



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. 15 of 11 January 2023 on the Candidacy of Aliona MIRON,
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 30 December 2022, 5 January 2023 and 11 January 2023. 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

Aliona MIRON, judge at the Supreme Court of Justice (“the candidate”), is 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 21 April 2009 to serve in Riscani Court in Chisinau. The candidate was appointed as a judge until the retirement age on 30 April 2014. The candidate was appointed member of the Disciplinary College for six years on 20 October 2017. On 9 September 2021, the candidate was appointed as judge at the Supreme Court of Justice.

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 14 July 2022.

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 3 August 2022 the Commission sent the candidate a request for clarifying information, containing seven questions, including 22 sub-questions and seven requests for further documentation. The candidate replied within the requested time period, on 7 August 2022, to all questions and provided all of the requested documents.

On 14 September 2022, the Commission sent a second round of 22 questions, including 58 sub-questions and 16 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period, on 17 September 2022, but did not provide all of the requested documents.

On 21 October 2022, the Commission sent a third round of eight questions, including 22 sub-questions and nine requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period, on 24 October 2022, to all questions and provided most of the requested documents.

The candidate did not request access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022 and therefore did not receive the materials.

On 30 November 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.

Also, the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity as The Bangalore Draft Code of Judicial Conduct 2001 and as revised at the Round Table Meeting of Chief Justices on 25-26 November 2002 and endorsed by United Nations Social and Economic Council, resolution 2006/ 23 ("Bangalore Principles of Judicial Conduct") provide relevant guidance.

Opinion No. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. N° 3") provides further guidance.

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. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of the assets of persons close to candidates, as defined in Law No. 133/2016 on Declaration of Assets and Personal Interests, as well as of the persons referred to in art. 33 para. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

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.

Shifting 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, approved on 2 May 2022, according to Law No.26/2022, (hereinafter “Evaluation Rules”), only if a candidate fully meets all of the indicators set for the in art. 8 para. (2)- (5) of Law No.26/2022 does the candidate satisfy the criterion of “ethical and financial integrity.”

III. Evaluation of the candidate

The candidate was asked at the hearing about the following financial and ethical issues:

1. Source of funds for a 10,000 EUR loan and Declarations to National Integrity Authority (NIA) and the Commission about the loan

a. The facts

In her annual declarations on assets and personal interests submitted to the National Integrity Authority (hereinafter “annual declarations”) for the years 2015, 2016 and 2017, the candidate declared a loan of 10,000 EUR with no interest and no due date that was contracted in 2015 from her husband’s relative. In her 2018 annual declaration and all subsequent declarations, the candidate declared a 5,000 EUR loan with no interest and with no due date from the same person. The official registered income of her husband’s relative and the relative’s spouse for the five years preceding the loan was an average of 55,850 MDL per year (41,500 MDL – wife; MDL 14,350 - husband), est. 2,700 EUR. According to bank records, in 2011 and 2012 the husband’s relative was paying installments on a 7,500 MDL credit contracted in 2011.

In written communication with the Commission, the candidate explained that the 10,000 EUR loan from her husband’s relative was contracted to pay the remaining installments for an apartment that the candidate bought at a preferential price in 2015 and 2016 through a program for improvement of living conditions of judges and court staff at the candidate’s court. In response to the Commission’s first round of questions, the candidate stated that over the year 2018 “in several installments, a part of the loan was repaid – 5,000 EUR. This was not documented because it is a close relative that can confirm it at any time”. With her response, the candidate submitted a written statement from the relative which stated: “[...] during the year 2018 the amount of 5,000 EUR was reimbursed to me”. The statement further claimed that the source of funds for the loan were the relative’s family’s savings. The spouse of the husband’s relative previously worked as an engineer and later moved to work abroad. According to the candidate, for some time, the spouse of the husband’s relative imported, repaired and sold cars and some household appliances.

In response to the Commission’s second round of questions, when asked for details about how the 5,000 EUR were reimbursed (including the dates of payments), the candidate stated: “Regarding the repayment of the loan of 5,000 EUR in 2018, I inform you that it was not repaid in monetary amounts, documented in writing”. The husband’s relative and the relative’s spouse moved into the candidate’s apartment at the end of 2016 due to the relative’s health condition. In exchange for the candidate’s family’s involvement in the care, procurement of medicine, transport, utilities, etc., the relatives decided to cancel the sum of 5,000 EUR from the debt.

