



REPREZENTANȚA PERMANENTĂ A REPUBLICII MOLDOVA
PE LÂNGĂ OFICIUL ONU ȘI OMC DIN GENEVA

PERMANENT MISSION OF THE REPUBLIC OF MOLDOVA
TO THE UNITED NATIONS OFFICE AND TO THE WTO IN GENEVA

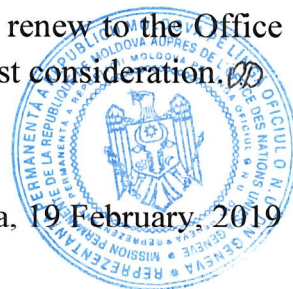
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The Permanent Mission of the Republic of Moldova to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and with regard to the communication, *reference no. AL MDA 1/2018*, of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Diego Garcia-Sayan has the honour to transmit herewith the comments of the Government of the Republic of Moldova on the alleged unfair dismissal and ongoing criminal prosecution against the judge Domnica Manole.

The Permanent Mission of the Republic of Moldova to the United Nations Office and other international organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, the assurances of its highest consideration.

Geneva, 19 February, 2019



Annex: 5 +13 pages.

**OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS
GENEVA**

Information
provided by the Government of the Republic of Moldova in response to the
communication of the Special Rapporteur on the Independence of Judges and
Lawyers, Mr. Diego Garcia-Sayan

Ref: AL MDA 1/2018, dated 19 December 2018

With regards to the communication sent by the Special Rapporteur on the Independence of Judges and Lawyers, Diego Garcia-Sayan, regarding the alleged **unfair dismissal and ongoing criminal prosecution against the judge Domnica Manole**, the Government of the Republic of Moldova presents the following comments:

We appreciate the role of the Special Rapporteur and the OHCHR Special Procedures Branch in the promotion and protection of the independence of judges and lawyers around the world and strongly support the mandate. We nevertheless respectfully observe that some of the factual and legal assertions in your letter need further clarification.

The criminal proceedings involving Domnica Manole are currently at the stage of trial in first instance. The criminal case no. 2016928173 regarding the prosecution of judge Manole on the basis of Article 307 paragraph (1) of the Criminal Code of the Republic of Moldova – *Pronouncing a judgment contrary to the law*, was submitted to the Chisinau Municipal Court on 20.04.2018, in accordance with the procedural rules embedded in Article 297 of the Criminal Procedure Code.

The examination in first instance of the criminal case has started on 10.05.2018 and since then, eleven court hearings have been scheduled (until 19.11.2018). Most of the hearings have been postponed at the defense's request, for reasons such as failure to appear in court, medical reasons and change of lawyers in the defense team. A detailed list of all the hearings in this case as well as the reasons for their postponement can be found in Annex 3, which contains the comments submitted by the Anti-corruption Prosecutor's Office of the Republic of Moldova.

At the last hearing in 2018, on the 27th of December, the Court accepted the defense's request to postpone the hearing on the grounds that a newly contracted lawyer needed time to study the case materials. Thus, the trial proceedings in this case are still ongoing.

The factual and legal grounds for the removal of judge Manole from Office stem from **(a)** the fact that the risk factors, specified in the advisory opinions of the Security and Intelligence Service No. 5/2139 of 17.10.2016 and No. 5/134 of 30.01.2017, were identified in the judge's activity, therefore the conditions established in Article 15 paragraph (4) and (5) of the Law No. 271-XVI of 18.12.2008 on the verification of holders of or candidates for public offices were met, as well as **(b)** the fact that the applicant gave explanations to Jurnal Tv on why she had a separate opinion on 08.06.2017 when examining the request of *ÎCS Jurnal de Chisinau Plus SRL* regarding the restoration of the term for appeal in the civil case "*Candă Andrian vs ÎCS Jurnal de Chişinău Plus SRL*", registration number 02-2a-5415-09032017, which was randomly assigned to her for examination, actions considered to be in violation of the provisions of Article 8 paragraph (3), Article 8 paragraph (3¹), Article 25 paragraph (1) of the Law No. 544/1995 on the Status of the Judge.

The Republic of Moldova attaches utmost importance to international norms, standards and provisions that give rise to international obligations, which are consistently reflected and embedded in the national legal framework on the independence of judges and lawyers.

The independence and impartiality of judges is the cornerstone of the human right to a fair and public hearing, enshrined in Article 10 of the Universal Declaration of Human Rights, Article 14 of the ICCPR, Article 6 of the European Convention on Human Rights and repeatedly reinforced in UN Resolutions, international judgments and recommendations. As subsequently interpreted by the Human Rights Committee, the right to a fair and public hearing as embedded in the ICCPR “requires States to adopt appropriate measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them”.

In the Republic of Moldova, independence and impartiality of judges is a constitutional principle enshrined in Article 116 of the supreme law, and further guaranteed through the Law No. 544/1995 on the Status of the Judge and the Law No. 947/1996 on the Superior Council of Magistracy.

Article 1 paragraph 4 of the Law No. 544/1995 on the Status of the Judge establishes that “judges take decisions in an independent, impartial manner, acting in the absence of any restrictions, influences, pressures, threats or interventions, direct or indirect, from any other authority, including the judicial ones”. The Superior Council of Magistracy, which is an independent body responsible for the good organization and functioning of the judicial system, is also “the guarantee of the judicial authority's independence” (Art. 1 Law No. 947/1996). In order to fulfill its role and exercise its functions, the Superior Council of Magistracy has competences related to judgeships, such as submission of proposals for appointment, administration of the oaths, approval of regulations for the recruitment process for candidates to a judgeship, appointment of the board for evaluation of performance, etc. (Art. 4 Law 947/1996; A detailed description of the transparency mechanisms and the legal procedure in place for promotion, transfer, discharging from official responsibilities, detachment, suspension, resignation or removal from office – can be found in the comments submitted by the Ministry of Justice of the Republic of Moldova in Annex 2).

