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European Union and Council of Europe Joint Project “Support to the justice reform in the Republic of Moldova”

Assessment of the Draft Law no.423 of the Republic of Moldova on the Amendment of Certain Legal Acts

On the basis of the comments of Marina Naumovska Milevska, Judicial
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Background

1. The objective of the Joint Project of the European Union and the Council of Europe “Support to the Justice Reform in the Republic of Moldova” (the Project) is to contribute to the initiatives of the Government of Moldova and support the implementation of the justice reform in line with European standards with primary focus on the implementation of recommendations included in the European Commission for Democracy through Law (Venice Commission) Opinions and Group of States against Corruption (GRECO) compliance report. The Project shall focus on achieving the following objectives:
 - The Justice Sector Reform Strategy is further implemented, and the legal framework is more in line with European standards and commitments;
 - The judicial and prosecutorial self-governing bodies exercise their competences to select, appoint, promote, transfer, suspend and remove judges and prosecutors in an effective, objective, and transparent manner;
 - The National Institute of Justice provides enhanced judicial training for judges and prosecutors through improved curricula and internal processes allowing for a more transparent and impartial selection of new judges and prosecutors and for better training capacities, in line with the 2022 TAIEX recommendations;
 - Constitutional justice is enhanced through increased legal capacities of members and staff of the Constitutional Court and increased accessibility of Constitutional Court rulings via a new database.”

Objective of the assignment

2. In the framework of this Project, urgent request was made for analysing draft amendment regarding the National Institute of Justice (NIJ) prepared by the Member of Moldovan Parliament, Ms. Olesea Stamate. For that purpose, the Council of Europe asked the consultant, Marina Naumovska-Milevska to analyse the provisions of the Draft Law no. 423 on the amendment of certain legal acts as they pertain to the competences of the NIJ in the light of the relevant Council of Europe standards and best practices.

Introduction

3. The main goal of the proposed changes and amendments in Law No. 423 is to enhance the organisational capacities of the NIJ envisaged in the Action Plan for the implementation of the Strategy on ensuring the independence and integrity of the justice sector for the years 2022-2025.
4. The Draft Law No. 423 proposes changes and amendments to the five laws: Law No. 544/1995 on the status of the judge; Law No. 1585/1998 on Compulsory Health Insurance; Law No. 1593/2002 on the amount, method, and terms of payment of compulsory health insurance premiums; Law No. 3/2016 on the Prosecutor's Office; and Article 3 of Law No. 133/2016 on the declaration of wealth and personal interests. These changes and amendments aim at streamlining a number of administrative aspects related to the status of the NIJ's listeners, as well as issues aimed at strengthening the capacities of the institution.
5. In order to be able to conduct this analysis, the consultant was provided with an unofficial translation of the current Law No. 152 on National Institute of Justice, Draft Law No. 423 on the amendment of certain legal acts, the Law No. 544 regarding the status of the judge and Assessment Report of the Peer Review Expert Mission to the Republic of Moldova on Initial and continuing legal education for judges and prosecutors at the National institute of Justice from June 2022.
6. The changes and amendments of the Draft Law 423 were reviewed in light of the Council of Europe standards and best practices. Special attention was given to the level of

- harmonization of the new amendments with the CCJE Opinions regarding training of judges and judicial independence¹ and Magna Carta of Judges (Fundamental Principles).
7. The comments and recommendations on the draft articles are provided following each respective article. Only those articles that, in the consultant's opinion, need improvement were commented. The original text of the proposed amendments from English translation is inserted for easier reading of the corresponding comments and recommendations.
 8. The comments were prepared relying on the English translation of the draft amendments of the three laws. The translation may not accurately reflect the original version on all points.