At the public hearing, the candidate reiterated the claims made in her written communication with the Commission. The candidate stated that she did not pay back the 5,000 EUR as the relatives decided to “forgive” this loan for all the help that they had received, including living with the candidate’s family in their apartment since 2016. The candidate claimed that the relative also refused to have the remaining portion of the loan paid back, but the candidate’s husband insisted that they should repay the debt, which is why the candidate still declared 5,000 EUR debt remaining on the loan. When confronted with the inconsistency in her annual declarations (the 10,000 EUR and the 5,000 EUR), the candidate acknowledged that she was wrong and made a mistake when she changed the “initial amount” of the loan from 10,000 EUR to 5,000 EUR.

As to the source of funds for the loan, the candidate’s explanation was consistent with her written communication. She explained that besides the savings from salary, the relatives imported and sold cars and appliances.

b. The law

Art. 8 para. (5), lit. c) and d) of Law No. 26/2022 provides that the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2). Pursuant to art. 8 para. (5) lit. e), the Commission is also required to verify the existence of loan agreements where the candidate is a contracting party.

Pursuant to art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 a candidate’s failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of assets of persons close to candidates, as defined in Law No. 133/2016 on declaration of assets and personal interests, as well as of third persons referred to in art. 33 para. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

Close persons, as defined in Law No. 133/2016 on declaration of assets and personal interests, are: “husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law).

Art. 4 para. (1) lit. f) of Law No. 1264/2002 on the declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in effect in 2015) requires the subject of declaration to declare: "debts in the form of debits (including unpaid taxes), mortgages, guarantees issued for the benefit of third parties, loans and credits."

Art. 4 para. (1) lit. e) of Law No. 133/2016 on declaration of assets and personal interests (in

effect since 2016) requires the subject of declaration to declare "the personal debts of the subject of the declaration, his/her family members or his/her cohabitant in the form of any debt, pledge, mortgage, guarantee issued for the benefit of a third party, loan and/or credit, if the value of the same exceeds the value of 10 average national salaries;"

Items 41 and 42 of the Regulation on the way of filling in the declaration of assets and personal interests in electronic form, approved by NIA Order No. 15 of February 27, 2018, pursuant to the Law no. 133/2016 on declaration of assets and personal interests, provides that the subject of the declaration will include in the heading "Initial amount" the amount of the debt in accordance with the legal act, generating the debt.

c. Reasoning

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests and is required to verify sources of income and methods of acquiring assets by the candidate, family members and close persons to the candidate. The Commission is also required to verify the existence of loans if the candidate is a contracting party.

Three aspects of the 10,000 EUR loan raised questions. First, the inconsistency in the candidate's declaration of the loan amount in her annual declarations as 10,000 EUR between 2015-2017 and 5,000 EUR between 2018-2021. Second, the source of funds for the relative to lend 10,000 EUR to the candidate's family. And, finally, the inconsistency in the candidate's written communication with the Commission and the written statement submitted by the relative as to whether the candidate paid back 5,000 EUR or whether that amount was forgiven.

At the public hearing, the candidate conceded that she should not have changed the amount of the loan from 10,000 EUR to 5,000 EUR in her 2018 and subsequent annual declarations in light of the requirement that the "initial" amount of the loan be declared, not the amount of remaining debt.

Of greater importance was the source of income for the loan from the husband's relative and the repayment of the debt. The candidate and the relative claimed that the source of funds for the loan was savings from salaries and from importing and selling automobiles and other goods. The official registered income of the relative and the relative's spouse for the five years preceding the loan was an average of 55,850 MDL per year (est. 2,700 EUR), which raises doubts about their ability to make a loan in an amount that was the equivalent of almost four years of their combined salaries. Moreover, bank records showed that in 2011 and 2012 the relative was paying installments on a 7,500 MDL credit contracted from a Moldovan bank in 2011. This fact raises doubts regarding the capacity of the candidate's relative to accumulate savings in the amount of 10,000 EUR, only three years after the relative had finished payment of installments for a loan of only 7,500 MDL. The Commission's concerns are also corroborated by the fact that no information was provided by the candidate or the relative about the amount of savings the relatives had, or the amount of income generated by the importation and sale of vehicles and goods.

