Action against Corruption in the Republic of Moldova

TECHNICAL PAPER

JUDICIAL INSPECTION OF THE REPUBLIC OF MOLDOVA
- ANALYSIS AND RECOMMENDATIONS ON LEGISLATION AND INTERNAL PRACTICES -

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The project "Action against Corruption in the Republic of Moldova" aims to address key priorities and needs in the Republic of Moldova which are closely interlinked with the reform processes initiated by the government and their obligations towards implementing international standards against corruption and the related monitoring recommendations. More specifically, the Action is designed to deliver assistance in the legislative, policy and institutional reforms by addressing pending recommendations from the Fourth Evaluation Round of the Council of Europe's Group of States against Corruption (GRECO).

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ABBREVIATIONS

CC	Constitutional Court of the Republic of Moldova
CCJE	Consultative Council of the European Judges
ECHR	European Court of Human Rights
ICMS	Integrated Case Management System
Inspection Regulation	SCM Decision No 506/24 of 13 November 2018 on the amendment of the Regulation on the organization, competence and functioning of the Judicial Inspection
Law No 178	Law No 178 of 25 July 2014 on the Disciplinary Liability of Judges
Law No 514	Law No 514 of 6 July 1995 on the Organization of the Judiciary
Law No 544	Law No 544 of 20 July 1995 on the Status of Judges
Law No 947	Law No 947 of 19 July 1996 on the Superior Council of Magistracy
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy

1. EXECUTIVE SUMMARY

The existence of democracy depends on respect for the principle of separation of powers, their effective functioning and respect for the principle of legality. The Republic of Moldova's path is undoubtedly towards a European direction, which implies compliance with international standards on the independence of justice.

However, justice without accountability can lead to abusive practices by judges. That is why a balance must be struck between respecting the freedom of judges to make decisions and enhancing their integrity and professionalism. One way of making judges accountable is the system of disciplinary liability.

The new law on the disciplinary liability of judges, Law No. 178/2014[1], came into force in 2015, was substantially amended in 2018 and then amended again at the end of 2020. It was intended to specialize the bodies involved, but also to give greater control over the solutions given by them. The current regulation still poses some problems of practical implementation.

With regard to the *grounds for disciplinary liability,* we point out that some disciplinary misconduct is not clearly enough formulated, and others cause confusion regarding the distinction between the independence of judges and the possibility of control of judicial decisions.

The general rule is that disciplinary misconduct must be related to the way in which the professional activity is carried out, not to the legality of the decision taken or to ethical violations. Only in exceptional cases is the disciplinary liability of judges accepted for a certain degree of culpable violation of legal rules in the course of judicial activity, which requires careful regulation of this ground and great care in its application.

Regarding the *disciplinary procedure,* we believe that it is not efficient enough, as it involves too many bodies: the investigation is carried out by the Judicial Inspection, the judgement by the Disciplinary College, the internal appeal by the Superior Council of Magistracy (SCM), the judicial appeal by the Court of Appeal and the Supreme Court of Justice (SCJ). Moreover, some loopholes in the law issued by Parliament have been filled by provisions in the regulations approved by the SCM, which is highly questionable in a state where the rule of law must be respected.

The present study aims to analyse only the Judicial Inspection, with a view to clarifying its status, strengthening its role and increasing the professionalism of inspectors. The Moldovan authorities should decide whether the Inspection will remain part of the SCM – as it is now, despite some provisions to the contrary – or whether it should be given the necessary resources to assume real autonomy. Whichever the decision, the Judicial Inspection should have more inspectors and its own administrative apparatus. The criteria for selecting inspectors need to be reviewed. Inspectors should be specialized by field of activity and receive intensive training in disciplinary law, relevant national and constitutional case law and applicable international standards. The salary level of inspectors should be increased. At the same time, their accountability should be strengthened through a regular evaluation system and a robust disciplinary system. The status and disciplinary offences of inspectors should be regulated by law and, in case of sanctions, the inspector should be automatically removed from office.

The role of the Judicial Inspection in the disciplinary procedure needs to be strengthened. The Inspection should be the only body designed to bring and argue a case before the Disciplinary Board, and the person who notified the Inspection should be excluded from the disciplinary trial or appeal procedure. The confrontation in the disciplinary procedure of the judge with the party to the trial dissatisfied with the judges' actions should be avoided at all means.

[1] Republic of Moldova, *Law No 178/2014 on the disciplinary liability of judges*

2. INTRODUCTION

Law No 178 of 2014 governs the disciplinary liability of judges in the Republic of Moldova. It entered into force on 1 January 2015 and regulates the principles of the disciplinary procedure, grounds for disciplinary liability, categories of disciplinary offences committed by judges, disciplinary sanctions, stages of the disciplinary procedure, powers of the institutions involved in the disciplinary process, procedure for examining and adopting decisions in disciplinary cases and appeal mechanism against them.

In the summer of 2016, Law No 178 was amended for the first time. The ***Law No 102/2016*** introduced a new disciplinary offence, required by the Law on the Institutional Integrity Assessment.

In the autumn of 2018, Law No 178 was amended for a second time and much more substantially. No less than 27 amendments were made to a law that originally had 43 articles, by ***Law No 136/2018.*** Apart from the administrative aspects, this new regulation makes important changes to disciplinary offences (some are dropped, others are modified, new ones are introduced) and to the procedures before the Judicial Inspection (the verification phase has been separated from the investigation phase) and the Disciplinary Board (the admissibility panels have become appeal panels).

An implicit change occurred with the entry into force of the ***Administrative Code*** No 116 of 19 July 2018. While until then decisions of the SCM, including those on disciplinary procedures, could be appealed directly to the SCJ, under the new Code they can be appealed first to the Court of Appeal and then to the SCJ.

Finally, in the winter of 2020, Law No 178 was amended again by ***Law No 205/2020***, defining the notions of "intent" and "gross negligence" in the content of a disciplinary offence and recognizing the right of the Ministry of Justice to refer cases of certain disciplinary offences committed by judges to the Judicial Inspection. The amendments to Law 544 also abolished the possibility of secondments within the Judicial Inspection.

The system of disciplinary liability of judges was a priority in the Justice Reform Strategy for 2011-2016 (extended until 2017). It is also targeted in the draft ***Strategy on Ensuring the Independence and Integrity of the Justice Sector for 2021-2024 and the Action Plan for its Implementation***, approved by the Parliament on 20 November 2020. Thus, objective 1.2.4 aims to improve the mechanism of disciplinary liability of judges and prosecutors, and the measures would be as follows:

> a) Amendment of the legal framework regarding the activity of the Judicial Inspection in the part related to:
>
> - rights, obligations, guarantees of judicial inspectors;
>
> - revocation of the mandate and other capacity building issues for inspectors;
>
> b) Amendment of the internal regulations of the Superior Council of Magistracy related to the activity of the Judicial Inspection;
>
> c) Amendment of the legal framework on disciplinary liability of judges in the part concerning:
>
> - ensuring clarity and predictability of the criteria that constitute disciplinary offence;
>
> - examination procedure;
>
> - extending the situations in which alternate members attend Disciplinary Board meetings and eliminating other shortcomings identified as a result of the review of practices.

The disciplinary liability of judges is a subject also under scrutiny by European bodies. Thus, the Venice Commission and the OSCE issued a ***Joint Opinion on the draft Law on disciplinary***

Liability of Judges[2] (March 2014). A number of observations were made at that time on the content of some disciplinary offences, but these recommendations were not implemented by the Moldovan authorities.

