

LEGAL AND INSTITUTIONAL ASPECTS REGARDING HUMAN RESOURCE MANAGEMENT IN COURTS

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***Abstract:** This article analyzes the legal-institutional aspects through the prism of human resources management. At the present stage, the effects of the reform on the efficiency of judicial services and the cost-effectiveness of the courts are a topic of discussion that is of concern to many stakeholders in society. The analysis of performance indicators shows that there are problems and difficulties related to the performance of human resources in the courts. The evaluation of the legal-institutional framework of human resources management in the courts of the Republic of Moldova made it possible to determine its adequacy for enhancing the performance of judicial and non-judicial staff.*

***Key words:** human resources management, reform, CSJ, CA, substantive courts.*

JEL: M10; M12.

Introduction

Since the acquisition of the independence of the Republic of Moldova, the judicial system has been subjected to a process of significant transformations with the aim of improving operational efficiency at all hierarchical levels: the Supreme Court of Justice (SCJ), the Courts of Appeal (CA) and the territorial courts. The reforms applied to the judicial system in the Republic of Moldova must lead to reasonable balances and manage crimes of various types in a continuously evolving society. Under these conditions, court personnel play an essential role in guaranteeing and respecting the fundamental human rights in a state of law.

Regulation of the activity of the courts and their staff

The judicial system is characterized by a double dimension: on the one hand, as public institutions, on the other hand, as entities that provide dispute resolution services, their operation and efficient management fall under the responsibility of the court management.

The impact of the reform on the efficiency of judicial services and the profitability of courts is a subject of debate of interest for multiple parties involved in society. At the same time, it is crucial to assess to what extent the reforms applied so far have contributed to improving the performance of the courts.

For the first level in the hierarchy of the court system, the court tends to deal with similar types of cases, generally covering a wide range of civil, criminal and family matters. Also, the responsibility for solving these cases rests with a single magistrate. Second, given that the first court takes on the bulk of the country's judicial workload, the busy calendar is not unusual. Even though certain specific types of cases may predominate in some courts and be absent in others, the similarities in the

distribution of routine and complex cases are far more pronounced than the differences. As a result, many magistrates intuitively understand the need for an efficient approach to routine cases, so as not to be overwhelmed by the timing required to resolve more complex issues. Third, magistrates have to cope with the demands and pressures associated with first-instance cases. They are familiar with the fast pace of the judicial process and their central role in resolving all types of litigation. However, to one degree or another, magistrates recognize the need to do more than hand down judgments. They must manage a complex network of people before, during and after each legal proceeding. The work context requires administrative skills, giving magistrates a secondary managerial role in the trial court.

The quality of court results reflects not only the character of the magistrate's decision, but also the management of the judicial process. Aspects such as the treatment of participants, the management of time and attention given to cases by magistrates, the implementation of innovative practices and the cooperation of magistrates with each other are crucial to the success of the court's work and the public's perception of it.

In order to avoid different interpretations in the process of court administration, it is important to make a distinction between jurisdictional administration and court administration.

Table 1.1. The differences between jurisdictional administration and court administration

Jurisdictional administration	Court administration
It covers issues of jurisdictional, procedural and administrative law.	It includes all the tasks and functions of support and infrastructure that allow judges to fulfill the judicial tasks of the court, as an institution that fulfills the obligations, considered as the third power in the state.
Improving the judicial system by: <ul style="list-style-type: none"> • integration of judicial systems; • regulating and providing the authority of the courts; • improving judicial selection procedures; • change of record keeping rules, etc. 	It refers to court administrators, clerks, and the diversity of support staff (courtroom staff, reporters, interpreters, IT staff, human resources specialists, accountants, etc.) to enable justice to be delivered through judges.

Source: Developed by the author based on [1].

Court administration is crucial because it enables courts to function efficiently and effectively. As Peter Drucker remarked: "Without institutions there is no management, and without management there are no institutions" [1]. When the courts operate effectively, the rule of law is enhanced and the 3rd power in the state suffers the same approach as the first 2 powers. Therefore, the administration of the courts directly influences their performance, regardless of the category of the court.

Subsequently, according to the Constitution of the Republic of Moldova, "judges of the courts are independent, impartial and immovable" [2]. In addition, according to the Law on judicial organization, "the judiciary is independent, separate from the legislative and executive power, having its own powers exercised through the courts" [4].