The Law No. 544/1995 on the Status of the Judge guarantees the judicial independence enforcement through the procedure of justice administration, procedure of appointment, suspension, resignation and dismissal, inviolability, the secret of deliberations and prohibition on requests of disclosure, the liability for lack of respect for the court/judges and for interference with a court trial, allocation of adequate resources for functioning of the judiciary, provision of adequate organizational and technical conditions, favorable for the activity of the courts, ensuring judges' material and social welfare (art. 17) as well as judge's immovability (art. 18). Article 19 of the same law enshrines the principle of inviolability, which is extended to the judge's dwelling place and workplace, vehicles and telecommunication means, correspondence, goods and personal documents. At the same time, a judge may be subject to criminal prosecution only by the Prosecutor General with the consent of the Superior Council of Magistracy, under the Criminal Procedure Code. Additionally, a judge shall not be detained, brought by force, arrested or searched without the consent of the Superior Council of Magistracy.

All these provisions institute a *fair procedure* (principle 17 of the UN Basic Principles on the Independence of the Judiciary) and are deemed to provide several layers of protection for the judges against interference in the process of serving justice and to ensure that judges exercise their functions free of any external influence and make their decisions according to the law.

At the same time, the Law on the Status of the Judge compels judges to apply precisely the requirements of the law in the process of serving justice, to ensure the protection of human rights and freedoms, honour and dignity, to defend the interests of society, to prove a high professional culture and to be impartial.

In the exercise of their functions, as well as outside the office, judges have the duty to abstain from acts that could discredit justice, compromise honour and dignity of judges or to provoke doubts in respect to their own objectivity. Judges can not divulge the secret of deliberation or information obtained in a closed-door trial.

In order to protect the judicial system and ensure the respect for constitutional provisions on impartiality and independence of judges, as well as fulfill the human rights standard of a fair trial, a national legal framework (Law No.178/2014) on accountability of judges has been established in accordance with the international standards.

The independence of judges is not a prerogative or a privilege granted for the personal benefit of the judge, but a guarantee against external pressures in the decision-making process, being justified by the necessity of allowing judges to exercise freely their role as guardians of human rights and liberties. Thus, independence of judges is a fundamental pillar of the rule of law and a guarantee to a fair trial (paragraph 58 from the Constitutional Court's Judgement No. 23 of 25.07.2016).

In paragraph 70 of the Constitutional Court's Judgement No. 32 of 05.12.2017, the Constitutional Court has stated that "in its jurisprudence, the Court has consistently held that the independence of judges does not exclude his/her accountability, the latter being subject to a degree of caution determined by the necessity to guarantee full liberty of the judge against any induced pressures (CC Judgment no.22 of 5.09.2013, paragraph 61, CC Judgement no.26 of 11.11.2014, paragraph 41, HCC no. 12 of 28.03.2017, paragraphs 58-59)".

The Law No.178/2014 on the Disciplinary Liability of Judges provides the definition of a disciplinary misconduct and the procedural response triggered by such conduct. This law has been brought into conformity with the international standards and recommendations on the matter, particularly with the Joint Opinion No. 755/2014 of the European Commission for Democracy through Law (Venice Commission), the Recommendations of the Council of Europe Committee of Ministers No. (2010)12E/17 November 2010 regarding Judges: Independence, Efficiency and Responsibilities as well as with the OSCE/ODIHR Kiev Recommendation on judicial independence in Eastern Europe, South Caucasus and Central Asia.

According to Article 4 of the above-mentioned law, a misconduct can be observed in a judge's activity in different forms, such as (a) failure to observe intentionally or with gross negligence the duty to abstain when the judge knows or should have known about the existence of one of the circumstances provided by law for abstention, as well as making repeated and unjustified statements of abstention in

the same case, which result in delays in the consideration of the case; (b) adoption of a judicial decision that, intentionally or with gross negligence, violates the rights and fundamental liberties of natural or legal persons, that are guaranteed by the Constitution of the Republic of Moldova and by the international treaties on human rights that Republic of Moldova is party to; (c) behavior performed in the process of serving justice that exposes serious and obvious professional incompetence; (d) interference in the judicial activity of another judge; (e) illegal interferences or exploitation of his/hers status as a judge in respect to other institutional authorities or public officials for the purposes of processing a request, claiming or accepting the fulfillment of personal or third-party's interests, or for the purposes of receiving improper benefits; (f) failure to respect the secret of deliberations or the confidentiality of the works with such a character, or of other confidential information that the judge learned of in the course of lawfully performing his duties; (g) breach, due to reasons attributable to the judge, of the deadlines for procedural acts, including the deadlines for editing the judgments and for sending them to the participants to the trial, if such a breach had a direct effect on the rights of the participants to the trial or of other people; (h) absence without leave, being late or leaving the office without objective reasons to do so, if such a conduct has affected the activity of the court; (i) violation of imperative norms in the process of serving justice; (j) failure to perform, delayed performance or inadequate performance of a professional duty, without a reasonable justification, if that has affected directly the rights of the participants to the trial or of other people; (k) undignified attitude to co-workers, lawyers, experts, witnesses or other people in the course of serving justice; (l) violation of the legal provisions concerning the professional incompatibilities, interdictions and restrictions for judges; m¹) failure to respect provisions of Article 7 paragraph 2 of the Law No. 325 from 23.10.2013 regarding the assessment of the institutional integrity; (n) obstruction, by any means of the activity of judicial inspection and (p) other acts that infringe professional honor or integrity of the judges or, infringe the prestige of justice, to an extent that it affects the confidence in justice, which are committed while performing professional duties or outside the office hours, and which are so serious that can not be qualified only as breaches of the Code of ethical and professional conduct of the judges.

