



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. 27 of 21 March 2023 on the Candidacy of Angela POPIL,
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 3 March 2023 and 21 March 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

Angela POPIL, Head of the Associate Lawyers Office “Avornic and Partners” and member of the Council of the Union of Lawyers delegated by the Chisinau Bar Association (“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 received her attorney’s license on 1 July 2013 and has been a lawyer working with the Associate Lawyers Office “Avornic and Partners”. In 2007 – 2008, she held the position of Head of the Regulatory and Authorization Department at the National Financial Market Commission. From 2008 – 2010, the candidate was Head of the Legal Department at an insurance company and in 2011, she worked as a consultant with a World Bank Project in Moldova.

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 1 August 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 2 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 3 February 2023 the Commission sent to the candidate a request for clarifying information, containing 13 questions, including 38 sub-questions and 17 requests for further documentation. The candidate replied within the requested time period on 7 February 2023 and provided all of the requested documents.

On 13 February 2023 the Commission sent a second round of seven questions, including 16 sub-questions and six requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 16 February 2023 and provided all 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 3 March 2023 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.

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.

The *Public Servant's Code of Conduct*, adopted by Law No. 25/2008 regarding the public servant's Code of conduct, last amended by Law No. 305/2017, was applied over the period of time covered by the evaluation.

In the absence of rules of ethics and conduct approved for the field in which the candidate works or has worked, it shall be verified whether or not the past conduct of the candidate gives rise to reasonable doubts as to his/her compliance with the ethical and conduct standards established for judges and prosecutors (art. 8 para. (3) of Law No. 26/2022).

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, 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 hearing about the following financial and ethical issues:

1. Sub-evaluation of two properties

a. The facts

In 1999, the candidate and her husband purchased a construction land of 0.06 ha, located in Chisinau municipality Durlesti city (Durlesti 2007 property). In 2005, on this land a 99.1 sq.m. individual house was registered. On 11 October 2007, the candidate and her husband sold the property for the price of 557,960 MDL (33,632 EUR), according to the sale-purchase contract. In response to a written question from the Commission, however, the candidate informed the Commission that this property was sold in 2007 for the actual price of 70,000 EUR (1,161,300 MDL). This price is more than double the price indicated in the contract. Asked to provide an explanation to the Commission for the difference in price, the candidate was not able to do so.

The price of 70,000 EUR was not paid completely in cash by the buyer. Instead, the buyer paid the candidate and her husband 50,000 EUR (829,500 MDL) in cash. The rest of the price was paid for in the form of the transfer of a car, a Mercedes model 270 CDI (m/y 2003), owned by the buyer. According to the candidate's declaration of assets and personal interests for 2017 (hereinafter "annual declaration") provided to the Commission, the value of this car was declared as 23,000 EUR (381,571 MDL). Because the buyer was credited with 20,000 EUR of the value of the car towards the payment for the property, the candidate informed the Commission that she and her husband paid 3,000 EUR (47,770 MDL) to the buyer, as the remaining difference between the value of the property and the value of the car and the cash payment. The candidate informed the Commission that, in order to ensure the transfer of the car, a loan agreement was entered into between the candidate and her husband and the buyer of the property on the same day, 11 October 2007, as the sale-purchase contract for the property.

On 20 January 2012, the candidate and her husband purchased a construction land of 0.029 ha and an 87.3 sq.m. house located on this plot, in Chisinau municipality Durlesti city (Durlesti 2012 property). According to the sale-purchase contract the property was bought for the price of 863,893 MDL (55,905 EUR). However, the candidate informed the Commission that the actual price paid for this property was 65,000 EUR, about 10,000 EUR more than the price indicated in the contract. Asked about the difference between the actual price of 65,000 EUR and the contractual price of 863,893 MDL (55,905 EUR), the candidate stated that "the value of the contract is the value of the property determined for tax purposes as indicated by the seller at the conclusion of the contract. There is no other explanation".

b. The law

Art. 8 para. (4) lit. b) and para. (5) lit. a) and c) of Law No. 26/2022 provides that the Commission is required to verify that a candidate's wealth acquired in the past 15 years corresponds to the declared revenues, to verify that the candidate has complied 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 and to verify the method of acquiring assets 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.

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 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 capacity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal profession and an impartial observer.

Art. 8 para. (3) of Law No. 26/2022 provides that in the absence of rules of ethics and conduct approved for the field in which the candidate works or has worked, it shall be verified whether or not the past conduct of the candidate casts reasonable doubts on his/her compliance with the

ethical and conduct standards established for judges and prosecutors.

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. 13 of the Fiscal Code of Republic of Moldova (in force in 2007 – 2008) provides in para. (1) that the subjects of taxation shall be legal entities and individuals, except for the companies specified in art. 5 item 9), which during the tax period obtain income from any sources located in the Republic of Moldova, as well as legal entities that derive income from any sources outside the Republic of Moldova and individuals who obtain investment and financial income from sources outside the Republic of Moldova. Para. (2) of this provision provides that the subjects of taxation shall be obliged to declare the gross income obtained from all sources.

Art. 37 of the Fiscal Code of Republic of Moldova (in force in 2007 – 2008) provides in para. (5) that the size of the capital increase resulting from the sale, exchange or other form of disposal (decommissioning) of capital assets shall be equal to the surplus of the amount received in relation to the value base of these assets. Para. (7) establishes that the sum of the capital increase in the fiscal year shall be equal to 50% of the surplus of the capital increase recognized above the level of any capital losses incurred during the fiscal year.