In Republic of Moldova, the judicial system is structured according to Figure 1.1.

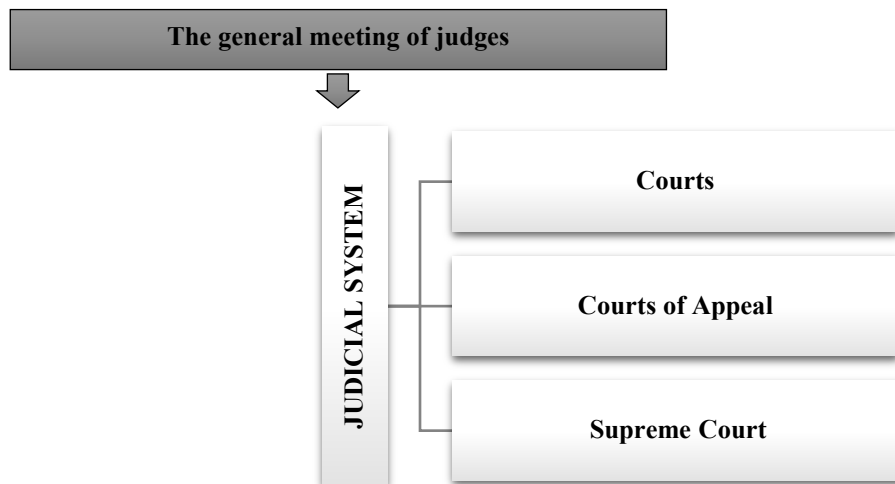


Figure 1.1. Organization of the judicial system in the Republic of Moldova

Source: Developed by the author based on [4].

The SCM represents an independent entity established for the purpose of organizing and ensuring the functioning of the judicial system, at the same time guaranteeing the independence of the judicial authority and its self-administration.

According to the law on judicial organization, "The General Assembly of Judges is composed of judges of all courts in the Republic of Moldova and ensures the implementation of the principle of self-administration of the judiciary" [4]. Judicial self-administration represents the right and the effective capacity of the courts to solve problems related to the "autonomous and responsible functioning of the judicial system" [4].

Until 2016, courts were present in every district residence and in all sectors of the Chisinau municipality; however, the adoption of the Law on the Reorganization of Courts reduced their number to 15 district judges. Also, the Courts of Appeal operate in a constituency that includes several territorial courts.

The Supreme Court of Justice (SCJ) operates in accordance with the Constitution of the Republic of Moldova and Law no. 64/2023 regarding the Supreme Court of Justice. According to this law, the SCJ is the supreme court in the Republic of Moldova, having the responsibility to ensure the uniform interpretation and application of legislation in the judicial system.

The number of judges and the staff required for each court are established according to the criteria provided in the law on judicial organization and the decisions of the Superior Council of Magistracy, including the Regulation on the criteria for establishing the number of judges in courts. The July 31, 2023 amendments to the law on judicial organization established a number of 504 judge posts for all courts in the Republic of Moldova.

It is important to note that the number of judges in the SCJ is determined by the Law on the Supreme Court of Justice, adopted in 2023, which provides for a total of 20 judges. According to this law, 11 of them are selected from among judges, while the other 9 come from among lawyers, prosecutors or university professors with a scientific degree in law.

As mentioned above, the Regulation on the criteria for determining the number of judges in courts aims to determine the optimal number of judges for each court. For this, a multitude of principles and criteria are applied (Figure 1.2).

