

DRAFT REGULATION OF THE SELECTION AND EVALUATION BOARD FOR PROSECUTORS (CSEP)

REPORT

Mission Context

The Superior Council of Prosecutors of Moldova (CSP) has initiated the process of amending, updating and revising the regulation concerning the functioning of the Selection and Evaluation Committee for Prosecutors (CSEP) based on recent legislative changes. A dedicated working group, composed of members of the CSP, CSEP and officials from the Council's apparatus, has been created to draft this institutional normative act.

To ensure that the regulation is comprehensive, legally sound and compliant with best practices, the project will call upon external expertise at each stage of the drafting and review process.

The expert will provide technical assistance and contributions to the working group, to ensure the development of a regulation that effectively promotes transparency, fairness and accountability in the selection and evaluation of prosecutors.

Mission Objective

The objective of this mission is to assist the CSP working group in drafting, revising and finalizing the CSEP regulation, by providing specialized expertise throughout the process and ensuring consistency with applicable legislation, international standards and institutional requirements.

In particular, the expert will help the CSP align its internal regulatory framework with recent legislative developments provided for by Law No. 3/2016 on the Prosecutor's Office (relating to the verification of prosecutors' integrity), as well as by Law No. 252/2023 "on the external evaluation of judges and prosecutors and amendments to certain regulatory acts."

Mission Description

The expert shall:

- Review the current regulation and relevant legal/institutional frameworks.
- Provide technical advice and recommendations for the amendment/update/revision of the regulation.
- Participate in the step-by-step drafting process, reviewing and providing feedback on each section of the document as it is completed.
- Ensure the regulation's alignment with international best practices in prosecutor selection and evaluation.

- Draft proposed provisions, comments and explanatory notes to support the working group's deliberations.
- Support the harmonization of the regulation with other national SCP legal acts.
- Participate in meetings and consultations with the working group and project team, as needed.

Documentary References

- Constitution of the Republic of Moldova of July 29, 1994
- European Convention on Human Rights and Fundamental Freedoms of November 4, 1950
- Law No. 3/2016 of February 25, 2016 on the "Prosecutor's office" and amendments of August 24, 2021
- Decision No. 12-225/16 approving the regulation of the "Superior Council of Prosecutors"
- Law No. 252/2023 on the external evaluation of ethical and financial integrity of judges and prosecutors
- Draft law amending certain normative acts (performance evaluation of judges and prosecutors) of March 5, 2025 promulgated on August 6, 2025
- Draft Regulation on the procedure for selection and evaluation of prosecutors and on the functioning of the Selection and Evaluation Council for Prosecutors
- Concept note No. 1 of September 25, 2025

Analysis of the Draft Regulation

Article 82 of Law No. 3/2016 creates the Selection and Evaluation Board for Prosecutors (CSEP), placed under the authority of the Superior Council of Prosecutors (CSP).

The powers of this board are defined by Article 87 of the same law.

Essentially, they consist of selecting applications for prosecutor positions and conducting professional evaluations of prosecutors.

The draft law amending certain normative acts (performance evaluation of judges and prosecutors) of March 5, 2025 promulgated on August 6, 2025 provides, particularly in Articles 29-4 and 30-4, that the integrity criterion includes the evaluation of ethical and financial integrity aspects.

Article IV of the same draft law further provides that, within 3 months from the date of entry into force of this law, the Superior Council of Magistracy and the Superior Council of Prosecutors will bring their sublegal acts into compliance with this law.

It is within this framework that the Superior Council of Prosecutors has established a working group to prepare the draft regulation concerning the procedure for selection and evaluation of prosecutors that it will be responsible for approving.

Article 6 sets out the principles that should prevail in the activities of the Selection and Evaluation Board for Prosecutors: legality, respect for human dignity, objectivity and impartiality, independence and inviolability of prosecutors, fairness, transparency, protection of personal data and privacy, confidentiality, non-discrimination.

It is therefore necessary to verify whether the mechanisms established by the draft regulation prepared by the working group sufficiently meet the respect for these principles.

It is especially necessary to verify that this draft regulation complies on the one hand with the domestic law of the Republic of Moldova and on the other hand with European norms and jurisprudence.

In addition, the above-mentioned working group specifically questions the conditions for implementing the verification of prosecutors' integrity.

For the most part, the draft regulation appears to comply with both European norms and jurisprudence and the domestic law of the Republic of Moldova.

However, it needs, on a number of points, to be either clarified or accompanied by mechanisms to guarantee its effectiveness.