General comments

9. Frequent changes in legislation are often lacking time for proper analysis and drafting legal acts, and consequently, very often they lack coherence not only in *lex specialis* itself but also throughout the entire legal system. They are also prone to technical mistakes and typos as a result of lack of time and resources. This observation is applicable to the present draft amendments.
10. Most of the amended/changed articles are of formal nature, and they might need further fine-tuning. However, several are substantial and need to be re-drafted. Furthermore, it should be noted that some of the substantial recommendations in the Assessment Expert Mission² conducted in June 2022 are not sufficiently addressed in the draft legislation subject of this analysis, especially with regard to the appointment of NIJ graduates, as well as details about admission and graduation commissions. Therefore, the current NIJ Law will benefit more if this momentum in legislative changes is used to introduce the most substantial changes and amendments as proposed in the mentioned Report.
11. The reasoning part given at the end of the document under chapter "Information Note" gives justification to the selected number of articles. It should be extended to all articles or, if a general approach to justifying the changes to these five pieces of legislation is taken, the reasoning for the most important changes should not be avoided.
12. It should be acknowledged that these changes and amendments will further enhance the quality of the legal texts of the five pieces of legislation proposed to be changed and amended with the Draft Law No 423, though they need minor improvements.

Comments and recommendations by article

13. Comments and recommendations are provided only for draft articles deemed in need of improvement. Therefore, they are presented following each specific draft article identified by the consultant as requiring additional input, clarification, or alteration.
14. **Art. I** - Law No. 544/1995 on the status of the judge (republished in the Official Monitor of the Republic of Moldova, 2013, No. 15-17, Art. 63), as amended, is amended as follows:

1. Article 6:

paragraph (1) shall be supplemented by point c¹) with the following content:

¹ CCJE Opinion N° 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges; and CCJE Opinion 4 (2003) on appropriate initial and in-service training for judges at national and European levels

² Assessment Expert Mission to the Republic of Moldova on Initial and continuing legal education for judges and prosecutors at the National Institute of Justice from 06/06/2022 - 10/06/2022 (TAIEX Report).

"c¹) the general average of the graduation from the National Institute of Justice or the average mark of the examination held before the Commission for the graduation examinations by the persons referred to in paragraph 1. (2) is higher than 8.";

15. **Recommendation:** Instead of specifying a number, using a percentage would be more pragmatic approach. The evaluation grid may alter in accordance with the requirements of the test subjects and the results obtained, which will result in frequent modifications to the legislation.
16. **Art. IV - The Law No. 152/2006 on the National Institute of Justice** (republished in the Official Monitor of the Republic of Moldova, 2016, No. 387, Art. 789), as amended, is amended as follows:

2. Article 9:

paragraph (1) shall read as follows:

"(1) The Director shall be appointed following a competition organised by the Board of the Institute for a term of four years. Prior to appointment, the Council of the Institute shall obtain the opinion of the Minister of Justice on the winner of the competition. The same person may hold a maximum of two terms of office as Director";

17. **Comment:** The composition of the NIJ Council includes nine members, with two being appointed by the Minister of Justice, as stipulated in Article 6 of the Law on NIJ. The rationale for increased involvement of the Minister of Justice in the selection process in this new article, is unclear. Moreover, it raises questions about the potential influence wielded by the Minister's "opinion" and whether it holds any substantive authority in the decision-making process.
18. **Recommendations:** The inclusion of an additional step in the Director selection process, namely soliciting the opinion of the Minister of Justice, appears unnecessary and may be construed as an effort by the executive branch to assert influence over the judiciary. As it is clearly stated in the para 19 of the CCJE Opinion No. 4, "*In order to shield the establishment from inappropriate outside influence, the CCJE recommends that the managerial staff and trainers of the establishment should be appointed by the judiciary or other independent body responsible for organising and supervising training.*" The standards concerning the independence of the judiciary as defined in the CCJE Opinion No 1, also refer to the implication of the independence on every aspect of judge's career from *training* to appointment and promotion and to disciplining.³ Consequently, the way the second sentence of the proposed paragraph 1 of the Article 9 is articulated, might be found questionable when put against CoE standards, and therefore it is recommended to be removed from this article.

³ CCJE Opinion N° 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges- "This independence must exist in relation to society generally and in relation to the particular parties to any dispute on which judges have to adjudicate. The judiciary is one of three basic and equal pillars in the modern democratic state[1]. It has an important role and functions in relation to the other two pillars. It ensures that governments and the administration can be held to account for their actions, and, with regard to the legislature, it is involved in ensuring that duly enacted laws are enforced, and, to a greater or lesser extent, in ensuring that they comply with any relevant constitution or higher law (such as that of the European Union). To fulfil its role in these respects, the judiciary must be independent of these bodies, which involves freedom from inappropriate connections with and influence by these bodies[2]. Independence thus serves as the guarantee of impartiality[3]. This has implications, necessarily, for almost every aspect of a judge's career: from training to appointment and promotion and to disciplining."

