



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. 28 of 21 March 2023 on the Candidacy of Valentin CAISÎN,
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 6 March 2023 and 21 March 2023. The members participating were:

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

Tatiana RĂDUCANU was recused from this matter and did not participate.

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

I. The procedure

Valentin CAISÎN, currently working as a lawyer at the Lawyer’s Office “Valentin Caisin” (“the candidate”), was on the list of candidates submitted by the Parliament to the Commission on 9 June 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge for the initial five-year term on 28 February 2011 to serve in the Bălți Court. On 26 September 2014, the candidate resigned from the position of judge. During the period of 2015-2017, the candidate was a lawyer-apprentice and jurisconsult at the Baschet Club “Edilitate” and at the LLC “Bioprotect”. The candidate received his lawyer’s license on 12 June 2017. In 2017, he founded the Lawyer’s Office “Valentin Caisin” and since then works there as a lawyer.

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 3 July 2022.

On 27 December 2022 the Commission sent a request to the candidate for completing and submitting by 3 January 2023 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 3 January 2023.

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 31 January 2023, the Commission sent to the candidate a request for clarifying information, containing 11 questions, including 31 sub-questions and 20 requests for further documentation. The Commission asked the candidate to reply to these questions by 4 February 2023. The candidate replied within the requested time period on 4 February 2023 to all the questions and provided most of the requested documentation. The candidate sent additional information on 7 February 2023.

On 13 February 2023, the Commission sent to the candidate a second round of questions, containing three questions, including eight sub-questions and five requests for further documentation, to clarify some issues that came out during the evaluation. The Commission asked the candidate to reply to these questions by 15 February 2023. On 15 February 2023 the candidate replied to the Commission's second round of questions within the requested time period and provided most of the requested documents.

On 21 February 2023, the Commission sent a third round of five questions, including 12 sub-questions and seven requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 23 February 2023 to all questions and provided most of the requested documents. The candidate indicated that further information would be sent when available.

On 24 February 2023, the Commission sent a fourth round of one question, including two sub-questions and three requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 26 February 2023 to all questions and provided all 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 6 March 2023, the candidate took part in a public hearing of the Commission.

The candidate sent additional information on 9 March 2023.

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.

For lawyers, the *Code of Ethics of Lawyers from the Republic of Moldova*, adopted by Congress of Lawyers on 20 December 2002, with amendments adopted by Congress of Lawyers of 23 March 2007 and 1 July 2016, was applied over the period of time covered by the evaluation.

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, 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) - (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 public hearing about the following financial and ethical issue:

1) Failure to pay income taxes for 2018-2021

a. The facts

In his 2018 - 2021 annual declarations on assets and personal interests (hereinafter “annual declaration”) submitted to the Commission, the candidate declared income from Lawyer’s Office “Valentin Caisin” totalling 762,920 MDL. According to the State Tax Service (“STS”), no taxable income was registered in the candidate’s name during the period of 2018 - 2021. The amount of income earned but not reported each year is set forth in the following table.

Year	Declared to the Commission	Reported to the State Fiscal Service
2018	182,438 MDL	0 MDL
2019	171,172 MDL	0 MDL
2020	161,100 MDL	0 MDL
2021	248,210 MDL	0 MDL

In response to the first round of questions, that were sent to the candidate by the Commission on 31 January 2023, the candidate presented digital copies of income tax declarations of the person carrying out professional activity in the justice sector (hereinafter “income tax declaration”) that he had submitted to the STS on 2 February 2023 for the period 2018 – 2021. According to those records, a total of 72,562 MDL was calculated as taxes owed for 2018 – 2021 and 2,226 MDL as penalties for 2021. The candidate also stated that there had been a delay in paying the taxes, which is why the penalties had been added.