Similarly, ***GRECO's Fourth Evaluation Round on Corruption Prevention in respect of members of parliament, judges and prosecutors*** recommended revising the legal and operational framework for the disciplinary liability of judges with a view to strengthening its objectivity, efficiency and transparency (First Compliance Report, December 2018) and found that this recommendation was only partially implemented due to legislative changes (Second Compliance Report, September 2020)[3].

The object of the present study is to analyse the legislation, regulations, standards and practices on the basis of which the Judicial Inspection carries out its work in relation to the disciplinary liability of judges in the Republic of Moldova. The members of the Judicial Inspection, the Disciplinary Board, the SCM, Chisinau Court, the Moldovan Bar Association, the Constitutional Court, LRCM, in discussions with the expert and the representatives of the Council of Europe in Chisinau made a valuable contribution to the drafting of the study.

[2] Venice Commission and OSCE/ODIHR, *Joint Opinion on the draft Law on Disciplinary Liability of Judges*, CDL-AD(2014)006, March 2014.
[3] GRECO, *First and second compliance reports (2018 and 2020)*, Fourth evaluation round on corruption prevention in respect of members of Parliament, judges and prosecutors.

3. ANALYSIS

A. Grounds for disciplinary liability

Law No 178 regulates disciplinary offences for judges with executive functions, as well as special rules for those with managerial functions or who are members of disciplinary bodies.

As for the misconduct of executive and managerial magistrates, this was analysed in a previous study to which we refer[4].

The disciplinary procedure regarding judicial inspectors is set out in Chapter IV of the Inspection Regulation.

The following actions are considered disciplinary offences:

a) interfering in the work of judges or intervening in any way to settle requests, claiming or accepting the settlement of personal interests or those of family members other than within the limits of the legal provisions in force;

b) public activities of a political nature;

c) infringement, for attributable reasons, of the time-limits for examining petitions under procedure or infringement of mandatory rules of law;

d) violation of the legal provisions concerning the obligation to submit the declaration of income and property and the declaration of personal interests;

e) unjustified refusal to carry out an official duty;

f) unjustified absences from work, lateness or absence from work;

g) undignified attitude towards colleagues, judges, petitioners while performing their duties.

The disciplinary sanctions are as follows:

a) warning;

b) reprimand;

c) harsh reprimand;

d) dismissal.

After the notified judicial inspector has presented an explanation of the disciplinary offence, the SCM issues the decision on the application of the disciplinary sanction.

The Regulation also points out that the decision of the SCM can be appealed to the SCJ.

Though no concerns were found regarding how offences or sanctions are regulated a general observation needs to me made regarding the place of these provisions. The judicial inspectors are judges and disciplinary liability is a matter of their status. The status of judges is regulated at the level of the Constitution and the law. It is unconstitutional to regulate the status of a judge by regulation. Therefore, we propose that the aspects concerning the disciplinary liability of judicial inspectors should be regulated in Law No 178. The Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe „*on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality*" has also pointed out, in para. 51, that the disciplinary

[4] Cristi Danileț, Analytical Paper "Disciplinary liability of judges in the Republic of Moldova. Evaluation of legislation and practices", CRJM, July 2020, available at https://crjm.org/wp-content/uploads/2020/07/Raspunderea-disciplinara-a-judecatorilor-in-Republica-Moldova-interactiv.pdf.

liability of a judge and the way it is assessed is, unlike any public servant, also a way of preventing unlawful interferences in the Judiciary[5].

B. Relationship between disciplinary procedures and other types of procedures

1. The appeal

Disciplinary liability does not depend on whether or not the act issued by the judge subject to the disciplinary case has been challenged or on the outcome of the appeal (Article 4(3) of Law No 178). This regulation seems to conflict with another, according to which the control exercised by the Judicial Inspection cannot include decisions subject to the appeals provided for by law (point 2.2 paragraph 2 of the Inspection Regulation).

We thus note that, in parallel with the trial procedure he/she is managing, the judge of the case could be disciplinarily investigated without the disciplinary bodies having to wait for the sentence to be pronounced or for the appeal to be resolved, which may create pressure on the judges involved in the resolution of the case.

In practice, it is often the case that some litigants seek, through disciplinary proceedings, either to influence judges, to double appeal or to review court decisions. It is true that the Judicial Inspection should not be able to establish that a judge has erred in his/her judicial acts, which is the purpose of appeals. In reality, because of the confusing wording of some misconduct, there is nothing to prevent the Judicial Inspection from acting as a genuine judicial review court. Moreover, a major problem arises when a law is infringed by the appeal court. Thus, for example, the violation of a mandatory rule is disciplinary misconduct if, had that rule been complied with, it would have led to a different outcome. The question arises as to what happens after the Judicial Inspection has established that the court of appeal has violated the law, as there is no appeal for revision in the legislation of the Republic of Moldova, such as in the Code of Civil Procedure of Romania – according to Article 509 para. (1) item 4 "*The revision of a decision pronounced on the merits or evoking the merits may be requested if a judge has been sanctioned by a final disciplinary measure for exercising his/her office with bad faith or gross negligence, if these circumstances have influenced the solution pronounced in the case*".

A clear demarcation should be made between the powers of the Judicial Inspection and the use of appeal mechanisms. For example, it is a disciplinary offence, and the Judicial Inspection must initiate disciplinary proceedings when the operative part of a decision is one way and the reasoning is another, but the Judicial Inspection should not have the right to say that the judge's decision is wrong. Similarly, it is a disciplinary offence if the composition of the panel of judges is different from that required by law. Also, as long as the law states that an order for recovery of a sum of money cannot be issued when the debtor is out of the country, there is disciplinary misconduct if it is decided otherwise. And if the judge who made the decision has taken a bribe, then he/she must also be prosecuted. Thus, the disciplinary procedure cannot be prevented by the criminal one: the former concerns illegal conduct in the exercise of judicial office, the latter concerns the commission of a common law offence.

To make a clearer distinction, a possible confusion of legal terms needs to be clarified: *misapplication of* the rules of law is grounds for appeal, whereas *violation of the rules of* law is grounds for disciplinary liability. This makes it even more obvious that the disciplinary procedure

5 *Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality* (para. 51).

should not be blocked on the grounds that the substantive or appeal procedure has not yet been exhausted.

2. Criminal procedure

According to Article 19 para. (3) of Law no. 544, the judge cannot be held liable for his/her opinion expressed in the course of justice and for the judgment rendered, unless his/her guilt has been established by a final judgment or, in the course of disciplinary proceedings, it has been established that he/she was intentional or grossly negligent in his/her actions or inactions, which led to one of the consequences referred to in Article 2007 para. (1) let. c) of the Civil Code of the Republic of Moldova No 1107/2002.

Criminal and disciplinary liability are different in nature: the first concerns the commission of a criminal offence, the other concerns the breach of an official duty. Therefore, they are not mutually exclusive, as the Venice Commission also stated in its Opinion No 880/2017, *Amicus Curiae addressed to the Constitutional Court of the Republic of Moldova on the criminal liability of judges,* para. 53[6]. Nevertheless, the introduction of criminal liability should be treated with caution when it comes to unintentional acts committed by judges. Although criminal and disciplinary liability are not mutually exclusive, when it comes to unintentional acts, "*while current practice does not entirely exclude criminal liability on the part of judges for unintentional failings in the exercise of their functions, the CCJE does not regard the introduction of such liability as either generally acceptable or to be encouraged*."[7]

In certain situations, the same act committed by a judge could also be legally classified under the Law on Disciplinary Liability and one of the offences laid down in the Criminal Code. In such a situation, when both the Judicial Inspection and the prosecution body are notified, it has to be clarified whether the investigations can be carried out in parallel or whether one should be suspended until the other is resolved.