In this respect, the following points will be successively addressed:

- objectivity and impartiality of Board members
- Protection of personal data and privacy
- the right to effective remedy and its exercise

Finally, the verification of ethical and financial integrity of prosecutors will be the subject of a particular focus.

1. Objectivity and Impartiality of Board / College Members

Complementing the already cited Article 6, Article 17 of the draft regulation states that Board members exercise their powers in accordance with Law No. 3/2016 and this regulation, demonstrating integrity, impartiality and fairness.

Articles 46 to 49 establish a mechanism for recusal and abstention.

It is notably specified, in Article 46, that a Board member cannot participate in the examination of an agenda item if there are circumstances that exclude their participation in the examination of the item in question or that would raise doubts about their objectivity.

This formulation could, if necessary, be clarified in order to better cover all aspects of impartiality, objective or subjective, and to guarantee on the one hand equality between prosecutors and on the other hand transparency of the Board's work.

Thus the following addition is suggested: "if there are circumstances of a personal or professional nature" ***(recommendation No. 1).***

2. Protection of Personal Data and Privacy

Article 28 of the Constitution of the Republic of Moldova provides that the State respects private and family life, mirroring Article 8 of the European Convention on Human Rights affirming everyone's right to respect for their private and family life, home and correspondence.

The draft regulation recalls this right to protection of personal data and privacy in its introductory Article 6.

Many provisions of the same draft (Articles 16, 59, 132 and following, annexes) allow the Board to obtain various information about the selected or evaluated prosecutor without setting limits and without providing a preventive mechanism.

The regulation could therefore be supplemented on this point ***(recommendation No. 2)***

Furthermore, Article 125 indicates that: "the prosecutor's evaluation file will also contain information concerning the health status reflected by the valid medical certificate."

It is recalled here that the European Court of Human Rights admits mandatory medical examination of civil servants if necessary for legitimate reasons, but requires that medical confidentiality be fully respected and that only strictly necessary information, essentially about fitness for duties, be communicated to the administration.

Article 125 could therefore also, if necessary, be supplemented in this regard ***(recommendation No. 3)***

3. The Right to Effective Remedy and Its Exercise

The observations will focus on:

- communication of the evaluation file documents to the prosecutor
- effectiveness of the remedy
- publicity of meetings
- consequences of the prosecutor's non-appearance before the Board

3.1 Communication of the Evaluation File Documents to the Prosecutor

Article 137 of the draft specifies that: "the evaluation report is brought to the attention of the evaluated prosecutor immediately after its preparation and at least 5 working days before the interview organized by the Board."

By limiting communication to the evaluation report alone without providing for that of other documents in the evaluation file, and particularly the information collected by the rapporteur based on Articles 132 to 135, the summaries of interviews provided for in Article 135, this article creates difficulty with regard again to Article 6 of the convention which guarantees fair trial but also equality of arms, as well as with regard to Article 20 of the Constitution of the Republic of Moldova.

This difficulty is all the more real since, with the exception of the self-evaluation completed by the evaluated prosecutor, the evaluation procedure conducted by the rapporteur is not adversarial.

"Article 137 could therefore be completed as follows: 'the evaluation report and the documents forming the basis of the evaluation...' and accompanied by a proviso for those containing state secrets: 'excluding those classified as state secrets.'"

At the very least, it would be appropriate, by adding a paragraph, to provide a mechanism allowing the evaluated prosecutor to request communication of all documents in the evaluation file
(recommendation No. 4).

3.2 Effectiveness of the Remedy

Furthermore, Articles 60 to 66, particularly in that they open a right of appeal against Board decisions, call for some remarks.

Article 65 provides that Board decisions may be appealed to the Superior Council of Prosecutors.

Article 66 adds that decisions of the Superior Council of Prosecutors may be appealed to the Supreme Court of Justice, specifying that in the case of the selection procedure, the appeal is limited to the adoption procedure.

The Selection and Evaluation Board for Prosecutors being subordinate, by law, to the Superior Council of Prosecutors, the first appeal to the Superior Council of Prosecutors is analyzed as an internal administrative review.

The Superior Council of Prosecutors therefore rules as first instance court, with the Supreme Court of Justice then ruling as appellate court.

Thus a two-tier jurisdiction is indeed established which meets the requirement of the right to fair trial under Article 6 of the European Convention on Human Rights.

However, regarding the selection procedure, limiting the Supreme Court of Justice's review to the adoption procedure weakens the effectiveness of the remedy.