According to art. 41 para. (1) and (2) of the Fiscal Code (in force in 2007 – 2008), upon the sale, exchange or other forms of alienation of the taxpayer's primary residence, the capital increase is recognized with the exceptions provided for in para. (3). In the sense of this title, the taxpayer's primary residence is considered to be the residence that has been in his ownership for 3 years, a period that expires on the date of alienation of this residence, and which has served as his primary residence throughout this period.

According to art. 50 para. (4) of Law No. 1453/2002 on notaries (in force in 2007), relating to the notarial authentication of legal acts, the owner of the asset is obliged to communicate to the notary and to the other party the location of the alienated asset (pledged). The responsibility for concealing the fact of the alienated asset (pledged) under interdiction (seizure, arrest, pledge), the communication of the unreal price of the asset, other erroneous data or the presentation of false (invalid) documents in the process of concluding the legal act lies with the guilty party.

Art. 51 para. (2) of Law No. 1453/2002 on notaries (in force in 2007), relating to the authentication of the alienation contract and the pledge contract of the assets, subject to registration provides that the person who alienates or pledges the assets shall be held liable for the communication of false or incomplete information.

According to art. 8 para. (3) of Law No. 26/2022, in the absence of rules of ethics and conduct approved for the field in which the candidate works or has worked, it shall be verified whether or not the past conduct of the candidate casts reasonable doubts as to his/her compliance with the ethical and conduct standards established for judges and prosecutors.

According to art. 3 para. (3) of Judge's Code of Ethics approved by Decision No. 366/15 of the Superior Council of Magistracy on 29 November 2007, "a judge must refrain from any behavior, action or manifestation that could prejudice the public's trust in the judicial system".

According to Principle 3.1 of the Bangalore Principles of Judicial Conduct of 2002, "A judge shall ensure that his or her conduct is above reproach in the view of the reasonable observer". And Principle 3.2. states that "[t]he behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. [...]".

c. Reasoning

In October 2007, the candidate and her husband sold the Durl esti 2007 property. The price stated in the contract was 557,960 MDL (33,632 EUR). However, as the candidate informed the Commission, the real price was 70,000 EUR (1,161,300 MDL), more than double the stated contractual price. The candidate was not able to provide an explanation for the differences in these prices. In January 2012, the candidate and her husband purchased the Durl esti 2012 property. The price stated in the contract was 863,893 MDL (55,905 EUR). Here, the actual price paid for the property was 65,000 EUR, about 10,000 EUR more than the price indicated in the contract. In her written answers to questions of the Commission, the candidate explained the difference between the actual price and the contractual price by stating that "the value of the contract is the value of the property determined for tax purposes as indicated by the seller at the conclusion of the contract. There is no other explanation". The candidate confirmed this explanation during the public hearing.

The Commission appreciates the candidate's openness in answering questions from the Commission on this issue. This does not take away the fact that the candidate twice participated in sale-purchase transactions of real estate, by which the parties deliberately agreed upon the sub-evaluation of property and the creation of a difference between the stated contractual price and the actual price paid.

During the public hearing, the candidate was not able to provide further information about who initiated the inclusion of a sub-evaluated price in the contract for the sale of the Durl esti 2007 property. She confirmed that the buyer of the property did not have sufficient financial means to pay the full price for the property and that the transfer of the Mercedes car was an agreed upon part of the transaction. The candidate further admitted that as a result of the sale of the property, she should, pursuant to art. 41 of the Tax Code, have paid capital increase taxes over the profits

from the alienation. She also admitted that she did not do so at the time and that this was not ethical.

In relation to the purchase of the Durllesti 2012 property, again a difference between the contractual price and the actual price paid was agreed upon. In this case, according to the candidate, the initiative to create this difference had come from the seller of the property. At the public hearing, the candidate explained that it was the seller who insisted on the contractual price and that it was the seller who controlled what was to be included in the contract. She also confirmed that she had not disagreed with this arrangement. Again, when asked whether this conduct was ethical, she admitted that it was not.

The candidate has therefore twice willingly participated in real estate transactions in which the parties agreed to sub-evaluate the value of the property and agreed to include a contractual price which was known to the parties to be incorrect. In the sale-purchase contract of the 2007 Durllesti property, a provision is included in the contract, which states that “we, the contracting parties, declare that the mentioned price, being the essential clause of the contract is the real one and we have been made aware [by the notary] of the provisions of art. 50 – 51 of the Law on notaries and we assume all the liability arising from the communication of the unreal price”. With including an incorrect price for the sale of the 2007 Durllesti property, the candidate avoided paying capital increase taxes based on the actual price paid for the property, whereas in the purchase of the 2012 Durllesti property, the candidate thereby assisted the seller of the property in avoiding the payment of such taxes.

All citizens are expected to comply with the law, including tax laws, and they face consequences when they do not. From the point of view of a legal professional and an impartial observer, the candidate’s actions in agreeing to documents that are incorrect and that concealed the true value of real estate properties for the purpose of avoiding taxes would be 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 c), and ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to the sub-evaluation of real estate properties in order to avoid or assist others in avoiding paying taxes over capital increase, which have been admitted and not mitigated by the candidate.

IV. Decision

Based on art. 8 para. (1), (2) lit. a), (4) lit. b) and (5) lit. a) and c) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate does not meet the financial and ethical 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