If the criminal investigation is carried out first and the judge is found guilty, since he/she is convicted, he/she will have to be excluded from the judiciary according to Article 25 para. (1) (g) of Law No. 544, so there will be no question of his/her disciplinary liability.

If the matter was first referred to the Judicial Inspection and the conditions for criminal liability could also be met, it should be noted that there is no rule expressly providing that the disciplinary procedure is suspended during the criminal proceedings. In practice, however, the Judicial Inspection stops the checks, notifies the criminal investigation bodies and, once the criminal proceedings have ended, the disciplinary procedure is resumed but, as a rule, the limitation period is found to have expired. This should therefore be expressly regulated, and the solution could be for the legislator to provide for the suspension of the limitation period for disciplinary liability during the course of criminal proceedings for the same offence. Another solution could be for the law to establish that in case the same conduct is source of disciplinary and criminal liability, the limitation period would be only one, that of the criminal offence (usually longer than the disciplinary). In this case, for a question of coherence of the system, the limitation period should not differ for crime and disciplinary sanction.

C. Provisions in regard to the Judicial Inspection included in Law No 947 on the SCM

a. Paragraph (1) of Article 7 states that the Judicial Inspection is a specialized body, together with the three Boards. It is not made clear whether it is a body of the SCM, attached to the SCM or outside the SCM.

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[6] Venice Commission, *Opinion no. 880/2017*, *Amicus Curiae addressed to the Constitutional Court of the Republic of Moldova on the criminal liability of judges,* para. 53.

[7] *Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality (para. 53).*

b. Article 7, para. (3) of Law No 185/2007[8] states that "The organization, competence and functioning of the Judicial Inspection are established by this law and by the regulation approved by the Superior Council of Magistracy". Based on this article, the Inspection Regulation was adopted.

c. Article 7[1] states that the Judicial Inspection is an independent body with functional autonomy. We consider that contrary to what is stated in Law 947, the Judicial Inspection is not a fully independent body.

We base our assertion on the fact that the same Article 7[1] states that it is the SCM that appoints the chief judicial inspector (para. 4) and ensures the technical-material activity of the Judicial Inspection (para. 7). Similarly, notifications concerning acts that may constitute disciplinary offences are submitted to the SCM Secretariat (Article 21(1) of Law No 178); the competition to fill the posts of judicial inspector is organized by the SCM, without any involvement of the chief judicial inspector, who is also appointed by the SCM (paragraph 3.1 of the Inspection Regulation); the decision on the dismissal of the judicial inspector is taken by the SCM and the SCM also announces the vacancy of the post (paras. 3.19 and 3.20 of the Inspection Regulation); it is the SCM that issues service cards to inspectors (para. 3.21); the annual activity report is published on the SCM website (para. 13.1 of the Inspection Regulation).

d. Article 7[1] prescribes that the Judicial Inspection has 7 inspectors with a 6-year non-renewable term of office. A person who holds a law degree or its equivalent, has at least 7 years of legal experience and an irreproachable reputation, and who has not served as a judge within the last 3 years may be chosen to the position of judicial inspector. There are no clear criteria for the selection and removal of the judicial inspector, nor who replaces him/her in case of absence. In the exercise of his/her duties, the judicial inspector enjoys the inviolability stipulated in Article 19 of the Law on the Status of Judges.

With regard to the *number of inspectors*, all vacancies have been filled. At present, only one person provides the secretarial work of the Judicial Inspection, but she is not part of the Inspection's establishment plan but belongs to the SCM. Even so, the number of inspectors is insufficient because, according to the Inspection Regulation, they have a total of 9 legal tasks, not only related to disciplinary proceedings. This makes it impossible, on the one hand, to comply with the legal deadlines for dealing with complaints received, and on the other hand, prevents inspectors from making regular checks at courts which would be the main tool for preventing violations of the law. We believe that a number of 10 inspectors would be sufficient for the effective performance of their duties, and that more staff should be delegated to the secretariat until their allocation.

With regard to the *qualifications of the inspector*, it is obvious that any procedure which falls within the competence of the Judicial Inspection requires a certain training of the inspector. The inspector must be a specialist, and judges or former judges are the most suitable to fill these positions. An outsider, even a lawyer or a professor, does not understand that well the investigation procedures which can lead to proceedings being cancelled or terminated. We believe it is quite difficult for former lawyers to inspect judges or to check the management of courts, as internal procedures and the way the law is applied are difficult for judges themselves to know. The inspectors now in office did not receive special training but were self-trained. All integrity inspectors should undergo mandatory training on court management, the legal framework for disciplinary offences and personal data law.

We also noted the lack of a **disciplinary guidance**, although in practice precedents are considered and discussed at internal meetings. We believe that this would be necessary, especially for new inspectors who need to know the previous practice of the Inspection, the Disciplinary Board and the SCM.

[8] Law no. 185/26.07.2007 on modification and completion of Law no. 947 XIII of 19 July 1996 on the SCM, published on 31.08.2007 in the Official Gazette no. 136-140 art. 579. It should be noted that on the website www.legis.md, the updated form does not include this amendment.

We believe that the ban on judicial inspectors for those who have been judges for the last three years is too harsh and could be compensated by a very serious selection procedure. The three-year ban seems more like a blanket indictment of the judiciary. We believe that well-trained and good-faith judges should be encouraged and selected to be part of the Inspection. Obviously, those who in the past had not only disciplinary but also managerial problems should be excluded from the competition.

Consultative meetings with the Inspection and other stakeholders revealed an *overload* of the judicial inspectors. In recent times, there has been an increase both in the number and complexity of cases dealt with by the Inspection. Inspectors draft documents of up to 30 pages. This creates pressure on inspectors to meet the deadlines for drafting work.

Thus, the inspectors deal with hundreds of requests and petitions sent by people involved in judicial proceedings (including convicts in prison who, during the pandemic, were no longer physically involved in legal proceedings and were thus deprived of the necessary information) or by the press. Some of these could be dealt with at SCM staff level. For example, if public information is requested about pending cases, or about the date of a procedure before the Disciplinary Board or the SCM, the public information office of the SCM should formulate the response. This requires that a specialized official be granted access to the ICMS. In this way, the judicial inspectors could be relieved and devote more time and attention to disciplinary proceedings.

Given the tasks of the Judicial Inspection – from those of court management to those of involvement in disciplinary proceedings – it would be desirable for judicial inspectors to receive prior training and even specialize. However, if specialization of inspectors were to be put into practice, there is a risk that some inspectors would have a heavier workload than others. Therefore, if it is not possible to specialize by area, it would be worth considering the possibility of rotating inspectors in different areas. Each inspector should know how the departments of a court operate and what their tasks are. This will prevent confusion, for example, where a judge is blamed for not issuing summonses.

e. The salary of the judicial inspector and the chief judicial inspector is determined in accordance with the legislation on the salary system in the budgetary sector.

