



Independent Evaluation Commission for assessing the integrity of candidates
for the position of member in the self-administration bodies of judges and prosecutors

Comisia independentă de evaluare a integrității candidaților la funcția
de membru în organele de autoadministrare ale judecătorilor și procurorilor

***Decision No. 3 of 26 October 2022 on the Candidacy of Ioana CHIRONET,
Candidate for the Superior Council of Magistracy***

The Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (“the Commission”) deliberated in private on 7 and 26 October 2022. The members participating were:

1. Herman von HEBEL
2. Victoria HENLEY
3. Nadejda HRIPTIEVSCHI
4. Vitalie MIRON
5. Tatiana RĂDUCANU
6. Nona TSOTSORIA

The Commission delivers the following decision which was adopted on that date:

I. The procedure

Ioana CHIRONET, judge at the Chișinău district court, Ciocana office (“the candidate”), was on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 6 April 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge for five years on 5 August 2015 to serve in Ciocana district court, Chișinău municipality. The candidate was appointed as a judge until the retirement age on 12 August 2020. The candidate was appointed judicial inspector in the Judicial Inspection of the Superior Council of Magistracy on 29 May 2018 and as chief-judicial inspector on 2 June 2020.

On 21 June 2022 the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 5 July 2022. The candidate submitted the completed questionnaire to the Commission on 5 July 2022.

On 8 July 2022 the Commission sent a request to the candidate for completing and submitting by 15 July 2022 the Declaration of assets and personal interests for the past 5 years as required by art. 9 para. (2) of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter “Law No. 26/2022”). The declaration also includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. The candidate submitted a completed declaration to the Commission on 15 July 2022.

Pursuant to art. 10 para. (1) of Law No. 26/2022, after receipt of the candidate’s declaration and questionnaire, the Commission obtained information from numerous sources in order to assess the candidate’s financial and ethical integrity. The sources from which information was obtained concerning evaluated candidates generally included the National Integrity Authority, State Fiscal Service, General Inspectorate of Border Police, financial institutions, public institutions, open

sources such as social media and investigative journalism reports and reports from members of civil society. Not all sources produced information concerning each candidate and not all of the information produced by sources about a candidate was pertinent to the Commission's assessment. All information received was carefully screened for accuracy and relevance.

To the extent that issues were raised from the candidate's declaration and questionnaire and collected information, those issues were raised in written questions with the candidate and during the public hearing.

Written communication with candidate:

On 30 August 2022 the Commission sent to the candidate a request for clarifying information, containing 6 questions, including 15 sub-questions and 4 requests for further documentation. The candidate replied within the requested time period on 2 September 2022 to all questions and sub-questions. The candidate indicated that some information would be sent later due to late response by the institution in possession of the respective information. The candidate sent additional information on 9 September 2022.

On 22 September 2022, the Commission send a second round of 2 questions and 3 sub-questions, which included 2 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 25 September 2022 to all questions and sub-questions and produced the required documents.

On 7 October 2022, the candidate took part in a public hearing of the Commission.

II. The law relating to the evaluation

The Commission's evaluation of candidates' integrity consists of verifying their ethical integrity and financial integrity (art. 8 para. (1) of Law No. 26/2022).

Art. 8 para. (2) of Law No. 26/2022 provides that a candidate is deemed to meet the criterion of *ethical integrity* if:

- a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer;
- b) there are no reasonable suspicions that the candidate has committed corruption acts, acts related to corruption or corruptible acts, within the meaning of the Law on Integrity No. 82/2017;
- c) has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

A number of versions of ethical codes applied to judges over the period of time covered by the evaluation. The codes were *Judge's Code of Professional Ethics*, adopted at the Conference of Judges on 4 February 2000, *Judge's Code of Ethics*, approved by the Superior Council of Magistracy decision No. 366/15 on 29 November 2007, *Judge's Code of Ethics and Professional*

Conduct, approved by decision No. 8 of the General Assembly of Judges of 11 September 2015, amended by decision no. 12 of the General Assembly of Judges of 11 March 2016, as well as the *Commentary to the Code of Judges' Ethics and Professional Conduct*, approved by Superior Council of Magistracy's decision No. 230/12 of 8 May 2018. Since 2018, the *Guide for Judges' Integrity* approved by the Superior Council of Magistracy's decision No. 318/16 of 3 July 2018 is another relevant source for the purpose of assessing judicial integrity issues.