Since this is an administrative procedure falling within the exclusive selection authority of the Superior Council of Prosecutors, the restriction of the scope of appeal before the Supreme Court of Justice, as provided for by law, may be envisaged

However, it could create difficulty if the procedure before the Superior Council of Prosecutors were not considered to fully meet the requirements of the already cited Article 6 but also Article 20 of the Constitution of the Republic of Moldova.

The European Court of Human Rights indeed considers that in civil or administrative matters, as in this case, a single tier of jurisdiction may suffice, but on condition that the trial respects all the guarantees provided by Article 6 of the convention (*ECHR Bruala Gomez de la Torre v. Spain 1997).*

The expert acknowledges that this is an issue falling within the scope of the law and not of the draft regulation currently under review. However, it would therefore be necessary to ensure that the selection procedure indeed meets this requirement (***recommendation No. 5)***.

3.3 Publicity of Board Meetings

Finally, regarding the holding of meetings, Articles 38 and 39 establish the principle of publicity of Board meetings, providing for closed session ("closed meeting") if restricted access information or state secrets are likely to be discussed.

Article 39 expressly excludes media representatives from closed meetings.

Without necessarily being contrary to European norms and jurisprudence, these provisions could in practice potentially create difficulty in case of too frequent recourse to closed meetings, with regard on the one hand to the principle of public hearings (Article 6 § 1 of the convention) and freedom of expression (Article 10 of the convention).

They would moreover compromise the stated transparency objective.

Article 34 of the Constitution of the Republic of Moldova provides moreover that: "the right of the person to have access to all information of public interest cannot be limited."

The European Court of Human Rights does admit restrictions to the principle of publicity, but only if they are strictly necessary and proportionate (*ECHR April 24, 2001, B. and P v. United Kingdom*).

In this case, the obligation for the Board to justify its decision for a "closed meeting" provided by Article 38 could be considered sufficient, on condition that this justification be precise and detailed, to allow for review and to prevent the overturning of the principle of the publicity of meetings (**Recommendation No. 6**).

The reasoning may, in particular, refer to the private or personal nature of the subject of the meeting

3.4 Consequences of the Prosecutor's Non-Appearance Before the Board

Article 42 further provides that in the performance evaluation procedure, in case of the prosecutor's non-appearance at the meeting, the Board will postpone their evaluation and notify them of the need to appear at another Board meeting and that the unmotivated non-appearance of the prosecutor at the second Board meeting is equivalent to the qualification "insufficient" with the consequences provided in Article 31 § 4 of Law No. 3/2016, namely the possibility of ex officio dismissal in case of two consecutive insufficient evaluations.

Without being, again, contrary to European norms and jurisprudence, this provision could be a source of litigation based on the disproportionate nature of the sanction and non-respect of the right to be heard.

The expert acknowledges that this is an issue falling within the scope of the law and not of the regulation under review. However, it would usefully justify a development that would make it possible to reject these two grievances, without it being necessary to issue a recommendation in this regard.

4. Verification of Ethical and Financial Integrity of Prosecutors

The verification of ethical and financial integrity of prosecutors will be the subject of a focus in three parts:

- reminder of European standards
- domestic law of the Republic of Moldova
- provisions of the draft regulation of the Selection and Evaluation Board for Prosecutors relating to ethical and financial integrity.

4.1 Reminder of European Standards

The integrity of magistrates is considered a fundamental pillar of the rule of law in Europe.

European standards, developed by the Council of Europe, the European Union and European courts, establish a set of common principles aimed at guaranteeing both the individual probity of judges and prosecutors and public confidence in justice.

The Council of Europe, and particularly the Venice Commission, formulates opinions on judicial reforms and emphasizes that integrity requires clear rules of ethics, mechanisms of asset transparency and independent discipline.

Financial transparency involves, depending on the country:

- the obligation for judges and prosecutors to submit to an asset and/or interest declaration,
- verification of this declaration by an independent body,
- public access, total or partial, to these declarations to ensure transparency.

The Group of States against Corruption (GRECO), which the Republic of Moldova joined in 2001, regularly evaluates European countries and formulates recommendations, regularly stigmatizing the insufficiency or ineffectiveness of control mechanisms put in place to prevent corruption.

On September 26, 2025, GRECO published a thematic report on the right of access to information, recalling that an effective system of access to official documents and information is essential to fight corruption, strengthen the accountability of governments and public officials and enable citizens to participate in public life with full knowledge.

Among the essential principles, indeed financial transparency ensured by the obligation of asset and interest declarations, regularly checked by independent bodies, and by corruption prevention.