As long as the inspectors check the work of all courts, including the supreme court, it seems appropriate that their salaries should be the same as for Supreme Court of Justice judges. This would be a reason to increase the attractiveness of judges applying for the position of inspector. These inspectors should not only be from Chisinau, but the interest of those from outside to come to the Judicial Inspection raises the issue of settling some accommodation and transport expenses.

f. The Judicial Inspection has the following powers (Inspection Regulation, point 5.1):

- *to check the organizational activity of the courts in the administration of justice.* This regulation is in line with international standards and does not raise any implementation problems;

- *to verify the correctness of the random allocation of files for examination in the courts.* This regulation is also in line with international standards and does not raise any implementation issues;

- *to examine citizens' petitions on matters of judicial ethics addressed to the Superior Council of Magistracy, requesting a written explanation from the judge concerned by the petition.* In relation to the ethics-related task, it is noted that the SCM has an ethics committee composed of members of the SCM who issue recommendations. However, the law assigns to the Inspection the verification of notifications on ethics, which is not advisable. A clear distinction should be made between the ethical and disciplinary fields. In practice, there were situations when the Judicial Inspection referred disciplinary cases to the Disciplinary Board with a

report on disciplinary misconduct, but the Board found no misconduct and only a possible breach of ethics. However, in such a situation there is no procedure for re-examination of the judicial ethics aspect. One viable solution would be to separate the facts contained in the notification: at present, the legislation only prescribes the possibility of linking cases, but not for separation.

- *to verify notifications concerning acts that may constitute disciplinary offences.* From this regulation, we believe that it is clear that the Judicial Inspection is the body responsible for disciplinary proceedings against judges;

- *to verify the steps taken to obtain the agreement of the Superior Council of Magistracy to initiate criminal proceedings against the judge.* When the Prosecutor General asks the SCM for permission to prosecute a judge, the Judicial Inspection has only 5 days to verify the request. During this period, not much data can be collected, and no additional checks can be made beyond those already made by the case prosecutor. The team of experts considers that the analytical note prepared by the Judicial Inspection is not necessary. The necessary checks can be made by the SCM secretariat on the spot;

- *to study the grounds for the rejection by the President of the Republic of Moldova or by the Parliament of the candidacy proposed by the Superior Council of Magistracy for appointment to the position of judge or for appointment to the position of vice-president or president of the court, with the presentation of an information note to the Superior Council of Magistracy.* The Judicial Inspection receives from the Secretariat of the SCM the rejection by the Parliament or the President of the Republic of Moldova of the candidate proposed by the SCM for appointment as judge or appointment as president/vice-president of a court. Theoretically, the Judicial Inspection must verify the grounds indicated by the authority in question in the refusal letter, ask the judge for explanations or clarifications from other institutions. Finally, the Judicial Inspection draws up an information note addressed to the SCM to adjust its initial proposal. In some cases, however, Parliament's decision is not reasoned, so the Inspection would have nothing to check. The solution to this situation is to avoid political involvement in the selection and career of magistrates.[9]

- *to verify the execution of the SCM decision.* This competence is reflected only in the Inspection Regulation, not in Law 947. This regulation is in line with international standards and does not raise any implementation issues;

- *to examine notifications concerning acts which may constitute disciplinary offences committed by judges.* This competence is reflected only in the Inspection Regulation, not in Law 947. However, there is above the competence to "*verify notifications concerning acts which may constitute disciplinary offences"*. These competences seem to overlap;

- *to receive the petitioners in audience in the manner set by the Superior Council of Magistracy on Thursdays of the month, but not less than twice a month.* Also, this duty appears only in the Inspection Regulation, not in Law No 947. It is not clear what the purpose of these hearings is: if it concerns the work of the SCM or the Boards, then it is not the Inspection that has to hold hearings with petitioners.

Overall, the team of experts points out that the competences of the Judicial Inspection could appear too wide and the Judicial Inspection concentrates tasks that could be separated. As the CCJE noted in *Opinion no. 17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence* (para. 29 and 39 and recommendation 10), "individual evaluation of judges should, in principle, be kept separate, both from inspections assessing the work of a court as a whole, and from disciplinary procedures". As a possibility, the Moldovan authorities should consider whether the Judicial Inspection could exclusively deal with the

[9] This aspect was also highlighted in the *Technical Paper "Review of the composition and operation of the Superior Council of Magistracy of the Republic of Moldova", (ECCD-MLD-TP1-2020),* December 2020, developed within the "Action against Corruption in the Republic of Moldova"

investigation of disciplinary liability, and whether the SCM could have other bodies with competence in the field of performing control over the organisation and functioning of the court system.

B. Provisions in regard to the Judicial Inspection included in Law No 178 on disciplinary liability:

Law No. 178 is the framework law on the grounds and procedure for disciplinary liability of judges in the Republic of Moldova.

a. The law does not allow the sanctioning of judges for offences under another law, but only for those laid down in Article 4.

This is a positive aspect, which is in line with the principle of legality, including in disciplinary matters.

b. Disciplinary offences are described in Article 4 para. (1) (a) to (p) and in para. (2).

Some misconducts raise problems of legal accuracy and cause confusion in interpretation, as discussed in the first section of this chapter.

c. The concepts of *intent* and *gross negligence* have recently been defined in Article 4[1].

This is a big step forward in order to remove the different and subjective interpretations of disciplinary bodies, with the practice to prove some inefficiencies of this regulation.

d. The limitation period for disciplinary proceedings shall be 2 years from the date of the commission of the offence and 5 years if the offence results from an irrevocable decision of a national or international court[10].

In addition, another possibility could also be explored considering that at present, the disciplinary procedure is cumbersome and involves five judiciary bodies. Sometimes there is a risk of the limitation period running out and a possible solution could be enlarging the limitation periods or equalizing the limitation period of disciplinary and criminal procedure, when the same fact is source of both criminal and disciplinary liability, as presented above.

e. The subject of the disciplinary action may be a sitting judge or a judge who has resigned, but for acts committed during the exercise of the judge's mandate.

f. In the procedure for examining disciplinary cases, the Judicial Inspection is involved at every stage:

f.1. Filing a notification for acts that may constitute disciplinary offences.

An ordinary litigant wishing to report disciplinary misconduct should not be prevented by administrative challenges. He/she has no way of knowing the technical procedure, so he/she should have a simple form to hand and no obligation to indicate the grounds for the misconduct.

Notifications concerning facts that may constitute disciplinary offences shall be submitted to the SCM Secretariat, registered and forwarded to the chief inspector within 3 days of receipt. Subsequently, the notification is randomly assigned to an inspector for verification (Article 21).

The ex officio notification of the Judicial Inspection can take place in at least two circumstances:

- One of the purposes of carrying out checks at courts is also to identify issues relating to the disciplinary liability of judges and their non-compliance with the rules of the Code of

[10] The team of experts points out that serious concerns must be raised regarding the fact of a conviction decision from an international court being the source of disciplinary liability or negative consideration in promotion procedures. Conviction decisions of the ECtHR are usually related to flaws in the national law or procedure and not in the direct conduct of the judge and, therefore, cannot be considered as a sign of disciplinary liability. The team of experts recommends that this criterion should be eliminated as such. For more information on this aspect please also see the *Technical Paper "Mechanisms for integrity checking of judges during appointment and promotion in the judiciary in the Republic of Moldova" (ECCD-AAC-MLD-TP3-2021)*, April 2021, developed within the "Action against Corruption in the Republic of Moldova" (Recommendation VII).

Ethics (paragraph 3 of the Regulation on the volume, methods, grounds and procedure of verifying the organizational activity of courts in the administration of justice, approved by the Decision of the Superior Council of Magistracy No. 239/9 of 12.03.2013). Therefore, we believe that the checks made by the Judicial Inspection should not be limited only to the documents received from the parties and the judge's opinion. Regular and unannounced visits to the courtroom by inspectors or spot checks of audio-recorded hearings should be organized;

- Another circumstance is prescribed in Article 19 para. (2), which allows the Judicial Inspection to be informed by the members of the SCM, the Performance Evaluation Board, the judicial inspectors and the Ministry of Justice of the facts that have become known to them in the exercise of their duties or based on information disseminated by the media. However, there are no clear procedures for the *ex officio* notification of the Judicial Inspection. These should be laid down in the Inspection Regulation, in order to limit the degree of discretion and remove accusations of subjectivity.