The 15 types of misconduct enumerated in this Article are in line with the principle of foreseeability requiring that the conduct giving rise to disciplinary action be defined with sufficient clarity, so as to enable the concerned person to foresee the consequences of his or her actions and thereupon regulate his or her conduct (principle explained in the ECtHR Case *N.F. v. Italy*, Judgement of 02.08.2001, paragraphs 29-30).

Also, misconduct arising out of omissions or out of the assumption that “the judge should have known” triggers liability only when committed intentionally or with gross negligence, which resonates with the OSCE/ODIHR Kiev Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (paragraph 25) and the Joint Opinion No. 755/2014 of the European Commission for Democracy through Law (paragraph 19).

The Venice Commission, in the *Amicus Curie* opinion, adopted at its 110th plenary session, stated that “a balance needs to be struck between immunity as a means to protect the judge against undue pressure and abuse from state powers or individuals (immunity), on the one hand, and the fact that a judge is not above the law (accountability), on the other. The Venice Commission has consistently pointed out that judges should not be granted general immunity, but functional immunity for acts performed in the

exercise of their judicial functions. This is because, in principle, a judge should only benefit from immunity in the exercise of his or her lawful functions. More details on the conformity of the Law on accountability of judges with international standards can be found in the comments submitted by the Superior Council of the Magistracy, in annex 1.

The Republic of Moldova is committed to ensure the quality of justice, the transparency of the judicial activity and the trust of the civil society in justice.

The Superior Council of Magistracy of the Republic of Moldova

With reference to your request of 21 December 2018, registered with the SCM on December 28, 2018 under no. 4920m, we communicate the following:

Justice is carried out in the name of law only by the Courts, for the purpose of defending and ensuring the full realization of fundamental rights and freedoms of citizens, as well as of other legitimate rights and interests deducted during trial.

In this context, referring to the updated information on the ongoing criminal case regarding Mrs. Domnica Manole, as well as the information on the ruling of the Court to reject the requests to recuse the president of the judicial panel, we communicate the following:

The criminal case brought against Mrs. Domnica Manole is currently being examined by the Chişinău Municipal Court; the Court is to examine the case in all its aspects, in full, impartial and objective terms, in accordance with the applicable law.

Thus, the Superior Council of Magistracy (SCM) is not a party to the criminal prosecution case of Judge Domnica Manole, respectively, does not hold updated information regarding the stage of the criminal proceedings, neither about the rulings to reject the requests of recusal of the president of the judicial panel.

With reference to the presentation of information regarding the decision of the Supreme Court of Justice to reject the request for annulment of the Decisions of the Superior Council of Magistracy no. 368/17 of 31.05.2016 and no. 369/17 of 31.05.2016, please be informed that the decision in question can be accessed on the website of the Supreme Court of Justice http://jurisprudenta.csj.md/search_cont_csm.php?id=168.

At the same time, according to art. 120 of the Constitution of the Republic of Moldova, it is mandatory to observe the sentences and other final judgments of the Courts, as well as the collaboration requested by them during trial, the execution of sentences and other final Court decisions.

The completeness of the judiciary is determined by its volume, the binding nature of final and irrevocable court judgments and the need that these be respected by all bodies of state power, local government, businesses, organizations, institutions, persons holding public offices, citizens and their associations and that the rulings are executed unconditionally throughout the entire territory of the Republic of Moldova, without exceptions. The obligation to comply with the court decisions also includes the obligation to execute them, a fact stipulated by art. 20 of the Law on the organization of the judiciary, according to which: "the judgments of the Court are mandatory and their non-execution implies liability according to the law", as well as by the procedural law as a general principle.

With reference to the factual and legal grounds for the dismissal of Mrs. Domnica Manole from the position of judge at the Chisinau Court of Appeal, two distinct grounds can be invoked, namely:

The first reason: the fact that the risk factors specified in opinions of the SIS no. 5/2139 of 17.10.2016 and no.5/134 of 30.01.2017 were identified in the judge's activity, thus meeting the conditions established by the

provisions of Article 15 par. (4), (5) of the Law no. 271-XVI of 18.12.2008 on the verification of the holders of and candidates for public positions/offices;

The second reason: the fact that the applicant gave explanations to Jurnal TV on why she had a separate opinion on 08.06.2017 when examining the request of ÎCS Jurnal de Chisinau Plus SRL regarding the extension of the term for appeal in the civil case “Candu Andrian vs ÎCS Jurnal de Chişinău Plus SRL”, registration number 02-2a-5415-09032017, which was randomly assigned to her for examination, actions considered to be in violation of the provisions of Article 8 (3), (31), Article 25 (1)) of the Law on the Status of the Judge, (copy of SCM Resolution No. 451/21 of 04.07.2017 is attached).

On 19.11.2018, the College of the Supreme Court of Justice issued the Judgment no. 3-4/18 on the action filed by Domnica Manole against the Superior Council of Magistracy and the Security and Intelligence Service regarding the annulment of the administrative acts, the reinstatement in position of judge, the payment of the salary for the forced absence from work, compensation for material and moral damage and the payment of court fees (this can be accessed on the website of the Supreme Court of Justice http://jurisprudenta.csj.md/search_cont_csm.php?id=202).

At the same time, regarding the request for information on the responsibility of judges, as well as on the existing guarantees to protect the independence of the judiciary, we mention the following.

