruption. Evaluated within the system by the Judicial Performance Evaluation Board and by the Superior Council of Magistracy, the compromised judges were usually given 'very good' or 'excellent' rates, having been promoted in the system: to higher courts or administrative positions. This analysis demonstrates by conclusive examples that the judicial self-governing body and its boards usually ignore the journalistic investigations and the public image of some judges.



The reasons why the Superior Council of Magistracy and its boards ignore the journalistic investigations about judges are of objective but also subjective nature. On the one hand, neither the legislation on the judiciary nor the internal rules of the specialized boards, the Judicial Inspection or the SCM contain any provisions which oblige those institutions to consult the journalistic investigations when evaluating a judge or during a competition within the system. On the other hand, the law does not forbid them to take notice of press investigations when the latter provide clear evidence of a magistrate's integrity issues. The fact that the decision of whether or not to take into account public scandals or journalistic investigations involving a judge is left at the discretion of the SCM and its bodies gives the public the impression that the system is trying to protect certain compromised judges while trying to find faults with inconvenient judges.



Based on the findings of the analysis, it is recommended to the Superior Council of Magistracy to revise the criteria by which judges are evaluated and to pay more attention to the integrity criteria but also to the way in which the judicial self-governing body builds its collaboration relations with the mass media, especially with the investigative press. In order to correct the negative public image of the judicial system, the SCM should prove that it is open to rehabilitating the system, and thus it is attentive and sensitive to the public information about the integrity issues of certain judges. This information needs to be verified, and the decisions of the internal bodies of the SCM regarding controls and evaluations need a written motivation as detailed and precise as possible that leaves no room for interpretation.

Further information on the topic can be found here:
www.fes-moldova.org