



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. 26 of 13 March 2023 on the Candidacy of Alexandru POSTICA,  
Candidate for the Superior Council of Magistracy*

The Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (“the Commission”) deliberated in private on 7 March 2023 and 13 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*

Alexandru POSTICA, lawyer and co-founder of the Associate Office “Postica, Turuta Attorneys” (“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 his attorney’s license on 22 December 2006 and has since been a lawyer. In 2006, he founded the Attorney’s Office Alexandru Postica, which was liquidated in 2021 and is since 2021 co-founder of the Associate Office “Postica, Turuta and Attorneys”. In addition, since 2004, the candidate worked on human rights and strategic development issues, in various positions with the non-governmental association Promo-LEX. Since 11 February 2022, the candidate is a member of the Disciplinary Board of the Superior Council of Magistracy.

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 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 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 14 February 2023 the Commission sent to the candidate a request for clarifying information, containing 17 questions, including 73 sub-questions and 37 requests for further documentation. The candidate replied within the requested time period on 19 February 2023 to all questions and provided all requested documents.

On 23 February 2023, the Commission sent a second round of six questions, including 24 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 February 2023 to all questions and provided all requested documents. The candidate sent additional information on 25 February 2023.

On 27 February 2023, the Commission sent a third round of two questions, including eight sub-questions and four requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 28 February 2023 to all questions and provided all requested documents.

Following the candidate's request, on 6 March 2023 the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022.

On 7 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.

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 Commission did not have serious doubts concerning any ethical integrity issues with respect to the candidate as per art. 8 para. (1) and (2) of Law No. 26/2022.

The candidate was asked at the hearing about the following financial issues.

#### *1. Purchase of an Audi Q5 car in 2020 and donation of 9,000 EUR from a friend*

##### *a. The facts*

On 6 August 2020, the candidate became the owner of a car, model Audi Q5, m/y 2014. This purchase involved the exchange of a car model Honda CRV, m/y 2006. The sale of the Honda CRV and purchase of the Audi Q5 took place using a power of attorney. The Audi Q5 had been imported from Canada in November 2019 and required some repairs. Although the sale-purchase contract of 6 August 2020 indicated a price of 90,000 MDL, the actual value of the car, after repairs, was 340,000 MDL (est. 17,000 EUR). The candidate informed the Commission that he was not aware of the details of the repairs that had been made, but that the value of these repairs

was included in the total purchase price of the car. On 20 December 2021, the candidate sold the Audi Q5, also using a power of attorney, for the price of 320,000 MDL (est. 15,300 EUR).

The price of the Audi Q5 car was about 9000 EUR higher than the value of the Honda CRV. This difference in value was covered by a donation of a friend of the candidate. The candidate provided to the Commission a signed statement from his friend in which the friend indicated that he was aware that the candidate was interested in replacing his Honda CRV car, that he was in a better financial situation at that time and that he decided to contribute financially to the purchase of the Audi Q5 car as a sign of gratitude for their friendship and for the help the candidate had provided to the friend for ten consecutive years. He also indicated that this financial contribution was not a payment for services rendered.

The candidate provided detailed information relating to the purchase of the car in 2020 and the sale of the car in 2021. He provided copies of the powers of attorney for the purchase and sale of the car and copies of both of the sale-purchase contracts. The purchase price was indicated in the 2020 declaration that the candidate submitted to the Commission and the sale price was included in the annual declaration of assets and personal interests which the candidate submitted to the National Integrity Authority (hereinafter: "annual declaration") for 2021. In his 2020 declaration to the Commission, the candidate also declared the donation of 9,000 EUR from his close friend. At the hearing, the candidate further clarified that his friend was a client of the company that had imported the car, that the car was for sale on the [www.999.md](http://www.999.md) website for cars for the price of 17,500 EUR but that the price agreed upon was 17,000 EUR and that his friend contributed to the purchase of the car as a birthday present to the candidate.