The independence of the judiciary is a prerequisite for the rule of law and a fundamental guarantee for fair trial. This independence is to be ensured by the state.

As required by the UN Basic Principles on the Independence of the Judiciary, the independence of the judicial power must be guaranteed by the State and enshrined in the Constitution or the laws of the country.

Thus, the independence of the judiciary and judges is enshrined and guaranteed through the Constitution of the Republic of Moldova (art.116), the legislative acts regarding the organization of the judiciary and the one the status of the judge, as well as through the international acts to which the Republic of Moldova is a party.

The Law on the Status of the Judge no. 544 of 20.07.1995 states that judges of all courts have a unique status and are distinguished only by their duties and competence, they are independent, impartial and immovable and obey only to the law (Article 1, Article 2).

Chapter V of the Law on the Status of the Judge No. 544 of 20.07.1995 expressly regulates the guarantees of independence, immovability and inviolability of judges.

According to Article 17 of the aforementioned Law, the independence of the judge is ensured by:

a) the procedure for the administration of justice;

b) the procedure of appointment, suspension, resignation and dismissal;

c) inviolability;

d) the secrecy of deliberations and prohibition on requests of disclosure;

e) establishing liability for lack of respect for court, judges and for interference with a court trial;

f) allocation of adequate resources for the functioning of the judiciary, providing organizational and technical conditions favorable for the activity of the courts;

g) ensuring judges' material and social welfare;

h) other measures under the law.

Thus, the constitutional guarantees for the independence of judges comprise the criteria of impartiality and immovability, the independence being a necessary prerequisite and an essential requirement for achieving impartiality.

The Independence of judges is not a prerogative or privilege granted in the personal interest of holder of judgeship, but a guarantee against external pressure in decision-making, being justified by the need to allow judges to fulfill their role as guardians of human rights and freedoms. Thus, the independence of the judge is a fundamental aspect of the rule of law and the guarantee of fair trial (Constitutional Court Judgment No. 23 of 25.07.2016, par. 58).

According to par. 70 of the Constitutional Court Judgment No. 32 of 5.12.2017, the Constitutional Court found that "In its case-law, the Court has consistently held that the independence of the judge does not exclude the accountability of the judge, and that it is subject to a degree of caution due to the need to guarantee the judge's full freedom from all induced pressures"(HCC no.22 of 5.09.2013, par. 61, HCC no.26 of 11.11.2014, par. 41, HCC no. 12 of 28.03.2017, par. 58-59).

At the same time, the Law on the Status of the Judge no. 544 of 20.07.1995 compels judges to execute the precise requirements of the law in the administration of justice, to ensure the protection of the rights and freedoms of citizens, their honor and dignity, to defend the interests of society, to ensure the high culture of the judicial activity, and to be impartial.

In the discharge of their duties, as well as outside working relationships, judges are obliged to refrain from acts that might discredit justice, compromise the honor and dignity of a judge or raise doubts about their objectivity. They have no right to disclose the secrecy of the deliberations and the information obtained in closed session.

The sanctioning of judges, according to the provisions of Article 116 paragraph (6) of the Constitution is conducted in accordance with the law.

According to Article 21 paragraph (1) of the Law on the Status of the Judge No. 544 of 20.07.1995, judges bear disciplinary responsibility in the manner established by the Law No. 178 of 25.07.2014 on the Disciplinary Liability.

At the same time, Article 8 of the Law no. 544 provides for the limitations of the position of judge, while Article 25 par. (1), lit. i) of the aforementioned Law provides that the judge is dismissed from office by the body that appointed him in case of non-observance of the provisions of Article 8.

In the context of the above, it is to be noted that the Superior Council of Magistracy is the body created for the organization and functioning of the judiciary, it is the guarantor of the independence of the judicial authority and exercises the self-administration of the judiciary.

In this respect, in order to ensure the independence of the judiciary and the functioning of the judiciary system, according to Article 4 of the Law on the Superior Council of Magistracy no. 947-XII of 19.07.1996, the Council was entrusted with powers regarding judges' career, the initial and continuous training of magistrates, the observance of the respect for disciplinary and the ethical norms by judges, the administration of the courts, and other competencies under the law, including the inviolability of judges , which refers to the examination of prosecution proposals.

According to Article 19 par. (4) of the Law on the Statute of the Judge, criminal prosecution against a judge may be initiated only by the Prosecutor General or the First Deputy and in the absence thereof by a deputy on the basis of an order issued by the Prosecutor General, with the approval of the Superior Council of Magistracy, respecting the conditions provided by the Criminal Procedure Code. In the case of a judge committing the offenses specified in Articles 243, 324, 326 and 330 of the Criminal Code of the Republic of Moldova, as well as in the case of flagrant offenses, the consent of the Superior Council of Magistracy for initiating criminal prosecution is not necessary.

At the same time, according to the provisions of Article 23 par. (2) of the Law on the Superior Council of Magistracy no. 947-XII of 19.07.1996, the SCM examines the proposal of the Prosecutor General or of the First Deputy, and in the absence thereof - of the Deputy appointed by the order issued by the Prosecutor General, only in terms of compliance with the provisions or circumstances stipulated in the Criminal Procedure Code for ordering the initiation of criminal prosecution, detention, summoning by force, arrest, or search of the judge, without assuming the powers of a court.