In follow-up questions, the candidate was asked to submit copies of the documents confirming payment of the taxes and to explain why he had submitted the income tax declarations to the STS on 2 February 2023. In his answers to the Commission, the candidate acknowledged that he had delayed submitting the income tax declarations to the STS. The candidate further stated that he had not been able to pay income taxes during the period of 2018 - 2021 because of a difficult financial and family situation, and that he did not start having a stable income until after he had signed a contract with the National Legal Aid Council in 2021 to provide state-guaranteed legal assistance. Between 2021 – 2022, he was able to pay all of his debts (credits, loans). The candidate indicated that he had already paid 43,186.52 MDL of the total amount of 72,562 MDL owed in income taxes and penalties. The candidate did not provide any proof regarding the payment of 43,186.52 MDL. The candidate also explained that, as of 23 February 2023, his remaining debt for the taxes was 29,375.48 MDL, which he said he would pay by 3 March 2023.

At the public hearing the candidate acknowledged that he had delayed submitting the income tax declarations for 2018 – 2021 to the STS. The candidate mentioned that he had intended to submit them earlier, namely after he had submitted the 5-year declaration to the Commission on 3 January 2023, but they were stored in his Lawyer's Office online personal file due to a technical error and were sent to the STS electronically on 2 February 2023. He also pointed out that the assessed penalties were in the approximate amount of 20,000 MDL, not 2,226 MDL as indicated by the Commission, since 20,000 MDL was to cover all four years. The candidate reiterated that the main reason for delayed submission of the income tax declarations to the STS was the lack of financial resources to pay the income taxes due to his resignation from judge's position, limited activity when he started his lawyer's practice and lack of other financial resources in the family until 2020. He also reiterated that his sister had helped him pay the taxes in 2023. The candidate also declared that he paid all due income taxes as of the hearing date, except 9,000 MDL that he was supposed to pay but was unable because of outstanding payment from a client. The candidate did not have the proof of payment with him but committed to submit them later.

After the hearing, on 9 March 2023, the candidate submitted to the Commission a copy of the Lawyer's Office "Valentin Caisin" online personal file transactions attesting the following payments to the state treasury between 24 February and 7 March 2023: a) payment of income taxes for the period of 2018 – 2021 in the amount of 72,503.09 MDL and b) payment of penalties for the same period in the amount of 21,086.46 MDL. The final balance for both income taxes and penalties indicated zero.

In November 2022, the candidate and his wife purchased a 43.7 sq.m. apartment in Chisinau municipality for 33,000 USD. The candidate explained that four sources of funds had been used to buy this apartment: three loan contracts, copies of which were provided to the Commission, and personal savings in the amounts of 40,000 MDL, 6,000 MDL and 3,300 EUR (accumulated from his activities as a lawyer, dividends received from the LLC "Z.S." and his wife's salary).

At the public hearing, in view of the fact that he had not had sufficient income to pay income taxes during the period of 2018 – 2021, the candidate was asked to identify the time period during which he and his wife had been able to save the funds that were used to purchase the apartment and to explain the source of these savings. The candidate stated that the savings were accumulated during the years 2021 - 2022 when his wife commenced a private business and started receiving

income from one of the companies, which company also provided one of the three loans for the apartment, as indicated above. The candidate began working with the National Legal Aid Council in 2021, which allowed him to receive a stable income, and signed a legal assistance contract with a private company. These new income sources allowed him and his wife to accumulate savings. The candidate further indicated that they had saved up to 126,000 MDL on their bank account with the purpose of covering the accumulated income tax debt. However, the opportunity to buy the apartment next door was both spontaneous and advantageous for the family. Hence, they decided to use the accumulated savings for the apartment and focus on the debts immediately after. The candidate also explained that initially he and his wife tried to obtain a loan from a bank, but they could not arrange it within the very tight deadlines imposed by the seller. After they had received a loan from a friend (one of the three loans indicated above), the candidate and his wife decided to buy the apartment using the loans and accumulated personal savings.

b. The law

Art. 8 para. (2) lit. a) of Law No. 26/2022 provides that the candidate shall be deemed to meet the criterion of ethical integrity if s/he 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.

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues as per art. 8 para. (4) lit. b) of Law No. 26/2022.

According to art. 8 para. (5) lit. a) of Law No. 26/2022, in assessing the candidate's financial integrity, the Commission is required to verify the compliance by the candidate with the tax regime in the part related to the payment of taxes on using funds and income derived from the owned property, as well as taxable income and the payment of import duty and export duty.