The press in the Republic of Moldova is extremely vocal and incisive about judges. Because the Judicial Inspection does not have a system of communication to citizens, the public/mass media does not know whether its efforts have a first result, which leads to the repetition of harsh or even defamatory articles in the press. There is no designated person in the Inspection for public relations.

However, information may sometimes appear that needs to be verified. That is why a person or office responsible for public relations within the SCM could act as a filter of information published in the press about judges and the work of the court: when it concerns criminal matters, the person could direct the information to the prosecutor, and when it concerns possible disciplinary matters – direct the information to the Judicial Inspection.

On some matters of principle that do not require verification, we believe that the SCM itself should react immediately – for example, a general statement that justice is corrupt, that it is too slow, or that a particular solution is too lenient. A more particular issue is in relation to the rulings of the European Court of Human Rights. When there is a conviction by the Court, the Government Agent should see if there is any question of fault on the part of the national judge, in which case he/she should notify the Judicial Inspection. Given the public interest in such a situation, the SCM's public relations officer should make an immediate communication to the public on the investigations started.

The SCM must play a more active role in giving information about the number of inspections carried out and their outcomes (obviously respecting the private data of the judges involved), as a way of informing the public that the Judiciary is not a power without control or liability.

Another questionable aspect is the competence of the Court Administration Agency (CAA) to refer cases to the Judicial Inspection. The CAA is responsible for ensuring the functionality of the information system used by the courts and, in the event that it reports interventions in the ICMS that raises suspicions of disciplinary misconduct, it then notifies the Judicial Inspection. Also, at the request of the Judicial Inspection, the CAA provides information on the functioning and possible interventions carried out in the ICMS by judges and participates as any complainant in the disciplinary procedure (in 2020, the CAA has submitted an estimated number of 14 notifications to the Judicial Inspection) and can appeal as any other person. These powers of the CAA are debatable and require some clarification. On the one hand, we do not believe that it can be argued that the CCA belongs to one of the categories listed in Article 19 para. (1) of Law no. 178. On the other hand, this institution is part of the state executive power and precisely in order to avoid any form of pressure or interference on the judge, the disciplinary accusation should be upheld by the Judicial Inspection. Things would be much simpler if the Judicial Inspection had direct access to the ICMS and, if irregularities were found, the Judicial Inspection would immediately initiate an *ex officio* verification.

The December 2020 amendments to Law No. 178 allow the Ministry of Justice, upon notification of the Government Agent, to notify the Judicial Inspection in case of a human rights violation committed by a court decision and found by an international body. Curiously, para. (3) of Article 20 provides that the notification of the Ministry cannot be rejected as manifestly unfounded if the limitation period has expired. This means that the Judicial Inspection will have to carry out the necessary checks, even a disciplinary investigation, draw up a report to the Disciplinary Board, and the Board will have to terminate the procedure because the limitation period has expired. Therefore, it is unclear why the Judicial Inspection has to start the disciplinary mechanism if the result is obvious from the beginning. In addition, the team of experts has already pointed out its concern regarding the fact of a conviction decision from an international court being the source of disciplinary liability of judges and recommended that this criterion should be eliminated.

Article 19 para. (4) of the law allows the person who filed the notification to withdraw it, and the Disciplinary Board can decide to continue the disciplinary procedure when there is a certain public interest. With regard to the withdrawal of the notification in the course of the proceedings before the Judicial Inspection, the law does not provide anything, which logically leads to the conclusion that the Inspection is obliged to continue with the proceedings. However, the Regulation of the Inspection prescribes in paragraph 10.4 that the revocation of the notification does not preclude the initiation or conduct of disciplinary proceedings, which adds to the law. Therefore, Law No. 178 should expressly provide for the actions of the Judicial Inspection in case the notification is revoked at the stage of case examination by the inspector.

f.2. Verification of notifications by the Judicial Inspection and disciplinary investigation:

It was intended to separate these two stages with the 2018 amendments, but the way the change was made causes more confusion.

The verification stage involves the following aspects:

- a formal examination: if the notification does not meet the formal requirements, it is returned to the sender to be rectified (Article 22);
- an admissibility analysis: if facts are alleged which are not covered by Article 4, if the limitation period has expired or if a notification is returned without new evidence, it is rejected as manifestly unfounded (Article 20(1) and (2)).

If the notification meets all the formal requirements, the next stage is the examination of the notification (Article 23(1)), where the issues raised in the notification are examined on their merits. In the first stage, the inspector checks the veracity of the allegations made. The time limit is 20 days, which may be extended by a further 15 days. The inspector may reach the following conclusions:

- the allegations are not upheld: it will issue a reasoned *decision* rejecting the notification as unfounded. The author of the notification may appeal to the Disciplinary Board within 15 days of being informed;
- the allegations are confirmed: it will issue a *resolution* to start the disciplinary investigation.

The next stage is the disciplinary investigation (Article 23(1^2)) in which the inspector carries out disciplinary proceedings, within 30 working days, with the possibility of an extension for a further 15 days. This stage was introduced by Law No 136/2018 in order to avoid contacting judges immediately after a notification is lodged against them. In practice, however, no difference seems to be between the verification of the notification and the disciplinary investigation. In both procedures the inspector is obliged to establish the facts by evidence, the written opinion of the complained judge is taken, and the legal classification is determined. In our view, this unnecessarily prolongs the disciplinary procedure before the inspector, which is why, either by law or by practice, the two stages should be distinguished or simply waived.

Once the disciplinary investigation was completed, the inspector may reach the following conclusions:

- there is no disciplinary misconduct: it will issue a reasoned *decision* rejecting the notification as unfounded. The author of the notification may appeal to the Disciplinary Board within 15 days of being informed;
- there is disciplinary misconduct: a *report* will be issued and sent with the case file to the Disciplinary Board.

One question is about the position of the judge against whom the notification was made. On the one hand, there is a legislative inconsistency: in one part it is stated that during the verification of the notification and the disciplinary investigation, the inspector is obliged to ask the judge for a *written opinion* on the circumstances invoked in the notification (Article 23(2)(b)), and on the other hand that the judge has the right to submit *written and oral explanations* at the verification stage (Article 25(1)(b)). It could therefore be the case that the inspector asks the judge for a written opinion, but the judge only provides oral explanations. There should be only one possibility: written explanations.

Also, in this respect, the law does not specify when the judge must formulate this opinion. This is the reason why judges sometimes refuse to present their opinion to the Judicial Inspection but agree to present it to the Board or the SCM, which sometimes causes a radical change in the position of the Judicial Inspection or the Disciplinary Board, even rendering some disciplinary actions useless. Therefore, we propose the introduction of a time limit for the judge to formulate his/her opinion.

At present, the Judicial Inspection informs the judge of any notification and asks for his/her opinion. In our view, the judge should be informed only in cases where there are grounds for disciplinary liability, not in cases where the notification is manifestly unfounded (the judge should only be informed after a disciplinary procedure has been initiated).

f.3. Examination of disciplinary cases:

The key role lies with the Disciplinary Board, before which the disciplinary proceedings take place. It is the Judicial Inspection that reports to the Disciplinary Board.