For documentation purposes, and in relation to the present report, express reference is made to GRECO's Fourth Evaluation Round Report on the Prevention of Corruption of Members of Parliament, Judges and Prosecutors in the Republic of Moldova, adopted on 1 July 2016, as well as to the Third Interim Compliance Report, adopted on 22 November 2024

4.2 Moldovan Domestic Law

Law 252/2023 establishes a procedure for external evaluation of ethical and financial integrity of judges, prosecutors and other persons specifically mentioned in the law.

This procedure, presented as unique, exceptional and limited in time, only applies to prosecutors who have held leadership positions since 2017, as well as to prosecutors from specialized prosecutor's offices.

The draft law of March 5, 2025 promulgated on August 6, 2025, applicable this time to all prosecutors, amended Article 29 of Law No. 3/2016 by increasing the weight of integrity in the overall evaluation to 40%, but especially supplemented it by specifying that from now on, integrity includes the evaluation of ethical and financial integrity aspects.

In fact, all prosecutors are therefore now subject to an evaluation of their ethical and financial integrity, entrusted to the Selection and Evaluation Board for Prosecutors.

The draft law of March 5, 2025 promulgated on August 6, 2025 does not reproduce the entire exceptional external verification mechanism of Law 252/2023, but incorporates the verification of ethical and financial integrity into the general prosecutor evaluation procedure.

It is therefore important that the draft regulation of the Selection and Evaluation Board for Prosecutors be consistent with the entire legal framework and particularly that it brings together the two methods of evaluating ethical and financial integrity, and does not establish a different process that could be disadvantageous, even discriminatory, depending on whether prosecutors fall under one law or the other.

4.3 Provisions of the Draft Regulation of the Selection and Evaluation Board for Prosecutors Relating to Ethical and Financial Integrity

The draft regulation provides various provisions relating to the conditions for verifying ethical and financial integrity of prosecutors, overall quite few in number since this new verification is integrated, as already indicated, into the overall evaluation procedure, and takes its place alongside the other criteria of professional competence and organizational competence.

Article 5 of the draft, reproducing the content of the law, recalls that the prosecutor evaluation procedure will notably concern their ethical and financial integrity.

Article 105, appearing in the part relating to evaluation, indicates that the "integrity" characteristic is reduced each time a disciplinary sanction has been applied to the evaluated prosecutor, including discrepancies between income and assets, undeclared conflicts of interest, or other issues highlighted by competent authorities (ANI, CNA, SFS, etc.)

The evaluation forms attached to the draft regulation (See for example Annex 5) incorporate integrity broken down into six criteria:

- respect for ethics and professional reputation
- presence of disciplinary violations during the evaluated period
- respect for the legal regime for declaration of assets and personal interests
- finding by the ECHR of a violation of the ECHR attributable to the prosecutor and/or finding by national courts of illegal actions committed by the evaluated prosecutor,
- respect for the legal regime concerning the acquisition and use of assets, receipt of services, responsibility for expenses related to asset maintenance and conclusion of services,
- respect for the tax regime for payment of income taxes, tax obligations related to import/export operations.

For each item, the annex defines the verification sources and the explanations they require.

Regarding respect for the legal regime for declaration of assets and personal interests, it is based on four documents: 1. annual declaration of assets and personal interests, 2. financial integrity questionnaire, 3. evaluation acts adopted by competent authorities, 4. accumulated data from information systems, other authorities and open sources.

In the "explanations" column, it is specified that the Board will assess respect for the legal regime when completing annual declarations of assets and personal interests, sources of income obtained and expenses incurred.

For the rest, the conditions for assessing integrity are identical to those of other assessed items.

The comparison of this new mechanism with those from Laws No. 3/2016 and No. 252/2023 calls for several remarks:

- **on the body responsible for verifying integrity**

Law No. 252/2023 entrusts the external evaluation of integrity to two commissions, one for judges, the other for prosecutors, each composed of 6 members (3 citizens of the Republic of Moldova and 3 representatives of development partners).

The attribution of this competence to the Selection and Evaluation Board for Prosecutors does not create difficulty in itself, subject however to strict respect for the objectivity and impartiality of its members (See our development above in 1 and recommendation No. 1).

- **on the right of access to information**

The external evaluation commissions and the Selection and Evaluation Board for Prosecutors have fairly comparable investigative means, notably by allowing them access to all information and information systems, including those held by the National Integrity Authority (ANI), the National Anti-Corruption Center (CNA) and the Information and Security Service (SIS).

This very broad access to information is obviously essential to allow a real and thorough verification of the ethical and financial integrity of the evaluated prosecutor as envisioned by the annexes to the draft regulation.

Law No. 252/2023 limits this right of access for unclassified state secrets, medical or lawyer professional secrets. It provides for confidentiality of personal data.