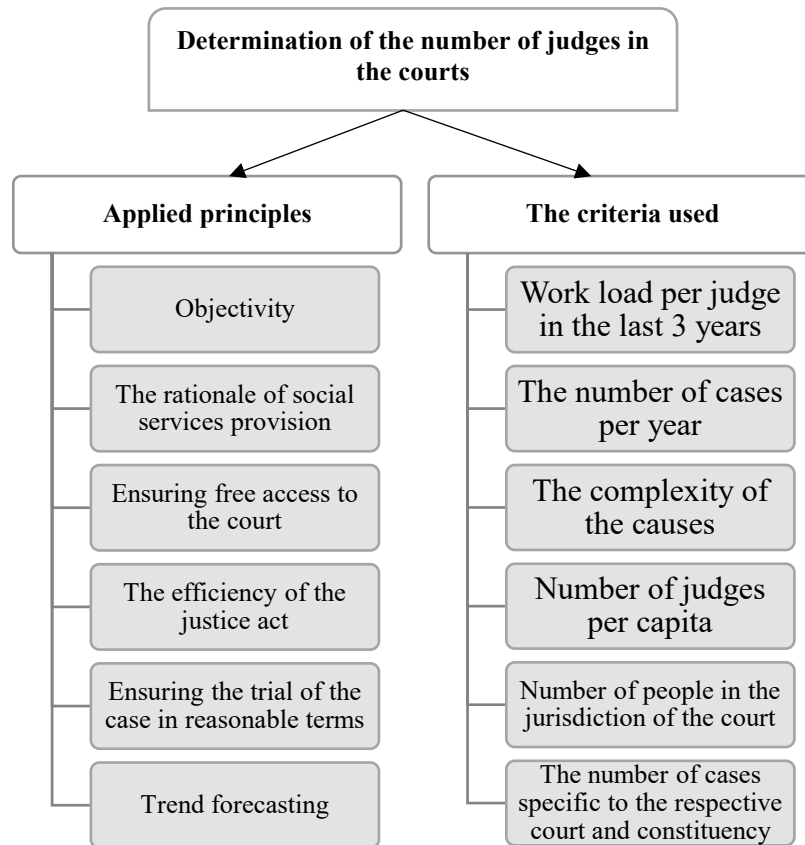


Figure 1.2. The principles and criteria applied to determine the need for judges
Source: Developed by the author after [3].

According to the respective methodology, the determination of the number of judges in the court is done at the initiative of the president of the court, who can make a request in this regard every 3 years. The Superior Council of Magistracy (CSM) can accept or reject that request. As for the other categories of personnel in the courts, their number is determined in accordance with the legislation in force.

The managerial activity of the court is coordinated by its president, while the organization and administration activities are managed by the court secretariat, which includes several positions. The regulation of specific HRM attributions for different categories of positions in the courts is carried out on the basis of specific laws adopted for this purpose (according to Figure 1.3).