The doubts generated about the source of funds for the loan were aggravated by the lack of

consistency in the statements made by the candidate and the husband's relative about the reduction of the loan amount. The candidate first stated that "in several installments, a part of the loan was repaid – 5,000 EUR." The relative echoed that narrative stating, "during the year 2018 the amount of EUR 5,000 was reimbursed to me." When asked for the dates and amounts reimbursed, the candidate conceded that the loan was "not repaid in monetary amounts" but was cancelled by the relatives because of the involvement of the candidate's family in care and procurement of medication, transport and full payment of utilities after the relatives moved in with the candidate and the relative had medical issues. The explanation of the supposed cancellation of 5,000 EUR of the debt was notably inconsistent with the earlier statements. Moreover, according to the candidate, the relatives moved in with her towards the end of 2016 and presumably began incurring expenses. Although it was represented to the Commission that the expenses were incurred in 2018, this seems unlikely in terms of when the relatives moved in.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criteria of financial and ethical integrity as per art. 8 para. (2) lit. c), (4) lit. a) and b), (5) lit. b), c), d) and e) of Law No. 26/2022 with respect to the source of funds for the 10,000 EUR loan, the reduction of the loan and the inconsistent declarations to NIA about the loan, which have not been mitigated by the candidate.

2. Costs of construction of the 190 sq.m. house located in Chisinau

a. The facts

On 3 October 2014 the candidate's mother purchased two land plots of 0,55 ha located in Chisinau municipality. The prices stated in the contract were 242,261 MDL and 241,386 MDL. In 2015, the candidate's mother started construction of two identical houses with a total surface of 190 sq.m. each. The candidate's mother paid the costs of the construction of both houses before she and her husband transferred the property rights to one of the houses to the candidate and her spouse.

On 20 March 2022, one of the houses being constructed by the candidate's mother was given a Certificate of Cadaster which states the value of the house as 2,450,000 MDL. The candidate's parents moved into that house in June 2018. The other house was transferred to the candidate and her husband on 2 March 2018 through two alienation contracts (a separate contract for each of the candidate's parents) with the condition of maintenance for life. The contracts indicated that the house was 70% finished and evaluated the cost of the land and the construction as 460,838 MDL. The candidate explained in writing after the hearing that the value of the house in the contracts was because there were two alienation contracts with half shares from the mother and the father each for 460,838 MDL, or a total of 921,676 MDL. In her 2018 annual declaration signed on 29 March 2019, the candidate declared the value of the land plot as 242,261 MDL and the value of the house as 679,415 MDL, consistent with the value stated in the contract.

In written communication with the Commission, the candidate provided the sale-purchase contracts of the plots, the alienation contracts with the condition of maintenance for life and the report on the degree of finalization of her house. In response to questions about the cost of construction, the candidate stated that neither she or her mother know the amount spent to

construct the two houses and no documentation was produced regarding the costs of construction. Accordingly, they were unable to provide any breakdown of the costs of construction of each of the houses or of the amount spent on the construction of the house donated to the candidate before and after the house was transferred.

At the public hearing, the candidate reiterated that neither she or her mother had any idea about the costs of construction of the houses. She mentioned that she knew that the source of funds used by her parents was legal and therefore she did not doubt her mother's ability to invest in the property, nor did the candidate consider keeping any kind of records of the expenses. The candidate explained that in 2018, when the alienation contracts were concluded, the degree of finalization of the house was based on a report made in March 2017, a year prior to the alienation contracts. Therefore, the finalization of the house was more advanced than 70% in 2018, when the candidate received the house. The candidate stated that her family did not advance much in the construction since they received the house, which is why they did not make a different evaluation of the degree of finalization. She claimed that the construction work done by the candidate's family has been minor: some painting works, plastering, installation of the kitchen and other cabinetry. The candidate informed the Commission that most of the building materials were purchased before the house was transferred to her in 2018 and that if additional materials were needed, such as "glue, a few paint cans, brushes etc.," she bought them from her salary. According to the candidate, these costs did not reach the threshold amount to require disclosure. Moreover, the candidate's husband did much of the work himself as he has a workshop at home and is skilled in construction. The only construction related expenses declared by the candidate or provided in response to written questions or at the hearing was 60,000 MDL spent in 2021 for plastering exterior house walls which the candidate declared in her 5-year declaration.