Art. 8 para. (4) of Law No. 26/2022 provides that a candidate shall be deemed to meet the criterion of *financial integrity* if:

- a) the candidate's assets have been declared in the manner established by law;
- b) the Evaluation Commission finds that his/her wealth acquired in the last 15 years corresponds to the declared revenues.

Art. 8 para. (5) of Law No. 26/2022 provides that in order to assess the applicant's financial integrity, the Commission is required to verify the following:

- a) compliance by the candidate with the tax regime in the part related to the payment of taxes when using the means and income derived from the property held, as well as taxable income and the payment of import duty and export duty;
- b) compliance by the candidate with the regime of declaring assets and personal interests;
- c) the method of acquiring the property owned or possessed by the candidate or persons referred to in art. 2 para. (2), as well as the expenses associated with the maintenance of such assets;
- d) the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2);
- e) existence or not of loan, credit, leasing, insurance or other contracts capable of providing financial benefits, in which the candidate, the person defined in art. 2 para. (2) thereof, or the legal entity in which they are beneficial owners, is a contracting party;
- f) whether or not donations exist, in which the candidate or the person established in art. 2 para. (2) has the status of donor or recipient of donation;
- g) other relevant aspects to clarify the origin and justification of the candidate's wealth.

In assessing and deciding upon the criteria related to financial and ethical integrity, the Commission is not to depend on the findings of other bodies competent in the field concerned. (art. 8 para. (6) of Law No. 26/2022). The Commission is required to assess the information gathered about candidates using its own judgment, formed as a result of multi-faceted, comprehensive and objective review of the information. None of the submitted materials has a predetermined probative value without being assessed by the Commission (art. 10 para. (9) of Law No. 26/2022).

A candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the above-listed requirements which have not been mitigated by the evaluated person (art. 13 para. (5) of Law No. 26/2022). As noted in the recent

Venice Report on vetting in Kosovo, “In a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources.” Also, “[I]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability.” Venice Commission, CDL-AD(2022)011-e, Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), §§10,9. The shifting of the burden of proof to the candidate, once the evaluating body has identified integrity issues, has been found permissible by the European Court of Human Rights, even in the vetting of sitting judges who may lose their positions or otherwise be sanctioned as a consequence of the evaluation. In *Xhoxhaj v. Albania*, no. 15227/19, §352, 31 May 2021 the Court stated that “it is not per se arbitrary, for the purposes of the “civil” limb of Article 6 § 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC [Independent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file.” Under art. 5 para. (1) of the Evaluation Rules of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administrative bodies of judges and prosecutors, pursuant to Law No. 26/2022, of 2 May 2022 (hereinafter “Evaluation Rules”), only if a candidate fully meets all of the indicators set for the in art. 8 para. (2), (3) and (4) of Law No. 26/2022 does the candidate satisfy the criterion of “ethical and financial integrity.”

III. Evaluation of the candidate

At the hearing, the candidate was asked about the following financial issues: 1) the non-disclosure of a loan; 2) failure to declare two bank accounts in the manner prescribed by law; 3) failure to declare the correct price for selling three land plots and 4) receipt of an amount different from the contract value. The Commission did not have serious doubts concerning any ethical integrity issues with respect to the candidate as per art. 8 para. (1) and (2) of Law No. 26/2022.