19. Given that checks and balances are secured with the diversified membership in the Board of the NIJ, one may consider further strengthening of the Board and increasing its transparency by including one member from the NGO sector instead of two members appointed by the MoJ.
20. According to the new wording of Article 9, the term of office has been modified from “without the possibility of serving two consecutive terms” to “a maximum of two terms of office as Director”. What would be the reason for such a change? Usually, countries appreciate keeping a good professional in the Director's post for a longer period of time. The Institute will only benefit from continuity in service. There is no need to limit the term of the Director to a maximum of two consecutive terms of office. In any case, if the board is not satisfied with the work of the Director, it can dismiss him/her anytime. Having in mind that those safeguards exist in Moldovan legislation, in the consultant's view, there is no advantage in limiting the term of office. In many countries, heads of Training Institutions stay for more than a decade, without limitation in terms of office, as in the Netherlands, Croatia, Estonia, Slovenia, Germany,⁴ etc.
21. is added paragraph (11) with the following content:

"(1¹) The position of Director of the Institute is open to any person who meets the following conditions:
a) holds a full university degree in law, public administration or management or its equivalent;
b) has at least five years' seniority in management, teaching or the judiciary;
c) knows Romanian as well as English or French;
d) has no previous criminal record;
e) is under 70 years of age;
f) has an impeccable reputation.";
22. **Comment:** Introducing a separate article on the criteria for selection of a Director of NIJ is welcomed, though some improvements to the list of criteria are recommended.
23. **Recommendations:** A law degree should be a minimum prerequisite for the position as a Director of NIJ. This criterion ensures that the individual not only possesses a comprehensive understanding of the judicial system but is also likely to gain respect and acceptance from judges and prosecutors.
24. Furthermore, the requirement for professional experience as a judge or a prosecutor is usual practice in most of the EU and Council of Europe member states. Therefore, if not requiring professional experience as a judge or a prosecutor, at least 2–3 years of working experience in the judiciary should be considered as a mandatory requirement.
25. Likewise, ten years of total professional experience should be required as a minimum. Only experienced professional can gain respect from judges and prosecutors.

⁴ In Germany, although there is no limitation in the legal acts about terms of office of the Director of the Academy, the tradition is that every mandate a different Lander proposes a Director.

26. Also, it should be clarified what is meant by "impeccable reputation". Subjective interpretation should be avoided.
27. 3. Article 10:
paragraph 3 is completed at the end with the following sentence: "In the absence of the Deputy Director, until the competition is completed, the Director's duties shall be performed by a person appointed by the Minister of Justice."
28. **Comments/recommendations:** In this article a general remark is made regarding a Deputy Director position which is also relevant to the current solution in Law No. 152 on the NIJ. It is recommended to consider the possibility of eliminating the Deputy Director position altogether from the Law. The role of a Deputy Director is deemed obsolete and requires financial resources allocated for a permanent position. Therefore, in the recommendations, Acting Director term will be used. In instances when the Director is absent, a substitute may be appointed by the Director from the NIJ staff. In cases when the Director is not in a position to nominate his/her substitute due to illness or other form of deprivation, the Council could appoint the substitute director from the NIJ staff till the new Director is appointed. Therefore, there is no need for double functions.
29. Concerning the proposal for the Minister to appoint a person to perform the duties of a "Deputy Director" till competition is finalised, this may be viewed again as an intervention by the executive branch into judiciary (see comment made under para 17 regarding CoE standards). As previously noted, an alternative approach could involve the Council appointing a substitute from the existing NIJ staff.
30. Furthermore, the comments made on the criteria for the Director under article 9 above are applicable *mutatis mutandis* to the Deputy Director, should this position be retained. The mandate of the Deputy should not be tethered to that of the Director. This approach will ensure a seamless transition from the outgoing to the incoming Director, mitigating concerns about the institution being temporarily without its leadership.
31. Lastly, this draft article is in collision with Article 7, para 1 (f) of the same Law. Namely, according to current wording of this provision one of the tasks of the Board of the NIJ is to "*order the temporary/interim performance of duties of a director or deputy director in the event of a vacancy until the vacancy is filled in the manner prescribed by law.* While the new wording of this article suggest that this responsibility is given to the Minister of Justice. Therefore, proposed paragraph 3 of Article 10 if adopted as such will be in collision with para 1 (f) of Article 7 of the Law on the NIJ.
32. 4. Article 11:
paragraph (7) shall read as follows:
"(7) The rules laid down in the internal regulations of the Institute shall apply to trainers working in the Institute. The workload of judges and prosecutors acting as trainers of the Institute shall be reduced by the Superior Council of the Magistracy or, as the case may be, by the Superior Council of Prosecutors in proportion to their involvement in the work of the Institute".
33. **Recommendations:** Judges and prosecutors should be motivated to become trainers and share their knowledge, experience, and judge craft with colleagues/future colleagues. Therefore, this new proposed solution is highly welcomed. Perhaps, an additional

