

ANALYTICAL NOTE

Vulnerabilities of the draft law amending certain normative acts (strengthening the mechanism for evaluating judges' performance)

Subject of the analysis: The draft law amending certain normative acts (strengthening the mechanism for evaluating judges' performance), prepared by the Ministry of Justice and submitted to the Venice Commission (CDL-REF(2026)017, 13 May 2026), together with the informative note.

Reference normative acts: Law No. 147/2023 on the selection and evaluation of judges' performance; Law No. 252/2023 on the external evaluation of judges and prosecutors; Law No. 544/1995 on the status of judges.

I. Essence of the legislative intervention

The draft supplements Law No. 147/2023 with Article 7¹, which divides the evaluation of the “integrity” criterion within the performance evaluation: the Board for the Selection and Evaluation of Judges (CSEJ) evaluates the indicators provided for in Article 7 para. (4) letters a)–d) (professional ethics, disciplinary sanctions, non-involvement in politics, professional reputation), while the Commission for the Evaluation of Judges established under Law No. 65/2023 on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice, exercising its powers under Law No. 252/2023 on the external evaluation of judges and prosecutors and the amendment of certain normative acts (hereinafter “Law No. 252/2023”) (“Commission No. 2”) evaluates the indicator under letter e) — financial integrity — by applying Article 11 para. (3)–(6) of Law No. 252/2023.

The structural elements of the draft are: (i) failure to reach the 40% threshold under the integrity criterion constitutes grounds for the “failed” rating; (ii) repeal of Article 3 para. (2) letter d) of Law No. 252/2023; (iii) the obligation of Commission No. 2 to evaluate, by 31 December 2027, the financial criterion with regard to judges who are not subjects of Law No. 252/2023, with the report and materials to be transmitted to the CSEJ within 3 days; (iv) phased

evaluation, starting with the courts of Chișinău, Bălți and Cahul; (v) exemption of judges appointed after 21 September 2023 (approx. 58 judges); (vi) entry into force one month after publication, with application until 31 December 2027.

Context of the judicial reform in Moldova — the framework within which the draft is placed

In order to properly assess the draft, it is essential to understand the architecture of the judicial reform in Moldova, built in stages and validated by the Venice Commission over several years.

A. The phased logic of judicial reform

The reform was designed from the top down — first cleaning up the self-governing bodies, then the higher courts, and only later the base of the system:

- Pre-Vetting (2022–2023): extraordinary evaluation of candidates for positions in the SCM and SCP, with a strict external filter — only 5 out of 23 candidates for the position of judge-member of the SCM passed the evaluation (at the initial stage). Purpose: ensuring an integrity-based self-governing body.
- Vetting of the SCJ (2023–2024): extraordinary evaluation of SCJ judges and candidates for these positions (Law No. 65/2023). Result: more than 60% of SCJ judges resigned or left the system.
- Vetting of key positions (2023–2026): extraordinary evaluation of judges and prosecutors in key positions — courts of appeal, presidents and vice-presidents of first-instance courts (Law No. 252/2023). This constituted the third stage of vetting, endorsed by the Venice Commission.
- Performance evaluation (Law No. 147/2023): the ordinary, periodic procedure (every 5 years), applicable to all judges, carried out by the CSEJ, a specialized body of the SCM.

The Venice Commission accepted the phased and limited logic of vetting. Starting with CDL-AD(2023)005 (§19), the Commission emphasized that “it ultimately belongs to the Moldovan authorities to decide whether the

prevailing situation justifies subjecting all judges to extraordinary integrity evaluations,” but it also drew attention to the risk of using the mechanism for the “political elimination of undesirable persons” (§26). Precisely for this reason, Law No. 252/2023 provided for the appointment of international members of the commissions by a vote of 3/5 of the elected Members of Parliament — an explicit safeguard against the political capture of the mechanism.

B. The current political context: the “von Hebel” crisis and the weakening of the legitimacy of vetting

Precisely during the period in which this draft law is being prepared and submitted to the Venice Commission, the vetting mechanism is going through a crisis of legitimacy generated by a controversial legislative decision:

- On 26 February 2026, the PAS majority failed to gather 61 votes for the appointment of Herman von Hebel as an international member of the Prosecutors’ Evaluation Commission. The candidate received only 53 votes, with an unprecedented coalition of the entire opposition forming against him.
- On 5 March 2026, Parliament amended the law by the simple majority of PAS, lowering the threshold from 3/5 to a simple majority — 51 votes — for the appointment of international members. On 6 March, von Hebel was appointed with 53 votes.
- The European Commission explicitly requested that the amendment be submitted to the Venice Commission. On 11 March, Parliament requested this opinion (case file 1278/2026, plenary session of 12–13 June 2026).

This legislative amendment fundamentally contradicts the principle on which the entire vetting mechanism was built. As *Verfassungsblog* emphasized on 22 April 2026, and as opposition MPs stated before the Venice Commission, “when international experts are appointed by a single political force, they cease to be perceived as independent arbiters.”