In addition to the 190 sq.m. house donated by her parents, in 2015 the candidate applied for a preferential price apartment through a program for judges at Riscani Court, which was accepted by the candidate in 2019, also in an unfinished state. The candidate informed the Commission that no funds were expended on that apartment until 2022 and those were paid for by the candidate's child. The candidate was also the owner of a 140 sq.m. apartment located in Chisinau municipality, which the candidate still owns.

b. The law

Art. 8 para. (5), lit. c) and d) of Law No. 26/2022 provides that the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2), as well as the expenses for the maintenance of such assets and the sources of income of the candidate.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of assets of persons close to candidates, as defined in Law No. 133/2016 on declaration of assets and personal interests, as well as of third persons referred to in art. 33 para. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

"Close persons", as defined in Law No. 133/2016 on declaration of assets and personal interests, are: "husband/wife, child, cohabitant of the subject of the declaration, the person supported by

the subject of the declaration, as well as person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law).

The Evaluation Rules state that undeclared income or expenditures are relevant for financial integrity, including but not limited to insofar as they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions. (art. 6 para. (1)). The rules also provide that the Annex to the Evaluation Rules defines the method for calculating undeclared wealth. (art. 6 para. (2) of Evaluation Rules).

Art. 8 para. (5), lit. b) c) and d) of Law No. 26/2022 provides that the Commission is required to verify compliance of the candidate with the legal regime of declaring assets and personal interests. Pursuant to art. 8 para. (2) let. c), para. (4) let. a), and para. (5) lit. b) of Law No. 26/2022 a candidate's failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

c. Reasoning

The Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2), as well as the expenses for the maintenance of such assets and sources of income. The Commission is also required to verify that the candidate has complied with the legal regime of declaring assets and personal interests and is required to verify and methods of acquiring assets by the candidate, family members and close persons to the candidate.

Questions persisted about two aspects of the Chisinau house that was alienated to the candidate. First, neither the candidate or her mother provided any amounts incurred or any documentation of the costs incurred by the candidate's mother for the construction of the two houses. Similarly, there was no detail or documentation about the amount of construction costs incurred before and after the house was transferred to the candidate. The candidate's mother's house, completed in 2022, was valued at 2,776,681 MDL for both the plot and the house. The candidate and her mother's claimed inability to provide even an approximation of the costs of construction of two 190 sq.m. houses roughly worth 5,500,000 MDL lacked credibility. Second, in her 5-year declaration submitted to the Commission in July 2022, the candidate was required to declare expenditures greater than 25,000 MDL. The candidate declared only a single expense in connection with the completion of construction on the house after it was transferred to her and her husband in March 2018, specifically 60,000 MDL incurred in 2021 for construction materials and labor on the exterior of the house. No other expenses were declared or specified by the candidate despite the house being only 70% finished in March 2017. In addition to her claim that her family had done much of the work themselves, the candidate also claimed that much work was done between the 70% finalization report in 2017 and her family's receipt of the house in March 2018. But the family did not move into the house until December 2019, suggesting that more work was undertaken for the house to be lived in yet no expenses were declared or provided for that time period. Moreover, it again challenges credibility that only 60,000 MDL and other minor expenses were made to the candidate's house, valued at 921,676 MDL in 2018 when it was

transferred to her in a 70% or more finished state, when her mother's house was valued at 2,776,881 MDL in 2022 when it was finished. The absence of consistent, credible evidence about construction expenses rendered it difficult for the Commission to verify the sources of funds for the completion of construction of the candidate's house after it was alienated to her in March 2018 or to verify that construction expenses and income had been properly declared.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criteria of financial integrity as per art. 8 para. (4) lit. b), (5) lit. c) and d) of Law No. 26/2022 with respect to the costs of construction of the Chisinau house transferred to her and her husband in 2018, which have not been mitigated by the candidate.

3. Activity in bank account with EUR

a. The facts

The candidate declared a bank account at a Moldovan bank in her annual declarations for the years 2012- 2014, with the notation that the funds in the account belonged to the candidate's parents. Her 2012 annual declaration indicated the balance in the account was 14,000 EUR. Her 2013 annual declaration indicated the balance of the account was 12,000 EUR. According to information produced by the bank, the candidate opened the bank account in April 2011. The information initially provided by the bank to the Commission showed that during 2011, a total of 76,343 EUR was deposited to the account. The first deposit of 26,000 EUR was made when the account was opened. The bank information appeared to indicate several additional deposits and withdrawals during the rest of 2011, some occurring on the same day. The records also showed that, starting in December 2011, no further deposits were made and, thereafter, amounts were withdrawn between 1,000 and 12,000 EUR until the account was closed in 2015.