consideration could be incorporated, such as "but not exceeding 20/30% of the judge's/prosecutor's working time," to strike a balance between the training activities and their primary responsibilities.

34. Also, if the workload is reduced, it is suggested that no further incentives, such as financial compensation, be extended to trainers who are actively serving as judges/prosecutors. An alternative incentive could involve a reduction in the mandatory training hours, while still maintaining a minimum threshold of training hours.

35. 8. Article 18:

in paragraph 1, the first sentence is replaced by the following: 'The Admission Examinations Committee shall announce the results of the tests on the day of their completion and the information on each test and the results of the examination shall be posted on the Institute's official website on the same day.';

36. **Comment:** If two committees/commissions for the admission examinations are established (criminal and civil), consequently in this article Committee/Commission should be in plural.

37. 9. Article 19:

paragraph (1) shall read as follows:

"(1) A person who has passed the entrance examination, after having completed the initial training courses, shall be obliged to register, within the period prescribed by law, in the register of candidates for the replacement of vacant positions of judge or prosecutor, to take part in the examination and to accept the position that is assigned to him/her as a result of the examination, as well as to work in this position for at least 3 years.";

38. **Comment:** If the intention behind the amendment is to align the years of service with the designated and actual work in the position, then the proposed amendment is appropriate. However, it is **recommended** that this synchronization should also extend to candidates entering the judicial profession, ensuring consistency with the seniority principle. See also comments under Article 29 para 4¹.

39. 10. Article 24 shall read as follows:

"Article 24. Traineeships

(1) The students of the initial training courses carry out internships, according to the curriculum of the Institute, under the guidance of a supervisor. The requirements for the traineeship leader shall be determined by the Institute.

(2) Traineeships are carried out in the courts, public prosecutors' offices, and prosecution services. Traineeships may be carried out in other public institutions and under the supervision of a lawyer.

(3) The heads of the public institution and the lawyer shall ensure the conditions necessary for the smooth running of the traineeship.

(4) Practice leaders must have at least 5 years' experience in the relevant activity and be of impeccable reputation.

(5) The traineeship leader shall be remunerated as determined by the Institute.

(6) At the end of the traineeship, the traineeship supervisor shall draw up a report on the trainee's work, which must meet the requirements laid down by the Institute.

(7) The Institute shall organise annual training for traineeship leaders."

40. **Comments:** Taking out the Superior Council of Magistracy and the Superior Council of Prosecutors involvement in the selection of the supervisors from the Law is appropriate. The Law should not be burdened with details, that should be left to the secondary legislation. However, their involvement as well as the role of the Presidents of Courts/Heads of Prosecution offices/Heads of Law offices, is crucial in the selection of the supervisors.
41. Including law office practice in the traineeship programme is commendable too.
42. Most of the EU countries provide for mandatory initial training for judges. Only in Finland, Malta, Serbia, Sweden and UK - Northern Ireland, initial training is optional. In France⁵ for instance, initial training lasts 31 months – 11 months at school and 20 months in the courts, in lawyers' offices, with investigators, private companies, public administrations etc. In the Netherlands⁶, before appointment, candidate judges usually receive initial training of at least one year and three months, at most four years, depending on the knowledge and experience of the trainee judge. During the periods of initial training, each candidate judge is supported by at least one tutor. This kind of initial training is mandatory for both experienced and inexperienced trainee judges and mainly takes place in the first instance courts. The exact duration of initial training differs as mentioned above, hence it depends on different pace of learning as a result of the different learning styles offered by the SSR (Training and Study Centre for the Judiciary). The level of knowledge and the pace of acquiring new knowledge and skills is tailored according to the preference of learning of each individual trainee judge.
43. **Recommendations:** Regarding the remuneration of the supervisors/leaders, the same comment given about the trainers-judges or prosecutors in Article 11, paragraph 7, is applicable in this context too.
44. The next **recommendations** are relevant to both draft amendments and the current state of Article 24.
45. One paragraph on the duration of the Initial Training should be introduced which would address the duration of traineeship part appropriate to prior legal practice of candidate judges/prosecutors. Consequently, "traineeship" for those candidates that have no prior experience in court/prosecution/lawyers' office, should be significantly lengthier. CCJE Opinion No. 4 on training for judges in para 26 "recommends mandatory initial training by programmes appropriate to appointees' professional experience."⁷
46. 11. Article 25(2):
 The word "knowledge" is excluded;
 Add point d) with the following content:
 "(d) other qualities intrinsic to the office of judge or, where appropriate, prosecutor."
47. **Recommendation:** One more paragraph in the same article is recommended that would ensure unified assessment of all trainees. Therefore, a paragraph stating