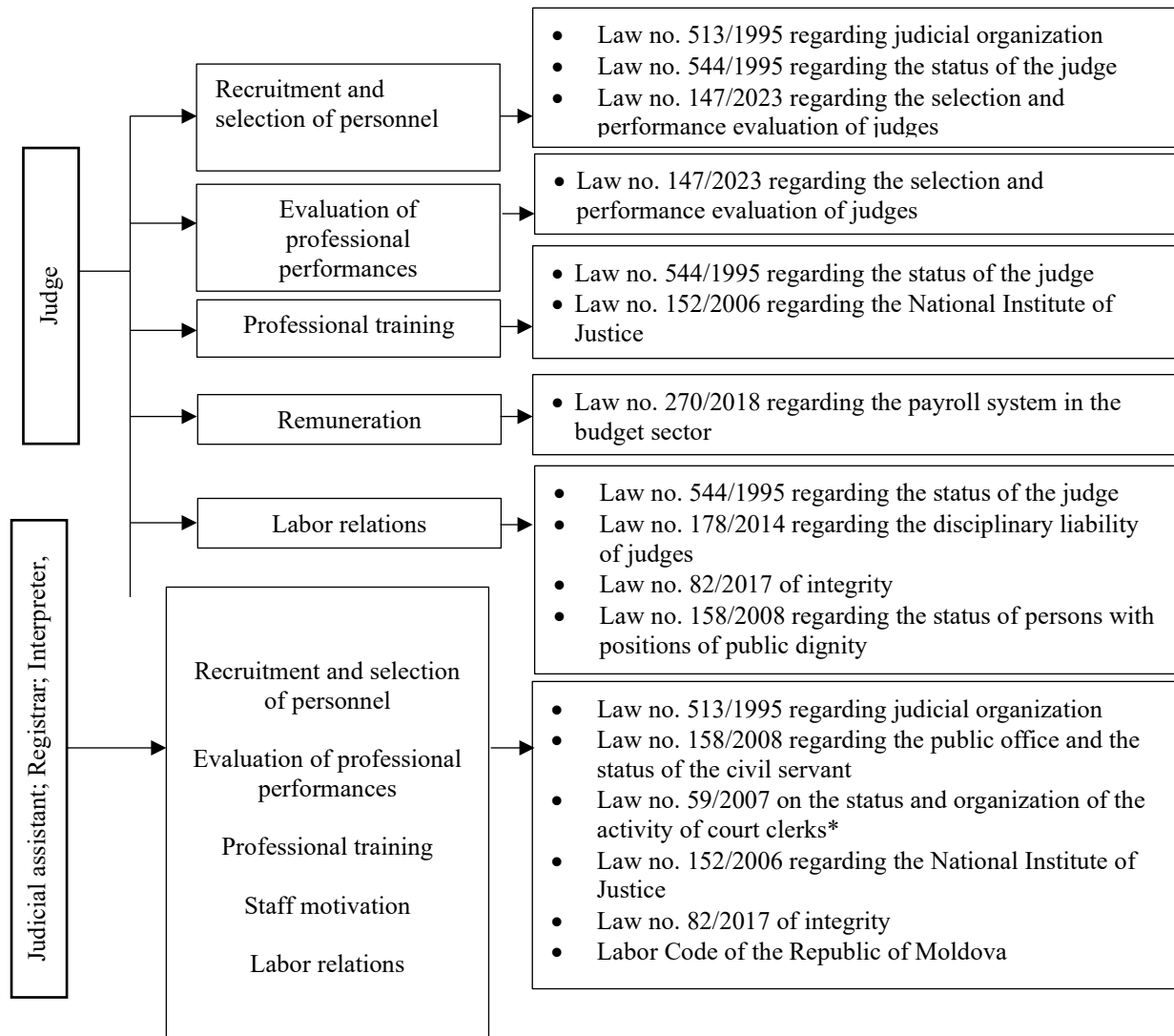


Figure 1.3. The legal framework regarding the regulation of HRM activities for certain positions in the courts

Source: Developed by the author after [5]; [6]; [7]; [8]; [9]; [10]; [11]; [12]; [13]; [14].

Starting from the HRM activities reflected in Figure 1.3, the Law 147/2023 shows the principles and criteria for the selection of judges. According to Annex 4, the stated principles and criteria allow for the most objective selection to ensure an efficient functioning of the courts, which will ultimately increase society's trust in the justice system. In the case of the other categories of personnel active in the judicial system, the selection is made in accordance with the Law on the public office and the status of the civil servant, as also reflected in Figure 1.3.

Another activity related to HRM and which is one of the objectives of our research refers to the evaluation of professional performances. According to the Law on the selection and evaluation of judges' performances, "judges' performances are evaluated in order to establish the level of knowledge and professional skills of judges, as well as the ability to apply theoretical knowledge in practice, to identify the weak and strong aspects of the judges' activity, to stimulate the tendency to improve professional skills and increase the efficiency of the activity of judges at the individual level and at the level of the courts" [14].

The professional evaluation of judges has an ordinary and an extraordinary character. The ordinary evaluation is carried out on the basis of three criteria: professional competence, organizational competence and integrity (Figure 1.4). Inter alia, from Figure 1.4, we note that the national legislation provides a set of indicators for the evaluation of the three categories of competences. Thus, for the evaluation of professional competence, 7 indicators are applied, in the case of organizational competence – 9 indicators, and for the evaluation of integrity, 5 indicators are used. If in the case of the evaluation of professional and organizational skills more quantitative indicators prevail that can be compared, in the case of the evaluation of integrity more qualitative indicators are observed, which makes their assessment more difficult. The interconnection between these indicators would increase the level of competences and skills of judges at work.