The person/authority who lodged the notification to the Inspection is also called before the Disciplinary Board. Where an individual is dissatisfied with an act or measure taken by a judge in a trial, the presence of the individual in the disciplinary proceedings should not be allowed, as – in practice – this would be conducted in adversarial proceedings between the judge under investigation and the Judicial Inspection. Contact between the judge concerned in a case and any of the parties cannot take place outside the courtroom, even in disciplinary proceedings. Outside the trial process, the judge has no reason to justify his/her actions or provisions to a person being tried. Therefore, the role of this person in the disciplinary procedure should be limited to notifying the Judicial Inspection, after which the latter body should take disciplinary action against the judge under investigation: to carry out checks, to carry out investigations, to notify the Disciplinary Board, to challenge the Board's decision before the SCM, to appeal the SCM decision to the courts.

The judicial inspector participates in the procedure for the examination of the merits of the disciplinary case. He/she supports the report (Article 34(3)) and this report – drawn up under Article 26(3) – represents the limits of the judgements before the Disciplinary Board (Article 34(5)). The latter provision is contradicted by Article 32(2), which states that any member of the Disciplinary Board may request the Judicial Inspection to carry out additional checks or to collect new evidence if the information in the file is not complete. We believe that the Disciplinary Board is notified precisely based on the information included in the report, and this is the result of the verification and investigation work carried out by the Inspection within certain time limits. If the report is incomplete, the Board must give an appropriate solution and only after deliberation in

Plenary. It is inadmissible that, before any discussion on the substance of the disciplinary charge, some members of the Plenary of the Board ask the inspectors for new data or evidence.

In other words, it must be accepted that the Inspection is the prosecution body, the judge is the defence, and the Disciplinary Board is the disciplinary court. The Board must only rule on what is referred to it. If the Board concludes that there is insufficient evidence, it may, after deliberation, request it from the Inspection, by virtue of an active role which must be recognized in order to find out the truth. But before the case is examined on its merits, it is not possible for an individual member of the Board to request such evidence or checks in order to comply with the requirements of impartiality in relation to the disciplinary body.

We note that in disciplinary proceedings the participants in the process are not in an equal position: only the judge and the members of the Board may request the hearing of a person (Article 31(5)), not the author of the notification or the inspector. Here, we believe that the Regulation on the activity of the Disciplinary Board, approved by Decision No 505/24 of 13 November 2018, adds to the law: paragraph 91 states that all parties (without defining them) and any member of the Board may request the taking of evidence, including the hearing of persons. Our opinion is that, in the disciplinary trial phase, the Inspection is one of the parties, but this should be expressly stated, both in Law No 178 and in the Regulation of the Disciplinary Board.

f.4. Adoption of decisions on disciplinary cases:

When the Judicial Inspection adopts a decision rejecting the notification, the person concerned may appeal to the Disciplinary Board's Appeals Panel. The appeal procedure is a written one, so the inspector does not attend to support his/her decision.

The Appeals Panel of the Disciplinary Board will issue one of the following decisions:

- *dismiss the appeal as unfounded* by a decision which is declared by law to be final. It is questionable whether the decision can be final from the perspective of the right of access to justice. We believe that the litigant should have the right to apply to a court.
- if the Disciplinary Board *upholds the appeal* and orders the Inspection to resume the procedure, then the decision is binding on the Judicial Inspection, which will proceed directly to the disciplinary investigation phase (Article 29(3)). This means that the seemingly obligatory verification stage is omitted – it is a further argument that the distinction between the verification stage and the investigation stage is unnecessary. There are situations in which the Judicial Inspection, after reopening the disciplinary procedure, opts for a new decision rejecting the notification. In order to resolve this situation, we propose that, on the one hand, the first judicial inspector should be unable to resume the investigation in the case in question after it returns from the Disciplinary Board. On the other hand, the possibility should be created for the Board to retain the case in question if the analysis is complete, even if there is no Judicial Inspection report.

We believe that there is a third solution that should have been regulated – *reject the appeal as untimely* if the 15-day time limit within which it could have been lodged has been exceeded.

f.5. Appeals

The Judicial Inspection may appeal to the SCM against the decision of the Disciplinary Board on the merits of the disciplinary action (Article 39(1)). Neither the law nor the rules indicate who decides this: the case inspector, the inspector who presented the report to the Disciplinary Board or the chief inspector.

The decision of the SCM can then be challenged by the Judicial Inspection (Article 40). Again, neither the law nor the regulation indicates who decides that the appeal should be exercised.

C. Provisions in regard to the Judicial Inspection included in the Inspection Regulation

Law no. 185/2007 provided for the amendment of Law no. 947, adding to Article 7 the following paragraph*: "(3) The organisation, competence and functioning of the Judicial Inspection shall be established by this law and by the regulation approved by the SCM."*

Based on these provisions, by Decision No 506/24 of 13 November 2018, the SCM approved the *Regulation on the organisation, competence and functioning of the Judicial Inspection*.

The Inspection Regulation regulates the principles of the activity of the Judicial Inspection, the composition of the Inspection, the legal status of the judicial inspector, the disciplinary liability of the judicial inspector, the competence and functioning of the Inspection, the examination of petitions, the examination of applications, the examination of opinions, the verification of the organisational activity of the courts, the examination of notifications concerning acts which may constitute disciplinary offences committed by judges, the technical and material provision for the Inspection's activity, the remuneration.

The Regulation is deficient in several respects:

- Constitutionality issues: the status of magistrates is enshrined at the constitutional level, and the essential elements relating to the conclusion, execution, modification, suspension and termination of their legal employment relationship must be regulated only by organic law (Law No 947, Law No 178) and ordinary law (Law No 544) and cannot be laid down by an administrative act of lesser force, such as the Inspection Regulation. Therefore, we consider that all the conditions and procedure of the competition, the status and obligations of inspectors, their disciplinary liability should be regulated by law. It is not admissible that certain aspects are regulated only in the Regulation;
- It contains many exact repetitions of Law No 178, which is unnecessary: the law should contain the basic rules and the Regulation should contain technical ways of implementing the law;
- It contains confusing norms, which create difficulties in the practical application of the disciplinary liability provisions: on the one hand, it states as a matter of principle that, during a trial, the Judicial Inspection cannot refer to court decisions subject to legal remedies, and after the trial, the Judicial Inspection must respect the authority of *res judicata*; on the other hand, Law No 178 provides that disciplinary liability does not depend on whether or not the act issued by the judge subject to the disciplinary case has been challenged or on the outcome of the examination of the appeal;
- It contains many rules of reference, which makes the presence of these rules in the Regulation unnecessary. Thus, the section on the verification of the organisational activity of the courts refers to the Law on SCM and to a special Regulation in this field, the section on the technical-material assurance of the Inspection's activity refers to the Budget Law, and the section on salaries refers to a framework law. The role of the Regulation is to show how the law is to be implemented. There is no sense in one regulation referring to another;
- There is a provision that does not correspond to a legal amendment: according to paragraph 10.37 of the Regulation, the decision of the SCM shall be challenged before the SCJ, whereas currently, the initial appeal is to the Chisinau Court of Appeal (according to Article 39 and Article 40 of Law No. 174);
- Some regulations add to the law: for example, the one mentioned above on the revocation of the notification. Another example is the one stating that the disciplinary liability of the judicial inspector can only be incurred if criminal or civil liability is not applicable (paragraph 3.17) – apart from the fact that such a prohibition is not in the framework law, it causes confusion: the grounds for disciplinary liability are different from those for civil and criminal liability, so that the possible procedure or sanction applied in one matter does not prevent the procedure and sanction being carried out in the other matter;
- It contains an unacceptable regulation: the judge may only contact the author of the notification in the presence of the judicial inspector (paragraph 10.27(d)) – it is incomprehensible why a judge who has been complained about by someone would

contact the complainant, especially if that party is involved in a case that has not been completed by the judge. This should not be allowed under any circumstances.