⁵ <https://www.enm.justice.fr/en>

⁶ <https://ssr.nl/ssr-excellent-training-for-a-just-society/initial-training-programmes/>

⁷ See also other recommendations given by the CCJE about initial training in the CCJE Opinion 4 (2003) on training for judges, available in Romanian at: <https://rm.coe.int/1680747cfc>

“assessment/evaluation grid with grades and guidelines will be developed by the NIJ to secure a unified approach in the assessment of trainees and transparency of the assessment process” could be sufficient for that purpose.

48. 12. Article 26:

paragraph 1 is completed at the end with the sentence 'The examination shall assess the knowledge, skills and personal qualities relevant to the performance of the duties of judge or prosecutor';

is supplemented by paragraphs (1¹) - (1³) with the following content:

"(1¹) The Graduation Examination Committee is formed before the graduation examination, based on the decision of the Council, of 6 members.

(12) I am a member of the Graduation Examination Committee:

a) two members appointed by the Superior Council of Magistracy, at least one of whom shall be a judge;

b) two members appointed by the High Council of Prosecutors, at least one of whom shall be a prosecutor;

(c) one member from among university professors or lawyers in one of the areas of law of the subjects covered by the competition tests, appointed by the Council and one appointed by the Minister for Justice.

(13) The term of office of the Committee for the Graduation Examination shall be one year and it shall exercise its functions until a new Committee is formed.";

49. **Comment:** If specialised examinations (civil/criminal) are to be conducted as part of the admission examination, the graduation examination (judge/prosecutor) should be conducted in the same way,

50. is completed with paragraph (2¹) with the following content:

"(2¹) The Institute's auditors are assessed by the psychologist, who presents the opinion on each auditor at the Examination Board meeting. The Examination Board takes into account the opinion given at the auditor's assessment. The written opinion is forwarded to the Superior Council of Magistrates or, where appropriate, the Superior Council of Prosecutors."

51. **Recommendation:** It may be worth considering moving this article within the admission examination part. Having a negative assessment by the psychologist at the conclusion of the initial training programme could be inefficient in terms of both time and resources.

52. 13. Article 27:

"Article 27. Participation in competitions to replace judges or prosecutors

(1) The graduate of the Institute, within one month of the application, is obliged to submit the file for inclusion in the register for the replacement of vacant positions of judge or prosecutor. The certificate of graduation from the Institute is valid for 3 years.

(2) If the graduate of the Institute does not fulfil the obligation provided for in paragraph 1, the (1), does not take part in the competition, refuses a second time to accept the post he/she has been appointed to following the competition, or serves as a judge or prosecutor for less than 3 years, he/she shall be obliged to reimburse the State for the cost of his/her training at the Institute and the scholarship paid during the initial training.

(3) In the event of failure to return the amounts referred to in paragraph 1, the (2), it shall be recovered on the basis of a court decision, at the request of the Superior Council of Magistrates or, where appropriate, the Superior Council of Prosecutors. The High Council of the Judiciary and the High Council of Prosecutors shall inform the Institute of the lodging of the action."