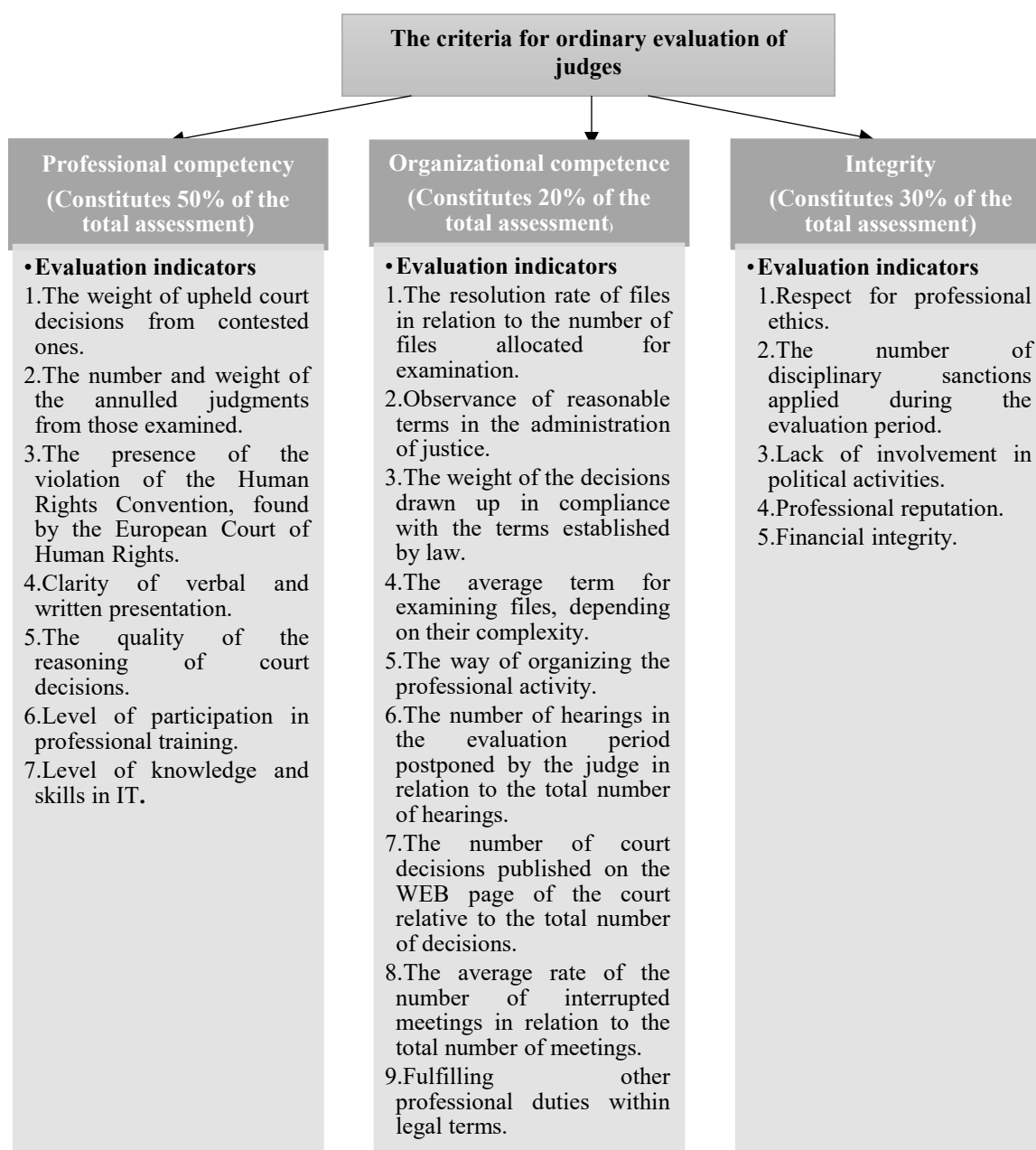


Figure 1.4. The criteria for ordinary evaluation of judges

Source: Developed by the author based on: [14].

Apart from the ordinary evaluation of judges' performances, the extraordinary evaluation is also applied. Usually, the extraordinary evaluation is used in the case of obtaining the qualification "insufficient" in the ordinary evaluation, or when promotion to a higher court is desired, or in the case of occupying a managerial position at a court of the same level. In the case of the extraordinary evaluation, the managerial capabilities of the judge are assessed, based on the performance indicators. The indicators in question aim to follow the professional path of the judge for the development of his career.

For the other categories of personnel in the courts, the performance evaluation is done according to the Law on the public office and the status of the civil servant. In the given case, performance evaluation is done by comparing the results obtained during the evaluation period with the predetermined objectives, and the results are used for salary, promotion or transfer. The performance criteria and indicators are established according to the specifics of the activities carried out at the court level.

The professional training of judges, judicial assistants, clerks and other categories of court employees is carried out within the National Institute of Justice, which periodically conducts continuous training courses, the duration of which must be 40 hours per year, as well as initial training courses for future judges and prosecutors. In the case of the other categories of court employees, the annual duration of professional training is established by consulting other governmental and legal institutions.