C. Deficit of transparency in the preparation of draft CDL-REF(2026)017

This draft law did not follow the standard procedural path for the preparation and consultation of normative acts:

- The draft was not published on the official website of the Ministry of Justice in the “Decision-making transparency” section before being submitted to the Venice Commission.
- No public consultation meeting was organized with experts, associations of judges, civil society or development partners before the preparation or finalization of the draft.
- The Ministry of Justice launched public consultations on the initiation of the drafting process only after the draft had already been submitted to the Venice Commission — reversing the normal logic of legislative drafting.

This practice contravenes Law No. 239/2008 on transparency in the decision-making process and represents a departure from good governance standards.

II. Identified vulnerabilities

1. Distortion of the exceptional nature of external evaluation — central structural vulnerability

Law No. 252/2023 defines external evaluation as an exceptional, one-off and time-limited exercise (Article 2 para. (1)), while the exceptional nature of the evaluation is expressly enshrined as a principle (Article 2 para. (2) letter d)). The draft de facto extends the competence of Commission No. 2 to approximately 200 judges of first-instance courts through the performance evaluation mechanism and prolongs the Commission’s mandate by an additional year — an effect explicitly acknowledged even in the informative note.

The Venice Commission’s standard, consistently reflected in its opinions on the Republic of Moldova concerning Laws No. 26/2022, No. 65/2023 and No. 252/2023, is that extraordinary vetting cannot become a quasi-permanent mechanism, and that integrity competences must be progressively taken over by the specialized bodies of judicial self-administration. The draft produces the opposite effect: the extraordinary body absorbs a component of the ordinary evaluation, instead of the ordinary body — CSEJ/SCM — developing its own capacity. The argument of “transfer of expertise” invoked in the informative note is not supported by any concrete normative transfer mechanism, such as training or a takeover calendar.

2. Repeal of Article 3 para. (2) letter d) of Law No. 252/2023 — removal of a negative safeguard

Letter d) expressly excludes from external evaluation judges and prosecutors who do not fall within the categories set out in Article 3 para. (1). The informative note argues that the repeal would be harmless, since para. (1) is exhaustive in nature. This argument is circular: the provision proposed for repeal was precisely the closing clause that guaranteed the exhaustive scope of the law regarding the circle of subjects. Its removal creates a precedent for extending, by interpretation, the scope of a vetting law — a legal certainty vulnerability that goes beyond the declared purpose of the draft and will outlive it.

3. Ambiguous normative reference and selective import of procedural safeguards

The new Article 7¹ para. (2) provides for the application of Article 11 para. (3)–(6) of Law No. 252/2023 “accordingly and in accordance with the procedure provided therein.” However, Article 11 contains evaluation criteria, not procedure. The actual procedure — initiation of the evaluation, hearings, evaluation panels, communication of doubts, public hearing, right of defence, reasoned report, examination by the SCM and appeal before the Supreme Court of Justice with suspensive effect — is regulated in Articles 12–20, to which the draft makes no reference.

Thus, essential normative questions remain unanswered: does the judge have the right to a hearing before Commission No. 2? Does the judge have access to the case materials? Does the judge benefit from the assistance of a lawyer? Can the findings in the “Report on financial integrity” be challenged before they are taken over by the CSEJ? What is the legal nature of the report — binding or advisory for the CSEJ? The draft imports the severe evidentiary standard of external evaluation — “serious doubts” regarding the discrepancy between assets, expenses and income over the last 12 years, taking into account close persons (Article 11 para. (3) and (5)) — that is, in essence, a reversed burden of proof, without importing the package of procedural safeguards that compensated for it in the architecture of Law No. 252/2023.

4. The 40% threshold and the consequences of the “failed” rating — disproportionality and impermissible delegation

The rule according to which failure to reach the 40% rating under the integrity criterion constitutes grounds for the “failed” rating raises three distinct problems:

- **Indeterminacy of the methodology.** The method for calculating the threshold and the weight of the financial indicator in relation to the other four indicators of the integrity criterion are not established by law, but are left to SCM regulations. A threshold with the potential to lead to removal from office thus depends on subordinate normative acts — contrary to the requirement that the essential elements of the status of judges be regulated by organic law.
- **De facto vetting without vetting safeguards.** The “failed” rating triggers, under Law No. 544/1995, suspension by operation of law and the mechanism for removal from office. Failure under the financial integrity indicator therefore becomes, in fact, an external evaluation with dismissal consequences, but without the remedies architecture of Law No. 252/2023 — public hearing, examination by the plenary SCM on the basis of the full case file, appeal before an SCJ panel composed of judges who have passed the evaluation, and suspensive effect of the appeal.
- **Sanctioning asymmetry.** For identical substantive findings, a judge who fails the external evaluation is subject to a ban on holding public office for 5–7 years and loses the one-off allowance and special pension (Article 18 para. (6) of Law No. 252/2023), whereas the consequences for a judge who “fails” the performance evaluation are different. Regardless of the direction of the asymmetry, differentiated treatment for the same conduct is unjustified.