The Venice Commission, in the *Amicus Curie* opinion, adopted at its 110th plenary session, stated that “a balance needs to be struck between immunity as a means to protect the judge against undue pressure and abuse from state powers or individuals (immunity), on the one hand, and the fact that a judge is not above the law (accountability), on the other. The Venice Commission has consistently pointed out that judges should not be granted general immunity, but functional immunity for acts performed in the exercise of their judicial functions. This is because, in principle, a judge should only benefit from immunity in the exercise of his or her lawful functions. If he or she commits a criminal offense in the exercise of his or her office, he or she should have no immunity from criminal liability.” (CDL-AD (2017)002-e, par. 17), (Judgment of the Constitutional Court No. 23 of 27.06.2017, par.49).

At the same time, according to par. 68 of the Constitutional Court Judgment No. 23 of 27.06.2017, by an *obiter dictum*, the Court emphasized that, under the criminal procedure norms, the initiation of a criminal case in accordance with the law, when there is reasonable suspicion that an offense was committed and when not one of the circumstances that excludes prosecution is applicable and the offense was committed by a judge, the criminal liability for the offense is not an act of intervention in the activity and independence of the judge, but a legal process of ensuring liability for committing a unlawful act (HCC No. 22 of 5.09.2013, par. 75).

In the context of the above, the Superior Council of Magistracy fulfils its duties in strict compliance with the law, permanently advocating for the independence of the judiciary as a whole.

At the same time, the Superior Council of Magistracy, both directly and through its subordinated bodies, ensures at all times the quality of justice, the transparency of the judicial activity and the trust of the civil society in justice.

**The President
of the Superior Council of Magistracy**

Victor MICU

The Ministry of Justice of the Republic of Moldova

Following the examination of the request of the UN Special Rapporteur on the Independence of Judges and Lawyers, Mrs. Diego Garcia-Sayan, sent in accordance with the procedure on individual complaints in the case of the “alleged unfair termination of mandate and criminal prosecution of the judge Domnica Manole”, the Ministry of Justice of the Republic of Moldova, communicates the following:

According to Articles 114 and 115 of the Constitution of the Republic of Moldova, justice is done in the name of law exclusively by the judicial system, namely by the Supreme Court of Justice, appellate courts, and first instance courts. According to Article 6 of the supreme law, legislative, executive and judicial powers are separated.

Therefore, the Ministry of Justice, as an executive body, is never involved in the process of serving justice, as such an involvement can be considered an interference with the activity of the judicial power.

In this context, according to the information available online on the web page of the Supreme Court of Justice, on the 5th of July 2017, Domnica Manole brought an action against the Superior Council of Magistracy, with the Service of Information and Security as a third-party defendant, concerning the annulment of two decisions of the Superior Council of Magistracy: Decision nr. 450/21 from 4th of July 2017 regarding the examination in a secret meeting of the Advisory Opinion issued by the Service of Information and Security concerning Domnica Manole, and Decision nr. 451/21 from 4th of July 2017 on the incompatibility with a judgeship and the proposal addressed to the President of the Republic of Moldova to relieve the appellate judge Domnica Manole of her duties. Additionally, the plaintiff has requested to declare the Advisory Opinions Nr. 2625 m/l from 19 august 2016 issued by the Service of Information and Security illegal.

On the 3rd of August 2017, Domnica Manole has filed a request to amend the initial action, claiming that the Service of Information and Security be recognized as co-defendant and claiming moral compensation from the Superior Council of Magistracy amounting to 100000 Euro, 5000 Lei lawyer’s fee and other legal expenses.

Domnica Manole has subsequently filed a motion for expedite hearings, which was dismissed by the Supreme Court of Justice on August 1, 2018.

On the 19th of November 2018, the Supreme Court of Justice has decided to dismiss the action filed on the 5th of July 2017 and to modify the operative part of the Decision nr. 451/21 from 04 July 2017 issued by the Superior Council of Magistrates by excluding the phrase: “art. 15 para. (4), (5) from the Law Nr. 271-XVI from 18 December 2008 on the verification of candidates and holders of public offices”.

In what concerns the Domnica Manole’s two request for recusal of the judges on this case, as well as the legal and factual grounds for the termination of Domnica Manole’s judgeship, we highlight that according to the Recommendation Nr. 28 of the Supreme Court of Justice concerning several aspects of the application of the Civil Procedure Code in the process of examining requests for recusals, the right to ask for the recusal of a judge (Article 50 of the Civil Procedure Code) constitutes a guarantee of the independence and impartiality of a judicial court. The procedure of hearing a request for recusals (Article 53 of the Civil Procedure Code) as well as the legal limits (Article 52 of the Civil Procedure Code) of the admissibility of a recusal request are deemed to

prevent and counter possible abuses throughout the trial and to ensure the balance needed for justice to be served.

At the same time, we highlight that Article 19 paragraph 2 of the Civil Procedure Code establishes that “A court’s decision issued on a civil case can be checked and re-examined only by the judicial body vested with such authority by the present Code and other laws”.

In regards to the conformity of the responsibility of judges with human rights law and international standards on the independence and impartiality of the judicial system, we highlight that Law Nr. 178/2014 concerning the disciplinary liability of the judges is in accordance with international standards, in particular with the Joint Opinion nr. 755/2014 of the European Commission for Democracy Through Law (Venice Commission), Recommendations of the Council of Europe Committee of Ministers nr. (2010)12E/17 November 2010 regarding judges: independence, efficiency and responsibilities as well as the OSCE/ODIHR Kiev Recommendation on judicial independence in Eastern Europe, South Caucasus and Central Asia.