In written communication with the candidate, the Commission asked what the withdrawals from the bank account were used for and how the deposits were made. The candidate explained that the bank account was opened with an initial deposit of 26,000 EUR, funds belonging to her parents. This was done because, given her parents' limitations, it was easier for the candidate to go to the bank, withdraw funds and make payments on behalf of the parents for living and other expenses. The candidate stated that the total cashflow of 76,343 EUR was erroneously indicated by the Commission because it was the total of funds deposited and withdrawn from the bank account. The candidate presented a bank statement for the account for the years 2012-2015, but not for the year 2011 when the deposits had been made.

At the public hearing, the candidate stated that there was confusion about the bank account statements. The candidate explained that she had requested the bank statement from the bank, but the bank only provided a statement for 2012 – 2015, which she forwarded to the Commission. The candidate stated that, besides the initial 26,000 EUR deposit, there were no other deposits to the account and that the account balance was withdrawn in several installments until the account was empty. The candidate said that she would request a written explanation from the bank in regard to the flows on that bank account.

Following the public hearing, the candidate submitted a written explanation from the bank. The bank confirmed that there was only one initial deposit of 26,000 EUR for 180 days. The statements initially provided by the bank to the Commission replicated information without explaining certain transfer activity. The bank further explained that, at the end of each deposit term, funds were transferred from the bank account and then redeposited automatically. The bank confirmed the withdrawals made by the candidate and confirmed that there were no deposits to the bank account other than the original deposit of 26,000 EUR.

b. The law

Art. 4 para. (1) lit. (d) of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force for 2012-2015), provided that the subjects of declarations had to declare financial assets, i.e. bank accounts, investment funds, equivalent forms of saving and investing, investments, bonds, cheques, bills of exchange, certificates of exchange, other documents incorporating property rights of the declarant or their family members, direct investments in national currency or foreign currency made by them or by their family members, as well as other financial assets.

Pursuant to art. 8 para. (2) let. c), para. (4) let. a) and b), and para. (5) lit. b) of Law No. 26/2022 a candidate's failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

Art. 2 para (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of assets of persons close to candidates, as defined in Law No. 133/2016 on declaration of assets and personal interests, as well as of third persons referred to in art. 33(4) and (5) of Law No. 132/2016 on the National Integrity Authority.

"Close persons", as defined in Law No. 133/2016 on declaration of assets and personal interests, are: "husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law).

According to art. 4 para. (1) let. a) of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force in 2012-15), the subjects of the declaration are to declare incomes obtained by family members during the declaration period.

c. Reasoning

The Commission had the obligation to verify, first, the source of the funds for deposits to the bank account and, second, the reason for the difference between the amount of funds declared in the candidate's annual declarations and the amount of funds deposited according to the statement produced by the bank to the Commission.

In response to written questions and at the hearing, the candidate stated that she had opened the account with a deposit of 26,000 EUR of her parents' money to help them pay their expenses. At the hearing, she stated that she had made no additional deposits to the account and in her annual declarations for 2012 – 2014 she had declared the bank account with the amount of funds available on the day of submission of the declaration, along with a notation that the funds belonged to her parents. The bank statement that was provided to the Commission by the bank showed a deposit turnover of over 75,000 EUR in the account.

After the hearing, in an effort to clarify the turnover in the bank account, the candidate obtained a written explanation from the bank that was consistent with the candidate's explanation to the Commission during the evaluation process. The Commission took note that the additional transfers in the credit/debit compartments on the bank statement initially provided by the bank were automatic transfers and redeposits executed automatically by the bank due to the expiration of terms of deposit in the account. These transfers were included in the calculations of the Commission, which led to a higher amount of cashflow than actually occurred.

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 and ethical integrity as per art. 8 para. (2) lit. c) and financial integrity as per art. 8 para. (4) lit. a) and b) and para. (5) lit. b), c) and d) of Law No. 26/2022 with respect to the turnover of the bank account because the information supplied by the candidate from the bank mitigated the Commission's concerns regarding this issue.

IV. Decision

Based on art. 8 para (1), (2) lit. c), (4) lit. a) and b) and (5) lit. b), c), d) and e) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate does not meet the integrity criteria as serious doubts have been found as to the candidate's compliance with the ethical and financial integrity criteria regarding the first two issues analyzed by the Commission (loan and house costs) and thus fails the evaluation. The Commission decided that the concerns regarding the third issue (activity in a bank account) were mitigated by the candidate.

V. Appeal and publication of the decision

Pursuant to art. 14 para. (1) of Law No. 26/2022, the candidate is entitled to appeal this decision within 5 days from receiving the decision.

Pursuant to art. 13 para. (7) of Law No. 26/2022, 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

Pre-Vetting Commission