5. Inequality of treatment between categories of judges

The draft establishes three parallel legal regimes: (i) the 85 judges subject to external evaluation under the full procedure of Law No. 252/2023; (ii) approximately 200 judges of first-instance courts, evaluated by the same Commission No. 2, on the same substantive criteria, but within a different and incomplete procedural framework; (iii) approximately 58 judges appointed after 21 September 2023, fully exempted until 2028 and thereafter.

The justification for exempting the third category is fragile: even the informative note admits that, until two thirds of the members of the Board were appointed, the selection of candidates was carried out by the SCM itself (Article 25 para. (2) of Law No. 147/2023), meaning that some of these judges did not undergo an integrity screening equivalent to the one invoked as the basis for the exemption. The date of appointment is a formal criterion, not one related to the rigor of the verification actually applied. Separately, the order of evaluation — Chișinău → Bălți → Cahul → the other courts — is fixed in the law without objectively verifiable criteria beyond the “impact of judicial activity”, which fuels the perception of selectivity and exposes the mechanism to accusations of targeting.

Following the logic set out in the draft regarding the exemption of judges appointed after September 2023 from the new evaluation procedure, it follows that the legislator trusts the capacity of the SCM, which passed the pre-vetting evaluation, to professionally assess judges admitted into the system. Why, then, is it necessary to introduce an additional mechanism through this draft law for judges appointed earlier, while the same SCM can evaluate them in accordance with Law No. 147/2023?

6. Overlap with the SCM electoral cycle — risk to judicial independence

The informative note openly states that judges of first-instance courts elect the majority of judge-members of the SCM — 4 out of 6 — that the future process for selecting members of the SCM and its collegial bodies does not include a pre-vetting stage, and that there are “significant risks” regarding the future composition of the SCM. Launching an evaluation with eliminatory potential precisely over the electoral body of the future SCM, in proximity to the elections for that body, represents the type of temporal overlap that the Venice Commission treats as a direct risk to judicial self-administration — regardless of the good faith of the declared intention. The evaluation mechanism becomes susceptible to being perceived, and used, as an instrument for shaping the composition of the self-administration body.

7. Margin of discretion of the CSEJ vs. the Commission’s conclusions

The text of the draft provides that Commission No. 2 evaluates the indicator concerning financial integrity. In this wording, the evaluation of financial integrity appears to be assigned exclusively to the Commission for the Evaluation of Judges, without it being clear whether the CSEJ has its own

competence to examine or assess the conclusions formulated by that Commission.

The informative note, however, does not confirm the same logic. On the contrary, it indicates that the intervention of Commission No. 2 takes place within an auxiliary framework, intended to support the CSEJ in the technical aspects of the evaluation. In this regard, it states that, after receiving the Report on financial integrity, “the CSEJ will make the totals and related calculations provided for by Law No. 147/2023”, while the Commission “will only provide support to the CSEJ in carrying out tasks for which it does not have staff with the necessary qualifications”.

On the one hand, the informative note suggests that Commission No. 2 has a support role, while the CSEJ retains the main role in applying Law No. 147/2023. On the other hand, the draft states that the evaluation of the financial integrity indicator belongs exclusively to the Commission. Is the Report on financial integrity merely a technical/support document for the CSEJ, or does it represent a binding finding that may directly lead to failure of the evaluation?

8. Concerns regarding the Commission’s capacity

Although the number of Commission members has been increased, the capacity of the Commission’s secretariat may constitute a serious challenge in relation to the evaluation of an additional 200 judges within a short period of time — one year. Even if additional analytical staff are recruited, the time required for hiring and training reduces the time available for the major effort needed to carry out the evaluation.

9. Entry into force

The one-month entry-into-force period coincides with the deadline by which the SCM must harmonize its normative acts, update the performance evaluation plan and transmit the list of judges to the Commission — a timetable that is practically impossible to observe in a qualitative manner, with the risk that evaluations will begin before the secondary normative framework is finalized.

Essential conclusions

1. The transformation of the exceptional mechanism into a quasi-ordinary one, contrary to the principles enshrined by Law No. 252/2023 itself and to the Venice Commission's consistent case-law regarding the exceptional, one-off and time-limited nature of vetting;
2. The procedural gap: the application of the substantive vetting criteria without the procedural guarantees of vetting, within a mechanism with the potential consequence of removal from office. This establishes a hybrid regime, with multiple problems of guarantees and procedure, while its practical efficiency remains highly questionable.
3. If the authorities insist on involving Commission No. 2 in one form or another in the evaluation of first-instance judges, the Ministry of Justice should restart the process of drafting the law, ensuring maximum transparency and the participation of involved/interested parties.

Analytical note prepared in the context of Opinion No. 1282/2026 of the Venice Commission — Joint Opinion of the Venice Commission and the DGI on the draft legislative amendments concerning integrity verification and the evaluation of judges. Working document — June 2026.