In this context, and according to Article 4 of the above-mentioned law, a disciplinary misconduct is defined as:

- a) Failure to observe, intentionally or with gross negligence, the duty to abstain when the judge knows or should have known about the existence of one of the circumstances provided by law for abstention, as well as making repeated and unjustified statements of abstention in the same case, which results in delays in the consideration of the case;
- b) Adoption of a judicial decision that, intentionally or with gross negligence, violates the rights and fundamental liberties of natural or legal persons, that are guaranteed by the Constitution of the Republic of Moldova and by the international treaties on human rights that Republic of Moldova has signed.
- c) Behavior performed in the process of serving justice that exposes serious and obvious professional incompetence;
- d) Interference in the judicial activity of another judge;
- e) Illegal interferences or exploitation of the status of a judge in respect to other institutional authorities or public officials for the purposes of processing a request, claiming or accepting the fulfillment of personal or third-party’s interests, or for the purposes of receiving improper benefits;
- f) Failure to respect the secret of deliberations or the confidentiality of the works with such a character, or of other confidential information that the judge learned of in the course of lawfully performing his duties;
- g) Breach, due to reasons attributable to the judge, of the deadlines for procedural acts, including the deadlines for editing the judgments and for sending them to the participants to the trial, if such a breach had a direct effect on the rights of the participants to the trial or of other people;
- h) Absence without leave/unauthorized absence, being late or leaving the office without objective reasons to do so, if such a conduct has affected the activity of the court;
- i) Violation of imperative norms in the process of serving justice;
- j) Failure to perform, delayed performance or inadequate performance of a professional duty, without a reasonable justification, if that has affected directly the rights of the participants to the trial or of other people;
- k) Undignified attitude to co-workers, lawyers, experts, witnesses or other people in the course of serving justice;

- l) Violation of the legal provisions concerning the professional incompatibilities, interdictions and restrictions for judges;
- m¹) Failure to respect provisions of the Article 7 paragraph 2 of the Law nr. 325 from 23 October 2013 regarding the assessment of the institutional integrity;
- n) Obstruction, by any means of the activity of judicial inspection;
- p) Other acts that infringe professional honor or integrity of the judges or, infringe the prestige of justice, to an extent that it affects the confidence in justice, which are committed while performing professional duties or outside the office hours, and which are so serious that can not be qualified only as breaches of the Code of ethical and professional conduct of the judges.

Also, in what concerns the respect for the human rights, we communicate that judges benefit from all the rights and liberties embedded in the Constitution of the Republic of Moldova and in the related Legal framework and in the process of serving justice, judges also benefit from the procedural rights established by the legal framework on legal procedure (Article 14 paragraph 1 of the Law Nr. 544/1995 on the status of a judge).

Regarding the independence and impartiality of the judiciary system, it is enshrined in Article 116 of the Constitution of the Republic of Moldova that judges are independent, impartial and irremovable.

Article 1 paragraph 4 of the Law nr. 544/1995 on the status of judges develops the constitutional provision, establishing that “judges take decisions in an independent, impartial manner, acting in the absence of any restrictions, influences, pressures, threats or interventions, direct or indirect, from any other authority, including the judicial ones. The hierarchic organization of the jurisdictions can not infringe the individual independence of the judge. Judges from all the judicial courts have a unique status and may differ only in the extent of competences and powers attributed to them”.

In regards to the guarantees in place for the protection and promotion of independence of the judicial system as a whole as well as of judges individually, Article 1 from the Law nr. 947/1996 establishes that the Supreme Council of Magistracy is “the guarantee of the judicial authority's independence”, an independent body, created in view of organization and functioning of the judicial system.

Hence, in order to exercise its functions, the Superior Council of Magistracy has the following competencies regarding the judges career (Article 4, paragraph (1) from the Law):

- a) *Submit proposals for appointment, promotion to a higher court, transfer to a court of the same level or to a lower court or promotion to the position of president or deputy president of a court or removal from office of judges, presidents and deputy presidents of courts, to the President of the Republic of Moldova or to Parliament,*
- b) *Administrates the oath of judges;*
- c) *Approves regulations regarding the criteria and procedures of selection of candidates for a judgeship, of promotion to a higher court, promotion to the position of a president or deputy president of a court, transfer to a court of the same level or to a lower level one;*
- d) *Approves the rules of procedure for the recruitment of judges, presidents or deputy presidents of courts and ensures the organization and deployment of the recruitment process;*
- e) *Disposes the interim positions of president or vice-president of the court, of the Court of Appeal or of the Supreme Court of Justice in case of vacancy or suspension of office, until the vacancy is filled or the suspension is canceled;*

f) Apply incentive-related measures to judges;

g) Appoints the board for the recruitment of judges, as well as the board to evaluate the performance of judges according to his/her competences.

With a view of ensuring the independence of the judiciary system, according to art. 19 of the Law nr.947/1996, the Superior Council of Magistracy shall make proposals to the President of the Republic of Moldova or, as the case may be, to the Parliament on the appointment of candidates to these positions, as well as on the appointment to the position of president of the court or court's deputy president.

The selection of candidates to the position of judge, court president or court deputy president is made by the Superior Council of Magistracy, based on the decision of the board on the recruitment and careers of judges. The decision of the Superior Council of Magistracy on the selection of candidates for the position of judge, court president or court deputy president must be motivated and adopted by an open vote by the members of the Council.

The decision of the Superior Council of Magistracy along with the respective proposal on the appointment to the position of judge, court president or court deputy president, the personal file records of the candidate with the curriculum vitae on his/her activity and draft decree or draft decision on the appointment to the position, shall be submitted by the President of the Council.

If the President of the Republic of Moldova or, as the case may be, Parliament rejects the proposed candidate, the Superior Council of Magistracy may propose the same or another candidate for the existent vacancy under the terms of Article 11 of the Law on the Status of Judge, Article 16 of the Law of Judicial Organization and Article 9 of the Law regarding the Supreme Court of Justice.