According to paragraph 2.4 of the Regulation, documents and information relating to the proceedings before the Judicial Inspection are confidential, except for those which, under the law, constitute information of public interest. Although the Regulation should have developed the conditions of communication with the public, the media, and on the website, there are no regulations in this regard. Moreover, during the interviews with professionals in the system, no contact person for the media or a clear way of communicating information of public interest to the media was identified, although the Inspection Regulation invokes the principle of transparency in paragraph 2.5. Therefore, especially in high-profile cases, the Inspection should communicate a minimum of information such as: *"We inform the public that the Judicial Inspection has taken action concerning the facts which were the subject of the press article of... dated... and will provide full information as soon as the necessary checks have been completed".*

D. Provisions in regard to the Judicial Inspection included in the Regulation of the Disciplinary Board

a. The interaction between the Disciplinary Board and the Judicial Inspection is regulated by the *Regulation on the activity of the Disciplinary Board*, approved by the Decision of the Superior Council of Magistracy No 505/24 of 13 November 2018.

The judicial inspector cannot, at the same time, be a member of the Disciplinary Board (paragraph 13). This rule, which is natural, should be regulated in the law on the status of inspectors.

b. Appeals against Judicial Inspection decisions

The Disciplinary Board's appeal panels review appeals against decisions of the Judicial Inspection rejecting notifications (paragraph 48). The appeal panels decide whether to uphold the appeal and refer the case back to the Judicial Inspection for further investigation or to reject the appeal as unfounded (paragraph 59). If necessary, the members of the appeal panels may ask the Judicial Inspection to carry out further checks and/or to collect new documents or evidence (paragraph 76).

After examining the appeal, the appeal panels decide (paragraph 78):

- to uphold the appeal and refer the case back to the Judicial Inspection for further investigation;
- dismiss the appeal as unfounded.

The decision on the admissibility of the appeal is binding on the Judicial Inspection, which is to carry out the disciplinary investigation (paragraph 84). The decision rejecting the appeal against the decision of the Judicial Inspection rejecting the notification is without right of appeal (paragraph 85).

We consider that the above rules unnecessarily repeat the rules already contained in Law No 178.

c. Disciplinary proceedings conducted by the Disciplinary Board

The disciplinary case is examined with the compulsory summons of the parties: the judge concerned, the judicial inspector and the person who lodged the notification (paragraph 90). This provision contradicts Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality. According to para. 67 of CCJE's Opinion, the persons that lodged the notification "must have the right to bring any complaint they have to the person or body responsible for initiating disciplinary action but they cannot have a right themselves to initiate or insist upon disciplinary action. There must be a filter, or judges could often find themselves facing disciplinary proceedings, brought at the instance of disappointed litigants."

Therefore, it is recommended to bring the disciplinary liability system of the Republic of Moldova in line with the CCJE opinion and exclude further intervention of citizens, after lodging the complaint (regardless of their right to be informed of the outcome of the investigation).

The Judicial Inspection is represented at the hearing by the judicial inspector who carried out the verification of the notification or another inspector designated by the chief judicial inspector. Attendance of the representative of the Judicial Inspection at the plenary meeting of the Board is compulsory (paragraph 94).

The rapporteur member shall, within 10 days of receipt of the information on the assigned case, request further checks by the Judicial Inspection and/or the collection of new documents or evidence if the information in the case file is not complete. Any other member of the Board may request the Judicial Inspection, through the Secretariat, to carry out the additional verification (paragraph 97(b)). We believe that this power of individual members of the Disciplinary Board is a violation of the neutral character of the trial. Thus, the Disciplinary Board is the body of judgment in disciplinary matters. In order to maintain objectivity, it must rule on the allegations made by the Judicial Inspection and the evidence in the disciplinary file. Any additional request for evidence by the Disciplinary Board is a preliminary ruling, in the sense that the accusation is found to be insufficiently substantiated and instead of rejecting the report, the accusing party is asked to provide new evidence.

The following rule caught our attention: *"The disciplinary case shall be examined only within the limits of the report of the Judicial Inspection"* (paragraph 114). This seems to contradict paragraph 104: "*If new evidence has been submitted which alters the solution proposed by the Judicial Inspection in the report submitted to the Board, the Judicial Inspection may ask the plenary of the Board to refer the case to the Judicial Inspection for further investigation. These checks shall be carried out within 7 days. Following the additional checks, the Judicial Inspection shall draw up a new report and forward it, together with the case file, to the plenary of the Board, in accordance with the general procedure laid down in Law No 178 and the regulation"*. This possibility of returning the report and having it redrafted is not prescribed in the law. The regulation of this power not by Parliament but by the SCM is unconstitutional.

As we have already pointed out, the Disciplinary Board acts as a court of law. Once it has been notified by the Judicial Inspection, it must give a decision. The most that can happen is that the case can be referred back to the Inspection if the evidence is unlawfully obtained. But if it is incomplete or contradicted during the proceedings before the Disciplinary Board, it must *terminate the disciplinary proceedings because no disciplinary offence has been committed.*

The examination of the disciplinary case starts with the presentation by the judicial inspector of the report on the results of the verification of the notification (paragraph 115). This means that the work of the member of the Board who is the rapporteur is in fact unnecessary.

Paragraph 90 provides that the disciplinary case shall be examined with the compulsory summons to the parties and expressly lists the judge concerned, the judicial inspector, and the person who lodged the notification. However, paragraph 116 states that *"after the presentation of the matter by the judicial inspector, the parties shall be heard"* – from which it follows that the judicial inspector is not a party. However, the fact that he/she notifies the Disciplinary Board and has the right to appeal against the decision of the Disciplinary Board makes it clear that the Judicial Inspection, represented by the judicial inspector, is a "party" in the procedural sense.

4. CONCLUSIONS AND FOLLOW-UP

The efficiency of the Judicial Inspection is linked to the good training of the judicial inspectors and to the quality of the legislation governing its work.

At present, the Judicial Inspection has powers in disciplinary matters, but also other powers, some of which are mere formalities or do not lead to a concrete result. Moreover, the Judicial Inspection sometimes acts as a legal secretariat of the SCM, representing it in trials, although the independence of the Judicial Inspection is guaranteed by law. The time allocated to such tasks takes away from the Inspection's time and affects the attention that should be given to the most important duties assigned to the Inspection: disciplinary tasks and those related to the administrative work in the courts.

At present, the disciplinary procedure is cumbersome, burdensome and involves five state bodies. It certainly needs to be streamlined. In any case, the existence of three appeals against a decision of the Disciplinary Board is too many.

Currently, the Judicial Inspection is regulated by several legal acts. It is noted that the Inspection Regulation contradicts or supplements the law, which is not admissible.

Theoretically, according to regulations of principle, the Judicial Inspection acts independently of the Disciplinary Board and the SCM. Some concrete regulations, but also the present factual situation, lead us to conclude that the Judicial Inspection is a body subordinated to the SCM.

Inspectors come from the ranks of former judges and lawyers. There is no attractiveness to fill these posts, especially for people from outside the Chisinau municipality. The reasons for this are the salary and the lack of accommodation and/or transport expenses.

The number of inspectors is insufficient because they have a total of 9 legal duties in addition to those related to disciplinary investigation. Also, they are burdened with tasks that could fall to other bodies.

