



MEDEL STATEMENT ON THE JUDICIARY IN THE REPUBLIC OF MOLDOVA

Magistrats Européens pour la Démocratie et les Libertés (MEDEL) wishes to express its serious concern over the recent Project of law on the reorganization of the Supreme Court of Justice and the Prosecutor's Office, presented by the Ministry of Justice of the Republic of Moldova.

According to the draft, one of the aims of the intended law is to reduce the number of judges of the Moldavian Supreme Court on the basis of an evaluation made by a newly created "Evaluation Commission", composed by members appointed mainly by the executive and legislative powers.

Such a Commission intended for the evaluation of judges, especially within the superior law court, and predominantly appointed by the Government, appears to be unapt to ensure an objective evaluation and to respect the guarantees of the statute of judges.

As the Consultative Council of European Judges (CCJE) recalled in its *Opinion n.º 17, on the evaluation of judges' work, the quality of justice and respect for judicial independence* (2014), "In order to protect judicial independence, evaluation should be undertaken mainly by judges. The Councils for the Judiciary (where they exist) may play a role in this exercise. However, other means of evaluation could be used, for example, by members of the judiciary appointed or elected for the specific purpose of evaluation by other judges. Evaluation by the Ministry of Justice or other external bodies should be avoided; nor should the Ministry of Justice or other bodies of the executive be able to influence the evaluation process. In addition, other professionals who can make a useful contribution to the evaluation process might participate in it. However, it is essential that such assessors are able to draw on sufficient knowledge and experience of the judicial system to be capable of properly evaluating the work of judges. It is also essential that their role is solely advisory and is not decisive."

MEDEL also sees with much concern the intended modification of the number of members of the Superior Council of Magistracy, by increasing the number of the representatives of the civil society. This proposed modification raises concerns because it could limit the possibility of judges to decide in all the matters concerning the Judiciary.

We must recall that the most relevant international institutions have repeatedly stressed the need for the existence of a significant majority of judges in the Superior Councils, as a guarantee of the independence of the Judiciary:

- the European Commission For Democracy Through Law (“Venice Commission”), in its *Report on the Independence of the Judicial System - Part I: the Independence of Judges* (adopted by the Venice Commission at its 82nd Plenary Session, Venice, 12-13 March 2010) expressly stated that a substantial part, if not the majority, of the members of High Councils must be judges elected or appointed by their peers;
- the CCJE, in the *Magna Carta of Judges*, approved in 17 November 2010, also clearly stated that in order to ensure the independence of judges, superior councils should be composed either of judges exclusively or of a substantial majority of judges elected by their peers;
- the Committee of Ministers of the Council of Europe, in its Recommendation CM/REC(2010) 12 – *Judges: Independency, Efficiency and Responsibilities*, says that not less than half of the members of the Councils for the Judiciary should be judges chosen by their peers from all levels of the judiciary, with respect for pluralism inside the judiciary.

MEDEL reiterates that the independence of the judiciary is one of the fundamental principles of the Rule of Law, as it is internationally recognised, inter alia, in the Basic Principles on the Independence of the Judiciary (UN 1985), the Council of Europe’s Recommendation NR (94) 12 regarding the independence, efficiency and role of judges, the European Convention on Human Rights or the European Charter on the Statute of Judges.

MEDEL will keep following closely the evolution of the debate in Moldova and urges the Government of the Republic of Moldova to refrain from any actions that would attempt against the independence of justice, especially by promoting laws that undermine the Judiciary.

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