Additionally, in order to ensure a transparent procedure of Promotion, Transfer, Discharging from Official Responsibilities, Detachment, Suspension, Resignation and Removal from the Position of Judge, art. 20 of the Law nr. 947/1996 states that:

The issues related to promotion, transfer, discharging from official responsibilities, detachment, suspension, resignation and removal from the position of judge shall be examined by the Superior Council of Magistracy under the terms of law.

The transfer of a judge for a limited period of time to another court shall be performed by the Superior Council of Magistracy upon judge's consent, under the conditions set out in Article 20 of the Law on the Status of Judge.

The promotion, transfer, discharge from official responsibilities, detachment, suspension, resignation and removal from the position of judge shall be done based on the recommendation of the board on the recruitment and careers of judges. The decision of the Superior Council of Magistracy regarding the promotion, transfer, discharging from official responsibilities, detachment, suspension, resignation and removal from the position of judge shall be motivated and adopted by an open vote by the members of the Council.

Participation in the competition for promotion in a higher court, transfer to a court of the same level of the members of the Superior Council of Magistracy, as well as of the judges assigned to the National Institute of Justice and the Secretariat of the Superior Council of Magistracy shall be forbidden for the period of exercise of their mandate and for a period of 6 months after termination of their mandate or the expiry of the term for which the judge was assigned.

The decisions on the transfer of judge to another court, promotion, resignation and his/her removal from position, along with a curriculum vitae with information his/her activity and a draft decree or draft decision shall be submitted to the President of the Republic of Moldova or, as the case may be, to Parliament.

The suspension from position of judge shall be performed by the Superior Council of Magistracy, under the conditions of Article 24 from Law on the Status of Judge.

In case the circumstances, which served as grounds for the suspension of judge from position, have disappeared, the Superior Council of Magistracy shall adopt a decision on annulment of his suspension from position.

The decision of the Superior Council of Magistracy on the suspension of judge from position or repeal of the suspension of judge from position shall be immediately submitted to the President of the Republic of Moldova or, as the case may be, to Parliament.

The Superior Council of Magistracy shall cease the resignation of judge and order the cessation of the monthly life allowance payment under the conditions of Article 26 from Law on the Status of Judge.

Regarding the **individual independence of judges** we mentions that this is ensured through the procedure for the performance of justice, the procedure for appointment, suspension, resignation and dismissal, the declaration of inviolability, the secrecy of the deliberations and the prohibition to demand disclosure, the determination of liability for lack of respect for the judicial system, judges and for interference in the hearing of the case, the allocation of adequate resources for the functioning of the judiciary, the creation of organizational and technical conditions favorable to the activity of the courts, the material and social insurance of the judge, other measures provided by law (Article 17 of Law nr. 544/1995).

In a similar context, Articles 18 and 19 of Law nr. 544/1995 establishes that a court judge is immovable within his/her term of office.

The personality of judge shall be inviolable, and the inviolability of a judge shall be extended to his/her dwelling place and workplace, vehicles and telecommunication means, which s/he uses, his/her correspondence, goods and personal documents.

The judge shall not be held liable for his/her opinions expressed in justice making and for judgments s/he passed unless s/he is found guilty of criminal abuse by a final sentence.

A judge may be subject to criminal prosecution only by the Prosecutor General with the consent of the Superior Council of Magistracy, under the Criminal Procedure Code. If the judge commits offenses specified in art. 243, 324, 326 and 330 of the Criminal Code of the Republic of Moldova, as well as in the case of flagrant offenses, the Superior Council of Magistracy's consent to initiate criminal investigation is not necessary.

Decisions through which the Superior Council of Magistracy expresses its consent or disagreement to initiate criminal prosecution under the conditions described above must be motivated and published on the official website of the Superior Council of Magistracy, by keeping the data on the identity of the judge anonymous.

A judge shall not be detained, brought by force, arrested, searched without the consent of the Superior Council of Magistracy. All procedural actions, except in cases of flagrant offense, may be carried out only after the order to initiate the criminal prosecution has been issued, respecting the guarantees established by the constitutional norms and international acts. The Superior Council of Magistracy's consent is not required in case of flagrant offenses.

The judge may be subject to sanctions only by the court. The court must inform the Superior Council of Magistracy of the sanctioned contravention of the judge.

The detained judge, if suspected of having committed a contravention, is to be released immediately after identification.

In the same context, in order to ensure the respect of the inviolability of judges, Article 23 of the Law Nr. 947/1996 establishes that a Prosecutor General's or deputy Prosecutor general's proposal to initiate criminal investigation, detain, bring by force, arrest, or search a judge, is examined by the Superior Council of Magistracy immediately, but no latter than 5 working days.

The Superior Council of Magistrates examines the Prosecutor General's, Deputy Prosecutor General's proposal only in regards to the respect of the conditions or circumstances provided by the Code of Criminal Procedure for the initiation of criminal investigation, detainment, bringing by force, arrest or search of a judge, without acting like a judicial court. The Prosecutor General does not participate in the deliberation.

According to Article 24 of the same law, the Superior Council of Magistracy adopts decisions with an open vote by the majority of its members. When decisions concerning the career of a judge, disciplinary liability, sanctions and removal from office of judges are considered, the ex-officio members of the Superior Council of Magistracy (the Prosecutor General, the Minister of Justice and the President of the Superior Council of Magistracy) participate in the meeting without a right to vote.

Decisions of the Superior Council of Magistracy can be contested at the Supreme Court of Justice by any interested person during 15 days from the day of issuance. Contestations are examined by a panel of 5 judges.