Disciplinary offences are described in the law, but some offences raise problems of legal accuracy and others overlap, which has led to confusion in interpretation. Deficiencies in some legal texts lead to inconsistent practices in the Inspection: some disciplinary notifications are not pursued because the court proceedings are ongoing, or the decision is subject to appeal; other disciplinary notifications are suspended because a criminal complaint has been lodged against the judge and criminal proceedings are ongoing.

There is no *ex officio* notification procedure of the Judicial Inspection, which leads to accusations of subjectivity and continued attacks in the press on judges and the efficiency of justice.

For a regularly lodged notification, the distinction between the verification of the notification and the disciplinary investigation is unnecessary and prolongs the disciplinary procedure.

SCM meetings are the framework for discussing court work and the efficiency of judges. The reports drafted by the Judicial Inspection should be seen beyond disciplinary matters. Thus, on closer examination, it is recommended that the SCM should analyse the most frequent reasons for notifications to the Inspection in relation to judicial activity and take appropriate action. The objective of a quality justice system is not to sanction judges but to prevent their misconduct and gross violations of the law. For example, if any unclear situations have been observed regarding the allocation of cases reported by the Judicial Inspection, the Court Administration Agency should be notified and the SCM should review the working procedures.

5. RECOMMENDATIONS

The disciplinary activity must be optimized, the procedure must be streamlined, the competence of inspectors must be increased. To this end, we make the following proposals:

1. We believe that a representative of the Judicial Inspection should participate in the working groups that exist within the SCM to amend the justice laws. Also, any strategy in the justice sector must be designed with the support of judicial inspectors.
2. Given the mission and scope of powers of the Judicial Inspection, there should be a separate chapter either in the Law on the Disciplinary Liability or in the Law on the SCM, containing references to the organization and functioning of the Judicial Inspection and to the status of judicial inspectors. The Inspection Regulation should be simplified and made more concrete by limiting it to technical aspects aimed at implementing the law, without unnecessarily repeating legal provisions and without referring to other regulations.
3. A political decision should be taken if the Judicial Inspection is to be an autonomous body in terms of functionality and independent in terms of organization from the SCM. If the answer is affirmative, the Judicial Inspection must have its own budget, secretariat, accounting section, driver, website, and headquarters. It is also necessary to establish criteria for the appointment of the chief judicial inspector and the procedure for his/her dismissal, to establish the manner of exercising the powers of the chief judicial inspector in the event of his/her absence and to involve the chief judicial inspector in the procedure for recruiting inspectors.
4. Judges know the judicial system best. It is therefore advisable to appoint judicial inspectors from among them. It is understandable that the public, especially lawyers, distrust such a system. But we believe that any suspicions about their fairness can be removed if the system of disciplinary liability and evaluation of inspectors is regulated by law. The procedure for disciplinary liability of the inspectors could be carried out strictly directly before the SCM, as they are the ones who appointed the judicial inspectors, and they enjoy a vote of confidence from the judiciary and civil society.
5. If public information is requested about pending cases or about the date of a procedure before the Disciplinary Board or the SCM, it should be the public information office of the SCM that formulates the answer, not the Judicial Inspection.
6. Since inspectors also check the work carried out at SCJ level, the salary level of judicial inspector should be increased to the level of SCJ judges. Also, in order to attract judges from outside Chisinau, it should be accepted that rent or transport be paid.
7. The number of judicial inspectors should be increased from 7 to 10, which could also ensure their specialization: by rotation, each one should only perform certain tasks. In addition, their efficiency could be increased if they used sample forms, with greater emphasis on the actual reasoning of the acts drawn up rather than on the narration of the issues in question.
8. In the recruitment competition for inspectors, knowledge of the law, organization of the judicial system and management should be examined. During their career, inspectors should receive training, especially in ethics, discipline and management. There should be a disciplinary handbook containing the relevant practice of the Judicial Inspection, the Disciplinary Board and the SCM.
9. To fully observe the principle of legality, which requires a clear and predictable law, some disciplinary offences against judges should be removed and the regulation of other offences should be redrafted.
10. Serious concerns must be raised regarding the fact of a conviction decision from an international court being the source of disciplinary liability or negative consideration in promotion procedures. Conviction decisions of the ECtHR are usually related to flaws in the

national law or procedure and not in the direct conduct of the judge and, therefore, cannot be considered as a sign of disciplinary liability. The team of experts recommends that this criterion should be eliminated form the grounds for disciplinary liability of judges

11. To limit the risk of the limitation period running out a possible solution could be considered to enlarge the limitation periods or equalizing the limitation period of disciplinary and criminal procedure, when the same fact is source of both criminal and disciplinary liability.
12. A procedure for *ex officio* notification from the press should be developed in the Inspection Regulation, involving collaboration with the SCM's press office/person, until the development of its own press office.
13. It should be made possible for the Judicial Inspection to have direct access to the ICMS created by the Agency for the Administration of the Courts and, in the event of irregularities being found, to initiate *ex officio* notification.
14. It should be clearly regulated whether disciplinary proceedings against a judge are precluded while the case is still pending or under appeal. Similarly, it must be unequivocally regulated whether a judge can be disciplinarily investigated for the same offence in the course of criminal proceedings. In our view, the disciplinary procedure should not be hindered by these two hypotheses.
15. The disciplinary procedure before the Judicial Inspection should be shortened. It could have two stages: one in which the *admissibility of the notification* is checked (whether the facts complained of formally fall within the series of offences under Article 4 of Law No 178, whether it is made within the time limit, whether it is not repeated and already settled) and one in which the procedure itself, called *disciplinary investigation,* is directly initiated.
16. It needs to be clarified whether, before the Judicial Inspection, the judge who agrees to the presentation of his/her defences only has to give explanations in writing or can also present them orally in a discussion with the judicial inspector. There should be a time limit for the judge to give his/her opinion to the Judicial Inspection on the allegations made by the complainant.
17. In order to preserve the impartiality of the Disciplinary Board, the legal provisions which allow any individual member of the Board to ask the Inspection for new data, documents or evidence after the report has been made by the judicial inspector should be excluded.
18. During the disciplinary proceedings before the judicial inspector, no contact should be allowed between the judge concerned and the person who lodged the notification. During disciplinary proceedings before the Disciplinary Board, the presence of the litigant should not be allowed. The disciplinary proceedings must be conducted in adversarial proceedings between the judge under investigation and the Judicial Inspection. Such an amendment would bring the framework of the disciplinary liability of judges in line with CCJE Opinion no. 3 (2002), par. 67.
19. When the notification is rejected by the Judicial Inspection and the appeal of the litigant is also rejected by the Disciplinary Board, we believe that the right of the litigant to appeal to the courts should be prescribed. We also believe that the solution of rejection of the appeal by the Disciplinary Board as untimely, if the 15-day time limit within which it could be lodged has been exceeded, should be regulated.
20. If the appeal is upheld and the Disciplinary Board orders the resumption of the procedure by the Judicial Inspection, the incompatibility of the same judicial inspector to carry out the disciplinary investigation must be foreseen. It should be made possible for the Board to retain the case if the analysis is complete, even if there is no Judicial Inspection report.

21. The law must make it clear that the Judicial Inspection is one of the parties in the disciplinary proceedings to ensure equality of arms and a fair trial.
22. The Inspection Regulation should regulate who within the Judicial Inspection decides how and who lodges an appeal in the disciplinary procedure.
23. The disciplinary decision must have an effect not only for judges but also for the litigants – that is why there must be an extraordinary appeal of review in the case of sanctioning a judge for certain acts committed in connection with the handling of the case.