1. Non-disclosure of a loan

a. The facts

On 3 May 2019 the candidate received a loan of 140,000 MDL at 9% interest rate for two years, due in 2021. The candidate declared this loan in her 2019 and 2020 annual declarations submitted to the National Integrity Authority (*hereinafter annual declarations*) but did not declare it in her 2021 annual declaration. In her answers submitted to the Commission on 2 September 2022, the candidate provided the copy of the loan agreement and explained that she did not declare the debt in 2021 because the monthly payment for the credit reimbursement was 6,591.29 MDL and in 2021 she only had 4 remaining payments to make, which is below 15 average salaries per economy and the law does not require her to declare this debt.

At the public hearing, the candidate confirmed that she disclosed the loan only in 2019 and 2020 and did not disclose it in 2021 because the remaining amount was small, only four months remained, and it did not exceed the threshold required by law for debts to be declared.

b. Law relating to disclosure of assets and financial interests

Art. 4 para. (1) lit. e) of Law No. 133/2016 provides that the subject of declaration shall declare “personal debts of the subject of the declaration, of his/her family members or partner in the form of debt, bond, mortgage, guarantee, issues in the benefit of third persons, loan and/or credit, if their value does not exceed 10 average salaries per economy.

In 2021, 10 average salaries per economy amounted to 87,160 MDL (8,716 MDL * 10).

Art. 6 para. (1) of Law No. 133/2016 provides that “the declaration shall be submitted every year, by the 31st of March, indicating the income earned by the subject of the declaration together with his/her family members or cohabitant in the previous financial year, the assets held and his/her personal interests as provided for under art. 4 para. (1) lit. b) - m) on the date of the declaration submission.”.

c. Reasoning

The Commission has established that the candidate declared the loan of 140,000 MDL in 2019 and 2020, and she did not declare the remaining debt of 26,365.16 MDL (four monthly payments of 6,591.29 MDL) in 2021. The Commission established that at the moment of submitting the annual declaration for 2021, in March 2022, the candidate's debt had been extinguished, the last instalment having been paid on 9 April 2021.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5), Law No. 26/2022) as to the candidate’s compliance with the criterion of financial integrity as per art. 8 para. (4) lit. a) of Law No. 26/2022 with respect to the non-disclosure of a loan in the last due year because at the date of submission of her annual declaration the candidate’s debt had been extinguished.

2. Failure to declare two bank accounts in the manner prescribed by law

a. The facts

During 2012 – 2015 the candidate had one bank account that she opened in 2003, last used in May 2008 and one bank account (salary related) that she has used from 2014 to the present. The bank account opened in 2003 was not declared in the candidate’s annual declarations for 2012-2015 and the bank account opened in 2014 was not declared in the candidate’s annual declarations for the years 2014-2015. In her written answers submitted to the Commission, the candidate declared that in her annual declarations she never declared her bank accounts, but has always declared only the amounts that constituted her and her family members’ annual income, as well as the amounts that constituted debts of her family.

At the public hearing, the candidate stated that she did not declare the account opened in 2003, which was most probably a salary related one, because she forgot about the account. The candidate explained that the account opened in 2014 was also a salary related one and since she declared all her income, she overlooked the provisions requiring the declaration of bank accounts as well.

b. Law relating to disclosure of assets and financial interests

Art. 4 para. (1) lit. d) Law No. 1264/2002, amended by Law No. 181/2011, applicable for annual declarations submitted for the years 2012-2015: “financial assets, meaning bank accounts, investments funds, equivalent forms of savings and investment, investments, bonds, cheques, bills of exchange, loan certificates, other documents that incorporate patrimonial rights of the declarant or of his/her family members, direct investments in national currency and in foreign currency by him/her or family members, as well as other financial assets.”

c. Reasoning

The Commission has established that the candidate did not declare the bank account opened in 2003 in the candidate’s annual declarations for the years 2012-2015 and the bank account opened in 2014 in the candidate’s annual declarations for the years 2014-2015. The Commission noted that although the legal provisions on the requirement to declare the bank accounts were clear, the candidate’s answers revealed no intention to hide, but rather an unintentional overlooking of the need to declare.