53. **Comment:** Two aspects should be considered here; one is the validity of the certificate and the second is the appointment of the NIJ graduates. Regarding the validity period, it is of the utmost importance that graduates are appointed to a magistrate's position almost immediately after graduation so that their qualifications are intact. In that case, validity is just an administrative necessity to regulate the status of the graduates in the meantime.
54. Having a second way of entering a judicial position on the basis of "seniority" is a great way to secure a diversified professional background and experience in the judiciary. However, one should consider appointing all graduates from the NIJ in this "validity period" first, otherwise it will be a waste of time and resources. Furthermore, having in mind that a successful graduation from NIJ is not a guarantee for appointment as a judge or a prosecutor, makes this career not very attractive for prospective legal professionals. On the other hand, it is a waste of public resources invested in the training of future magistrates who, in the end, are not appointed as judges or prosecutors. The issue of immediate appointment of NIJ graduates is of crucial importance and needs to be addressed as a priority. This is also one of the most important recommendations given in the Report of the Assessment Expert Mission as mentioned under "general comments", which has not been introduced in the Law on NIJ up to now.
55. **Recommendation:** A separate article that will secure appointment of all NIJ graduates in the shortest period possible (max 2 years) should be introduced. If one wants to continue with the two-way approach (NIJ graduates and seniority) when appointing judges and prosecutors in the Moldovan judiciary, two alternatives are possible; to introduce a percentage or to give priority to NIJ graduates. If a percentage is introduced, it should be very high in favour of NIJ graduates. For example, 80% of the total number of vacant judge or prosecutor positions on an annual basis should be appointed from the pool of NIJ graduates and 20% through the seniority principle. If the second approach is considered, in that case only after the appointment of all NIJ graduates to vacant judge or prosecutor positions, persons applying for the judge or prosecutor position based on the seniority principle can be appointed. This is the only way to secure that NIJ initial training is not in vain and the most skilled and professional candidates for judges/prosecutors are appointed.
56. 15. Article 29 shall be supplemented by paragraph 4¹) to read as follows:
- "(4¹) Persons applying for the position of judge or prosecutor on the basis of seniority, within a maximum period of 1 year from the issue of the certificate attesting to the passing of the examination before the Commission for Graduation Examinations, are obliged to initiate the procedure for access to the position of judge or prosecutor by submitting the set of documents to the Superior Council of Magistracy or the Superior Council of Prosecutors.
- Recommendation:** A favourable difference is made between the candidates with initial training completed and those that apply for the judicial post based on the principle of

seniority, in favour of the latter. Namely, the validity period of the examination certificate is 3 years in case of candidates with completed initial training programme. For the second category, the certificate is valid for 5 years. This discrepancy could be seen as discriminatory. Therefore, it is recommended to unify the validity period of the certificates for passing the graduation examination to 3 years for both categories.

57. **Art. V.**-Law No. 3/2016 on the Prosecutor's Office (published in the Official Monitor of the Republic of Moldova, 2016, No.69-77, Art.113), as amended, is amended as follows:

1. In Article 20, paragraph (1) shall be supplemented by point e¹) with the following content: "e¹) the general average of the graduation from the National Institute of Justice or the average mark of the examination held before the Commission for the graduation examinations by the persons referred to in paragraph 1. (2) is higher than 8."

58. **Comment:** See the comment provided in relation to Article 1 para 6 of Law No. 544/1995, Law on status of judges. The same is relevant for the prosecutors.

59. **Art. IX** - (1) This Law shall enter into force on 1 January 2024.

(2) The certificate of graduation from the National Institute of Justice obtained by 2021 and the results of the examination held in front of the Commission for Graduation Examinations by 2021 are valid for a period of 5 years.

(3) The prohibitions and limitations of this Law shall also apply to persons who have graduated from the National Institute of Justice or have taken the examination before the Commission for Graduation Examinations before the entry into force of this Law. Within 3 months from the entry into force of this law, persons who have not yet done so shall submit to the Superior Council of Magistracy and the Superior Council of Prosecutors, respectively, the documents necessary for their inclusion in the register of candidates.

(4) Within two months of the entry into force of this Law, the Superior Council of Magistracy, the Superior Council of Prosecutors, and the National Institute of Justice shall bring its normative acts in line with this Law.

(5) Within one month of the entry into force of this Law, the responsible authorities shall fill existing vacancies in the Council of the National Institute of Justice.