Although the HRM activities in the courts are regulated by a multitude of laws, nevertheless, at the current stage, society offers little confidence in the activity of judges. This could also be determined by the fact that even if more magistrates are targeted in criminal cases, until now no judge has executed his sentence, having an irrevocable Decision in this regard, a different fact for people who have no connection with the system judicial. This state of affairs in the judicial system perpetuates in the Republic of Moldova, which causes other sectors of the national economy to be affected.

Conclusions

As a result of the investigations carried out on the administration of personnel in the courts and their performance at all levels - the Supreme Court of Justice, the Courts of Appeal and the territorial courts - the following conclusions were drawn:

1. In the Republic of Moldova, there is an adequate legal and institutional framework for carrying out the legal act in accordance with the requirements of the European Union. Courts operate under a comprehensive set of laws that regulate legal, financial and behavioral aspects. They are engaged in a continuous process of improvement and adaptation to new requirements and changes taking place in society.
2. The administration of human resources in the courts is regulated by a multitude of laws and is supervised by several higher legal institutions. These institutions have the mission of supervising the activity of both judges and other categories of personnel within the courts. The Superior Council of the Magistracy (CSM) plays the role of a "watchful eye", monitoring the activity of all courts to ensure an efficient operation, in accordance with the legislation in force, which is constantly changing, according to European standards.

Bibliographical references

1. Aikman, A. (2007). The art and practice of court administration. Taylor & Francis Group, 453p. ISBN: 9781315087238.
2. Constitution of the Republic of Moldova. Available at: https://www.legis.md/cautare/getResults?doc_id=111918&lang=ro Accessed: 05. 09. 2023.
3. Decision of the Superior Council of Magistracy no. 212/8 of March 5, 2013 on the approval of the Regulation on evaluation criteria, indicators and procedure for assessing the performance of judges. Available at: https://www.legis.md/cautare/getResults?doc_id=111988 &lang=ro Accessed: 10. 01. 2024.
4. Law of the Republic of Moldova No. 514/1995 on Judicial Organization. Available at: https://www.legis.md/cautare/getResults?doc_id=112169&lang=ro Accessed: 31. 07. 2023.
5. Law of the Republic of Moldova No. 544/1995 on the Status of Judges. Available at: https://www.legis.md/cautare/getResults?doc_id=137572&lang=ro# Accessed: 25. 06. 2023.
6. Law No 947/1996 on the Superior Council of Magistracy. Available at: https://www.legis.md/cautare/getResults?doc_id=120592&lang=ro Accessed: 04. 08. 2023.
7. Law No 152/2006 on the National Institute of Justice. Available at: https://www.legis.md/cautare/getResults?doc_id=132887&lang=ro# Accessed: 09. 09. 2023
8. Law of the Republic of Moldova No. 59/2007 on the status and organization of the activity of court clerks. Available at: https://www.legis.md/cautare/getResults?doc_id=110230&lang=ro# Accessed: 05. 08. 2023.
9. Law of the Republic of Moldova No 158/2008 on civil service and civil servant status. Available at: https://www.legis.md/cautare/getResults?doc_id=135900&lang=ro# Accessed: 30. 07. 2023.
10. Law of the Republic of Moldova No 199/2010 on the status of persons holding public office. Available at: https://www.legis.md/cautare/getResults?doc_id=138405&lang=ro Accessed: 25. 08. 2023.
11. Law of the Republic of Moldova No 178/2014 on disciplinary liability of judges. Available at: https://www.legis.md/cautare/getResults?doc_id=135676&lang=ro Accessed: 10. 07. 2023.
12. Law of the Republic of Moldova No 76/2016 on judicial reorganization Available at: https://www.legis.md/cautare/getResults?doc_id=93527&lang=ro Accessed: 10. 09. 2023.
13. Law of the Republic of Moldova No 64/2023 on the Supreme Court of Justice. Available at: https://www.legis.md/cautare/getResults?doc_id=136304&lang=ro Accessed: 14. 09. 2023.
14. Law of the Republic of Moldova No 147/2023 on the selection and performance evaluation of judges. Available at: https://www.legis.md/cautare/getResults?doc_id=137518 &lang=ro Accessed: 08. 08. 2023.