The draft regulation limits the right of access only to information presenting risk factors for state security and public order and, regarding personal data, is content to recall the principle of respect for private and family life.

With regard to Article 26 of the Constitution of the Republic of Moldova and Article 6 § 3 c of the European Convention on Human Rights which guarantee the right to assistance of a lawyer, with regard still to the confidentiality of exchanges between the lawyer and client enshrined by the European Court of Human Rights, the insertion of a limitation in this respect in the draft regulation would be judicious ***(recommendation No. 8).***

- **on publicity of meetings**

Article 4-4 of Law No. 252/2023 indicates that the work of the Evaluation Commissions is not public, with Article 16-3 providing an exception for the hearing of the evaluated prosecutor.

The latter may however request a "closed" meeting and, in case of refusal by the Evaluation Commission, may, within three days, refer to the Superior Council of Prosecutors which rules at its next meeting, without other possible appeal.

Conversely, the draft regulation does not provide, in its Articles 38 and 39, any appeal against the Board's decisions to use a "closed" meeting.

It is not even provided that these decisions can be challenged with the decisions on substance.

To ensure that all prosecutors, regardless of their rank, are treated in the same manner, the rules should have been identical for both categories, namely those covered by Law No. 252/2023 and by Law No. 3/2016

It would therefore be appropriate, if necessary, to supplement the draft regulation, which would have the advantage of limiting the risk of litigation mentioned in § 3.3 above ***(recommendation No. 7)***

- **on communication of evaluation file documents**

Article 16-5-C of Law No. 252/2023 allows the evaluated prosecutor to review the evaluation file before their hearing.

Article 137 of the draft regulation limits communication to the evaluation report alone.

This article, which has already been noted as creating difficulty (See § 3.1 above), could be corrected ***(recommendation No. 4)***

- **on transparency of the procedure**

Article 18-8 of Law No. 252/2023 provides for publication of the integrity evaluation report on the Superior Council of Prosecutors' website within three days after its approval.

The draft regulation does not reproduce this provision, with Article 60 only providing for publication of the Board's decision alone.

With regard to the need for transparency as mentioned above, the draft regulation could align with Law No. 252/2023 ***(recommendation No. 9)***

- **on appeal to the Supreme Court of Justice**

In case of appeal against the decision of the Superior Council of Prosecutors, Article 19-6 of Law No. 252/2023 limits the scope of its examination by the Supreme Court of Justice to examination of possible procedural errors affecting the fairness of the evaluation or factual circumstances that could have led to passing or failing the evaluation.

Article 66 of the draft regulation, insofar as it concerns the evaluation procedure, does not restrict the right of appeal and, being broader than the aforementioned law, does not pose any difficulty.

As it stands, the other provisions of the draft regulation do not call for particular observations.

At the end of our mission and subject to both possible translation errors in the English texts communicated, the very short time allotted to us and the observations to come from the Expertise France mission and the authorities of the Republic of Moldova, nine recommendations can be formulated:

****Recommendation No. 1:****

Supplement Article 46 of the draft regulation to better cover all cases of impartiality by adding "circumstances of a personal or professional nature",

****Recommendation No. 2:****

Recall in requests for information about the evaluated prosecutor the principle of respect for personal data and privacy,

****Recommendation No. 3:****

Limit the scope of the medical certificate provided for in Article 125 of the draft regulation to fitness for duties alone,

****Recommendation No. 4:****

Amend Article 137 of the draft regulation to provide for the notification to the evaluated prosecutor of the evaluation report and of all the documents in the file, except those containing state secrets, or, alternatively, to allow—within a time limit to be determined—either to request such notification or to have access to the complete file.

****Recommendation No. 5:****

Ensure that in case of appeal against a decision of the Selection and Evaluation Board for Prosecutors regarding selection, the procedure before the Superior Council of Prosecutors strictly respects the requirements of Article 6 of the European Convention on Human Rights,

****Recommendation No. 6:****

Supplement Article 38 of the draft regulation relating to the Board's closed decision by adding: "by reasoned and detailed decision",

****Recommendation No. 7:****

Consider establishing an appeal against the closed session decision of the Selection and Evaluation Board for Prosecutors,

****Recommendation No. 8:****

Ensure that information requests made by the Selection and Evaluation Board respect confidentiality of exchanges between the prosecutor and their lawyer,

****Recommendation No. 9:****

Publish the prosecutor evaluation report prepared by the Selection and Evaluation Board on the Superior Council of Prosecutors website

Completed October 2, 2025

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