60. **Comment:** The deadlines given for the NIJ in the transitory provisions might be too tight to amend the necessary secondary legislation.

INFORMATION NOTE
to the draft Law on the modification of some normative acts

1. Name of the author and, where appropriate, of the participants in the development of the project

The legislative initiative was drafted by MP Olesea STAMATE.

2. The conditions that led to the drafting of the legislative act and the aims pursued

The project aims to implement action 3.2.2. of the *Action Plan for the implementation of the Strategy on ensuring the independence and integrity of the justice sector for the years 2022-2025*, approved by *Law No. 211/2021*, which states: "*Enhancing the organizational capacities of the National Institute of Justice*".

This action aims at streamlining a number of administrative aspects related to the work of the National Institute of Justice (hereinafter - NIJ), as well as aspects that will contribute to strengthening the capacities and skills of the NIJ's auditors.

3. Main provisions of the project and highlighting new elements

The draft provides for the following key changes:

1. Government medical insurance for National Institute of Justice auditors.

According to paragraph 4 of Annex No. 1 to *Law No. 1593/2002 on the amount, method and terms of payment of compulsory health insurance premiums*, the NIJ auditors, candidates for the position of judge and prosecutor, fall under the categories of payers of compulsory health insurance premiums "in the form of a percentage contribution to the salary and other rewards", in this case, the scholarship received during the period of study at the NCI (18 months). As the NIJ's auditors have to deduct 9% of the scholarship received at the beginning of each month at the same time as the calculation of the scholarship, the institution is obliged to enter this data in the "IRM19" form for the activation of the health insurance policy, but the form does not contain a box for this category of insured persons. As a result, at the moment, the auditors of the NIJ are listed as "employees" in the accounting software.

We underline that, according to Article 20 letter e) of the Tax Code no. 1163/1997, "scholarships for pupils, students and persons attending postgraduate or specialised postgraduate education at state and private educational institutions, in accordance with the legislation on education, established by these educational institutions, as well as scholarships granted by philanthropic organisations, with the exception of remuneration for teaching or research work, one-off allowances granted to young specialists employed at work, according to assignment, in rural localities;" are not included in gross income, being non-taxable sources of income.

Please note that according to Article 2 para. (4) of the Law no. 152/2006, the NIJ is not part of the national education and training system. As a result, the provisions of Article 20(e) cannot be applied to the NIJ.

Thus, in order not to discriminate against the NIJ auditors in relation to those who pursue postgraduate studies in educational institutions, it is proposed to implement a medical insurance mechanism, similar to the one existing for students in higher education institutions.

In this context, it is necessary to amend Article 4(4). (4) of Law No 1585/1998, point 4) of Annex No 1 to Law No 1593/2002 and Article 19 para. (3) of Law no. 152/2006.

2. Decrease the workload of judges and prosecutors working in the Institute as trainers.

In order to ensure the quality of the initial and continuous training process, it is imperative to attract the best professionals from the judiciary as trainers. Currently, the Institute is facing a shortage of trainers, especially judges from the Court of Appeal and the Supreme Court of Justice, who cite a heavy workload as an impediment. Thus, reducing the workload for judges and prosecutors working as trainers on a cumulative basis will be an incentive

to share their knowledge and experience within the Institute. In this context, the draft contains an addition to Art. 11 para. (7) of Law No 152/2006.

In addition, it is proposed to extend the categories of professionals who can be trainers, i.e., to include international experts. This amendment is necessary in the context of the close cooperation between the NIJ and the HELP network (addition of Art. 11 para. (4) of Law No 152/2006).

3. Concerning the results of the entrance exam:

It is proposed to regulate the obligation to publish on the website of the NIJ separately the results of each test of the entrance exam and, subsequently, the final result of the exam. It is therefore necessary to amend the first sentence of Article 18(1). (1) of Law No 152/2006. Another proposed amendment concerns the modification of the deadline for contesting the results of the entrance exam. It should be noted that the law currently sets a deadline of "48 hours". We stress that in practice it is difficult to ensure that this deadline is respected, especially when it overlaps with rest days. We consider it appropriate to set a deadline of 2 working days.