The Commission noted the fact that the bank account opened in 2003 was inactive since May 2008, which is a circumstance that corroborates the candidate’s statement that she forgot about it. While the account opened in 2014 was active, the Commission noted the candidate’s behaviour on declaring her income throughout the evaluated period and her acknowledgement that she overlooked the provisions requiring the declaration of bank accounts in addition to declaring the income. The Commission also noted that no major turnover on the two bank accounts was found: the bank account opened in 2003 was inactive since May 2008 with zero balance, while the one opened in 2014 had only salary related income, which was declared by the candidate.

The Commission did not find any benefit for the candidate not to disclose the two bank accounts and appreciated her genuine answers and provision of all bank statements as requested. The candidate's answers remained consistent with her demeanor towards declaration of all the income generated by the candidate and the candidate's family members over the years. The Commission did not find any other sources of income besides the ones declared by the candidate. At the request of the Commission, the candidate offered all the requested bank statements within the offered time. Moreover, a review of her annual declarations showed she disclosed issues that did not need to be disclosed, e.g., a loan that was under 10 average monthly salaries per economy, and thus, a lack of intent to thwart the legal regime on declaring financial assets. Even if the non-declaration of the two bank accounts constitutes a violation of the legal regime on declaring financial assets, it does not amount to a serious doubt to disqualify the candidate.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate’s compliance with the criterion of financial integrity as per art. 8 para. (4) lit. a) of Law No. 26/2022 with respect to non-declaration of the two bank accounts because the Commission did not establish an intention to hide.

3. Failure to declare the correct price for selling three land plots

a. The facts

On 16 April 2019, the candidate sold three land plots, which she had inherited, in a village of

Criuleni district. In her annual declaration for 2019 she indicated the amount of 43,000 MDL as the selling price for these land plots. In her tax declaration she indicated the sales price of 16,680 MDL. The candidate did declare the capital increase to the tax authorities and paid the relevant taxes. When she was asked by the Commission about the difference between the price on her annual declaration and on her tax declaration, the candidate explained that the correct price was the one declared to the Tax Service, namely 16,680 MDL. This is also confirmed by the sale-purchase contracts of the three land plots that the candidate provided to the Commission. The candidate indicated that the price of 43,000 MDL in her annual declaration was a mistake.

At the public hearing, the candidate confirmed that the price of 43,000 MDL in her annual declaration was a mistake and that the correct price was 16,680 MDL as she has reported to the tax authorities. She also confirmed that she discovered the mistake only upon receiving the Commission's question in this respect.

b. Law relating to disclosure of assets and financial interests

Art. 4 para. (1) lit. a) of Law No. 133/2016 requires declarants to declare "income received by the declaration subject together with family members, concubine in the fiscal preceding year".

c. Reasoning

The Commission took note of the fact that the candidate promptly acknowledged to the Commission the mistake made in her annual declaration. The fact that the candidate declared the amount of the sales price consistent with the contract to the tax authorities and paid all the taxes related to the selling of the three land plots corroborate her statement that the price listed on her 2019 declaration was a mere mistake. The candidate's error did not influence the amount of taxes she was required to pay or have other consequences. Also, the candidate timely provided full documentation to mitigate any concerns raised about the issue. Accordingly, the Commission considered the mistake not to be a major one.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial integrity as per art. 8 para. (4) lit. a) of Law No. 26/2022 with respect to the mistake in her annual declaration regarding the price for the three land plots because the candidate promptly acknowledged to the Commission the mistake and the Commission considered the mistake not to be a major one.