In order to ensure the guarantees received at the removal from office of a judge, Article 25 of the Law 5444/1995 provides that:

- (1) The judge shall be dismissed by the body that appointed him/her in the following cases:
 - a) filing a letter of resignation;
 - b) finding an obvious unsuitability to the position held as a result of two consecutive performance evaluation;
 - d) transfer to another office, in accordance with the law;
 - f) committing a disciplinary offense specified in Law nr. 178 from 25 July 2015 on disciplinary liability of judges;
 - g) delivery of a final judgment of his/her conviction;
 - g¹) establishment through a definitive finding report, of the conclusion of a legal act, of the issuing of a decision, without taking into account and solving a real conflict of interest, according to the legal provisions on conflicts of interest;

g²) failure to file the wealth and personal interests declaration, refusal to file such a declaration, under the terms of Article 27 paragraph 8 of the Law 132 from 17 June 2016 regarding the National Authority for Integrity;

g³) disposal, through a definitive court's decision of confiscation of unjustified wealth;

g⁴) establishment, through a definitive finding report of a failure to solve in time a situation of incompatibility set out in Article 8 paragraph 1 of the same Law;

g⁵) the negative result of the professional integrity test, grounded in a decision of the disciplinary board;

h) loss of citizenship of the Republic of Moldova;

- i) failure to respect provisions of Article 8 paragraph 1;
 - j) finding of incapacity to work, evidenced by a medical certificate;
 - k) expiration of the mandate due to non-appointment of judge until age-limit, as well as for the reason of his/her attaining the age-limit
 - l) finding, by final court decision, the restricted capacity to act or incapacity to act.
- (2) The proposal to discharge a judge of his/her duties is submitted by the Superior Council of Magistracy to the President of the Republic of Moldova or, by case, to the Parliament. If in the period of time between the submission of the proposal and the the final decision by the President or Parliament, the grounds for relieving the judge of his/her duties have changed, the Superior Council of Magistracy is obliged to modify the respective decision.
- (3) The manner to remove a judge from his/her position and the manner to appeal the decision of removal shall be established by law.
- (3¹) Dismissal of a judge based on grounds specified in par. (1) let. b), f), g), g⁵) and i) entails his/her deprivation of the right to single dismissal allowance provided for in Article 26 par. (3) and of the pension under Article 32. Judges covered by this paragraph shall be entitled to age- limit pension under the general conditions laid down by Law no. 156-XIV of 14 October 1998 on State Social Insurance Pensions.
- (4) If the decision to remove the judge from his/her position is cancelled then the respective judge shall be reinstated, as provided by law, with all his/her former rights including financial rights that s/he has been deprived of.
- (5) In case of a judge's death, the Superior Council of Magistracy shall declare position as vacant.

State Secretary

Nicolae EȘANU

The Prosecutor's Office of the Republic of Moldova
The Anti-Corruption Prosecutor's Office

After having examined the communication of the Special rapporteur on the Independence of Judges and Lawyers, the Anti-corruption Prosecutor's Office informs about the following:

On 20.04.2018, the Anti-Corruption Prosecutor's Office, in accordance with the provisions of Article 297 the Criminal Procedure Code, has sent, according to the territorial jurisdiction, to the Chişinău Municipal Court located in Buiucani sector, the criminal case no. 2016928173 regarding the prosecution of Manole Domnica Ştefan for committing the offense provided by Article 307 par. (1) of the Criminal Code - pronouncing a judgement contrary to the law.

The examination in first instance of the criminal case started on 10.05.2018, eleven court hearings having been held until 19.11.2018, most of them being postponed for various reasons attributed to the defense, as follows:

- 10.05.2018 – Lawyer absent from the hearing. The court ordered to repeatedly summon the lawyer;
- 29.05.2018 – Preliminary sitting;
- 19.06.2018 – Request for adjournment submitted by the defense;
- 02.07.2018 – The defendant failed to appear. The court ordered to repeatedly summon the defendant;
- 17.07.2018 – The defendant failed to appear. The court orders to repeatedly summon the defendant;
- 07.08.2018 – The preliminary hearing continued with the examination of the motions of the defense;
- 17.09.2018 – The preliminary hearing continued with the examination of the motions of the defense;
- 25.09.2018 – The charges were read out. The defendant asked for explanations on the charges, so the court ordered the prosecutor to submit a written reply and offered time to prepare it.
- 16.10.2018 – The witness Ciocan Iurie was heard;
- 29.10.2018 – Lawyer absent from the hearing. The court ordered to repeatedly summon the lawyer;
- 08.11.2018 – The witness Bocan Ion was heard;
- 19.11.2018 – Hearing deferred because of the defendant and her lawyer's failure to appear in court;
- 26.11.2018 – Hearing postponed due to the termination of the legal assistance contract between the lawyer Grecu Viorica and defendant Manole Domnica. The court granted the defendant time to ensure the attendance of a lawyer in the hearing;
- 06.12.2018 – Hearing postponed on the grounds that the defendant Manole Domnica requested additional time to contract a lawyer. The court granted the defendant time to ensure the attendance of a lawyer in the hearing.
- 27.12.2018 – Hearing postponed on the grounds that the new lawyer requested time to study the criminal case materials. The court granted the lawyer time to get acquainted with the case materials.

The next hearing regarding the present case was scheduled for 18.01.2019, when the court should hear the expert testimony and the reading of the criminal case materials, thus finalising the examination of the evidence of the prosecution.

Regarding the adjournment of court hearings, it is necessary to highlight that the Anti-Corruption Prosecutor's Office has taken all the necessary measures to prevent the delay of the present trial, including by ensuring the

presence of the witnesses of the prosecution, and intervening with steps to forcefully bring the defendant to court because of her failure to attend the hearings.

Chief Prosecutor of the Anti-Corruption Prosecutor's Office

Viorel MORARI