With regard to the conditions for admission to the admission competition, we consider it necessary that, in addition to the condition concerning the limit on the number of places, the condition of obtaining at least a mark of 8.00 should also be established (amendment of Article 18(1)(a). (6) of Law no. 152/2006; addition of Article 6(1) of Law no. 544/1995 with letter c¹ ; addition of Article 20(1) of Law no. 3/2016 with letter e¹ .

4. Regulating the status of the traineeship leader.

In order to ensure the effectiveness of the traineeships and the active involvement of the leaders in the work of the NIJ auditors, it is necessary to establish eligibility criteria as well as obligations that will make them accountable. As a result, in addition to the requirements laid down in the current legislative rules, Article 24 of Law No 152/2006 will be supplemented by provisions stipulating that the status/duties towards the traineeship leader will be determined by the NIJ.

5. Modification of the constitution of the Commission for the graduation examination.

At present, the law provides that this committee shall be constituted in the manner determined by the Council. In order to ensure the stability of its composition, it is proposed to add several new paragraphs to Article 26 of Law 152/2006, which will regulate in detail the composition and mandate of the Graduation Examination Commission.

It is also proposed to add a paragraph (2¹) to Article 26, which will govern the assessment of the Institute's auditors by a psychologist, whose written opinion will be presented to the Examination Board meeting on each auditor. This opinion is to be taken into account in the auditor's evaluation process.

In this context, a technical amendment is also proposed for Article 29(2). (2).

6. Inclusion of trainers who have been involved in the training of graduates in the list of persons who may not be part of the Commission for Graduation Examinations.

In the Report of the Peer Review Expert Mission to the Republic of Moldova on Initial and Continuing Legal Training of Judges and Prosecutors at the National Institute of Justice, conducted between 06.06.2022 - 10.06.2022, it was recommended that the NIJ trainers should not be part of the Graduation Commission. In the view of the international experts, the opinion of the trainers about the auditors is already reflected in the evaluations made during the initial training. This creates the impression that they are evaluating the outcome of their own work. The Commission will also not be able to include members of bodies subordinate to the High Council of Prosecutors and the High Council of the Judiciary.

7. The intervention in Art. 30 para. (3) of Law 152/2006 aims to replace the name of the methodology mentioned in the text with a more general wording, which will provide greater flexibility for the NIJ

8. Proposed amendment to Art. 34 para. (5) of Law no.152/2006 is necessary because the NIJ, except for working with the self-administration bodies of the justice system related professions, receives requests from various central and local public authorities to organise certain trainings.

9. The inclusion of the Institute's auditors in the mandatory verification mechanism for declarations of assets and personal interests.

Law No 228/2022 on the amendment of some normative acts established the obligation to submit a declaration of assets and personal interests for admission to the INJ. In order to ensure the integrity of the candidates for judges and prosecutors, it is necessary that these declarations be verified. As a result, it is proposed to supplement Article 3 of Law No 133/2016 and Article 27 of Law No 132/2016.

10. The proposed amendments to Article 3 of Law No 228/2022 concern the amendment of the final and transitional provisions of the law. They aim at unblocking the process of appointment of members to the NIJ Council by the Presidency and the PSC.

4. Economic and financial justification

The implementation of the project will require additional financial resources from the state budget for medical insurance by the Government for the NIJ auditors, to be provided in the budget for 2024.

At present, the grant for the NIJ auditors for the year 2023 is 10529,10 lei (which corresponds to the average salary for the year 2022). From this amount, based on Law 85/2016 for amending and supplementing some legislative acts, 9% is deducted monthly for medical insurance, which is 947.61 lei/month.

The amount required for the medical insurance of an NIJ auditor is:

947,61 lei/month * 12 months = 11 371,32 lei/year

Please note that according to the average for the years 2020-2023, there are approximately 36 auditors per year in the NIJ.⁸ As a result, the amount required for their medical insurance will be approx.:

36 auditors/year * 11 371,32 lei/year = 409 367,52 lei/year

5. How to incorporate the act into the existing regulatory framework

After the adoption of the draft law it will be necessary to adjust the internal acts of the National Institute of Justice.

⁸ Average number of NIJ graduates for recent years:

- 2020-35 graduates (15 judges/20 prosecutors)
- 2021-40 graduates (20 judges/20 prosecutors)
- 2022-34 graduates (15 judges/19 prosecutors)
- 2023- 36 graduates (15 judges/21 prosecutors)