According to art. 15 of the Fiscal Code (in force for 2021), the persons carrying out professional activity in the justice sector were required to pay an income tax in the amount of 12% of the annual taxable income for 2021 and according to art. 69⁴ of the same code (in force for 2018 - 2020), an amount of 18% of the annual taxable income for the years 2018 - 2020.

According to para. (4) of art. 69⁵ of the Fiscal Code (in force for 2018 - 2021), the persons carrying out professional activity in the justice sector were required to submit the income tax declarations not later than 25 March of the year following the fiscal period of declaration.

According to art. 1 para. (3) of the Preamble of the 2002 Code of Ethics of Lawyers from the Republic of Moldova, in exercising the profession, the lawyer is obliged to act in order to ensure the free access to justice and the right of the person to a fair trial, to contribute, by all legal means, to the protection of the profession, dignity and honor of the body of lawyers. Para. (1) Chapter VII of the same Code provides that the lawyer will have a dignified behavior that does not harm the image of the profession in society.

According to art. 2 para. (7) of the Preamble of the 2002 Code of Ethics of Lawyers from the Republic of Moldova, the lawyer's oath constitutes the legal-moral essence of exercising the profession. Art. 26 para. (1) of Law No. 1260/2002 on lawyers provides that lawyers submit the following oath: "I, the lawyer (family name, first name), take the oath to contribute to the defence of human rights, liberties and legitimate interests, to carry out diligently and honestly the duties of a lawyer, to keep the professional secret and, through my behavior, not to compromise the professional honor of a lawyer".

c. Reasoning

In assessing the financial integrity of the candidate, the Commission is required to verify if the candidate's wealth acquired in the past 15 years corresponds to the declared revenues and whether the candidate complied with the tax regime. The Commission is also required to verify if the candidate complied with the rules of ethics and professional conduct of lawyers.

Both in written communication with the Commission and during the public hearing, the candidate acknowledged that he did not pay income tax on 762,920 MDL that he had received for his activity as lawyer between 2018 - 2021. The accumulated income tax for this income was 72,562 MDL and penalties of 21,086.46 MDL. As of 9 March 2023, the candidate had paid the full amount of income taxes and penalties owed.

According to the legislation in force, the candidate was required to submit the income tax declarations by 25 March of each year for the previous fiscal year. The candidate also acknowledged that he had delayed submitting the 2018 – 2021 income tax declarations to the STS. He explained that he had intended to submit them after he submitted the 5-year declaration to the Commission on 3 January 2023, but due to a technical error, they were not sent to the STS electronically until 2 February 2023. That was after the Commission's first round of questions inquiring about the failure to pay taxes was sent to the candidate on 31 January 2023.

The candidate explained that the main reason for delayed submission of the income tax declarations to the STS and late payment of taxes was the lack of financial resources to pay the income taxes due to his difficult personal and family financial situation until 2021. He also explained that once he and his wife started having more stable income, they began saving in order to pay the income taxes that were owed. While the Commission takes into account these explanations and the fact that the candidate paid all his taxes for the period of 2018 – 2021 by 9 March 2023 the Commission also noted that at the end of 2022 the candidate chose to use his and his family's personal savings to buy an apartment, rather than paying the taxes owed. The candidate's explanation on his initial intention to use the accumulated savings to pay the taxes and the spontaneous and advantageous offer for the apartment, as well as the payment of taxes after the Commission's inquiry into this issue cannot mitigate the serious doubts regarding the candidate's financial and ethical integrity due to his failure to pay taxes for four consecutive years within the deadlines provided by law.

All citizens are expected to comply with the law, including tax laws, and face consequences when they fail to do so. From the point of view of a legal professional and an impartial observer, the

candidate's actions of not paying income taxes for lawyer's activity during a four – year period is inexplicable. The failure to abide by the law casts doubt on the candidate's compliance with the ethical criterion.

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 criterion of financial integrity as per art. 8 para. (4) lit. b) and para. (5) lit. a), and ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to failure to pay income tax during 2018 – 2021 within the deadline provided by law and payment only after Commission's inquiry into this issue, which have not been mitigated by the candidate.

IV. Decision

Based on art. 8 para. (1), (2) lit. a), (4) lit. b) and (5) lit. a) 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 and thus fails the evaluation.

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 Parliament. 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 Parliament 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