4. Receipt of an amount different from the contract value

a. The facts

In her 2017 annual declaration, the candidate declared the sale of a plot of land, a house and an accessory building to the house, which she had inherited, in a village in Criuleni district for the price of 6,000 EUR (appr. 123,409 MDL at that time). She also declared the sale amount of 123,409 MDL in her tax declaration form and paid the relevant taxes. In response to questions from the Commission about the transaction, the candidate provided the Commission with the sale-purchase contract, as well as the bank records. The bank records showed a deposit of 202,970 MDL to a bank account of the candidate on the date of the sale and a withdrawal in the same amount the following day. When asked about the discrepancy between the sales price on her annual declaration and the amount of funds deposited and withdrawn, the candidate explained

that the purchaser had obtained a loan of 205,000 MDL, more than the contract price, to cover repairs and the connection of utilities to the property. She further related that the full amount of the loan was deposited to the candidate's account at the bank's insistence. The candidate stated that she kept the contract amount (123,409 MDL) and gave the purchasers the remaining 79,561 MDL. The candidate also produced a declaration from the purchaser attesting to the same version of the events and the credit contract from the purchaser for a loan in the amount of 205,000 MDL.

At the public hearing, the candidate confirmed the above facts and explained that she agreed to receive a higher amount than the one indicated in the contract and give the difference back to the purchaser. She stated that she did not give this transaction much thought as she wanted to help the new residents of the property who were a young family, expecting a child, and a larger loan – which the bank agreed to -- was needed to make the house habitable. She also acknowledged she did not foresee at that moment that this transaction could raise any issues, she simply did not give it enough thought.

b. Law relating to disclosure of assets and financial interests

Art. 4 para. (1) lit. a) of Law No. 133/2016 requires declarants to declare “income received by the declaration subject together with family members, concubine in the fiscal preceding year”.

c. Reasoning

The evidence before the Commission is that the candidate received a higher amount than the sales price for the property and that she has returned the difference to the purchaser. The Commission finds that such transactions potentially raise doubts regarding the ethical and financial integrity of the candidate. The Commission established that the candidate provided a plausible explanation for her actions, namely she wanted to help the purchaser. The discrepancy between the sales price and the amount paid to the candidate came to the Commission's attention only through documentation provided by the candidate herself when questioned about the transaction. The candidate timely provided both the explanations, in a clear and candid manner, as well as all related documents. The candidate also acknowledged that she did not give this transaction much thought when she entered it and that she perhaps should have considered it with more care. The Commission did not establish any intention of the candidate to hide any income, she declared the amount indicated in the contract and paid all relevant taxes. The bank funded the loan in the larger amount. While this transaction raises doubts, the Commission found that they do not amount to a serious doubt warranting disqualification of the candidate.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial integrity as per art. 8 para. (4) lit. a) of Law No. 26/2022 with respect to the candidate's acceptance of a higher amount than in the contract and returning the difference to the purchaser because the Commission did not establish any intention of the candidate to hide any income and the difference that she paid back to the purchaser is not significant compared to her income as would indicate potential benefits to her from not disclosing it. Moreover, the purchaser provided a statement and records of the transaction that credibly corroborated the candidate's explanation.

IV. Decision

Based on art. 8 para. (1), (2) and (4) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate is compliant with the ethical and financial integrity criteria and thus passes the evaluation.

V. Appeal and publication of the decision

Art. 14 para. (1) of Law No. 26/2022 provides that a candidate is entitled to appeal a decision of the Commission within 5 days from receiving the decision.

Art. 13 para. (7) of Law No. 26/2022 provides that this decision is sent by email to the candidate and to the institution responsible for organizing the election or competition, which in the present case is the Superior Council of Magistracy. If within 48 hours of sending the decision, the candidate does not notify the Commission of his or her refusal to publish the decision, the decision shall be published on the website of the Superior Council of Magistracy in a depersonalized form, except for the surname and first name of the candidate that remain public. The Commission will also publish the decision on its website if the candidate does not object to publication.

This decision was adopted unanimously by all participating members of the Commission.

Done in English and translated into Romanian.

Signature:



Herman von HEBEL
Chairman, Commission