When asked about the ability of his friend to make the donation of 9000 EUR, the candidate provided a copy of the annual declaration of this friend for the period 2019-2020, when the friend was required to submit such a declaration. Based on this information, it was clear that the friend had sufficient resources to donate this amount to the candidate and that this income came from legitimate sources.

*b. The law*

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets and personal interests, must verify the method of acquiring the assets owned or possessed and must verify the existence of donations, as per art. 8 para. (4) lit. a) and para. (5) lit. b), c) and f) of Law No. 26/2022.

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

Art. 4 para. (1), lit. b) of Law No. 133/2016 on declaration of personal property and interests, requires the subject of a declaration to declare "movable and immovable property, including unfinished property, owned with the right of usufruct, use, habitation, superficies by the subject

of the declaration, including as beneficial owner, by his family members and his concubine/concubine or in their possession on the basis of mandate contracts, commission contracts, fiduciary administration, translational contracts of possession and use”.

*c. Reasoning*

In August 2020, the candidate bought an Audi Q5 car, m/y 2014, in exchange for a Honda CRV car, m/y 2006 using a power of attorney. The price of the Audi Q5 was 340,000 MDL (est. 17,000 EUR), which was about 9,000 EUR higher than the value of the Honda CRV. This difference in value was covered by a donation of a friend of the candidate. On 20 December 2021, the candidate sold the Audi Q5, also using a power of attorney, for the price of 320,000 MDL (est. 15,300 EUR).

In response to questions from the Commission, the candidate provided timely and detailed information and documentation relating to the purchase of the car in 2020 and the sale of the car in 2021. Copies of the powers of attorney for the purchase and sale of the car and copies of the sale-purchase contracts in 2020 and 2021 were provided. The candidate also provided a signed statement from his friend explaining the reasons for the donation and indicating the ability of this friend to finance this donation. In addition, in both the 5-year declaration and in the 2020 declaration that the candidate submitted to the Commission, the candidate included the purchase price of the car and the donation he received from his friend, with detailed explanations of the purchase in 2020, sale in 2021 and donation in 2020. In his 2021 annual declaration, the candidate included the sales price of the car.

The Commission further established that the purchase and sales prices of the car in 2020 and 2021 are in conformity with prices which can be found on marketplace websites for cars, such as [www.999.md](http://www.999.md). On these websites, prices for a similar car to the Audi Q5 range from 15,000 to 22,000 EUR. Also, the actual car purchased by the candidate was at that time advertised on [www.999.md](http://www.999.md) for sale for the price of 17.500 EUR.

In addition, the candidate provided a copy of the declaration submitted by this friend to the Central Electoral Commission (similar declaration to NIA) on 21 May 2021, for the period 2019-2020, according to the Annex 11 of the Regulation on the peculiarities of appointing and registering candidates for the position of deputy in the Parliament of the Republic of Moldova, approved on 3 July 2018, which demonstrates that his friend was able to donate 9,000 EUR to him from legitimate sources.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate’s compliance with the criterion of financial integrity as per art. 8 para. (4) lit. a) and art. 8 para. (5) lit. b), c) and f) of Law No. 26/2022 with respect to the purchase of a car and the donation from a friend, as the candidate mitigated the Commission’s concerns regarding this issue through the submission of all relevant documentation for this purchase and donation.

*2. Construction of a guesthouse, management of guesthouse by candidate's wife's company, loans to company and sources of funds*

*a. The facts*

In 2006, the candidate bought property in a tourism zone in Rezina District for the price of 30,500 MDL. The candidate was able to purchase this property from funds he and his wife received at their wedding in 2006. A copy of the sale-purchase contract for this property was provided to the Commission.

On 29 September 2010, the candidate's wife became the owner and administrator of a limited liability company, "DS company". The company was created for tourism related activities. According to information available to the Commission, the company did not create any income or net profit between 2010-2020. At the hearing, the candidate explained that in the first years after the establishment of the company, no activities were undertaken because the candidate did not have sufficient resources to support such activities.

In 2016, the candidate obtained permission for the construction of a "commercial building/hotel" (hereinafter referred to as "guest house") on the land plot. In his responses to written questions from the Commission, the candidate indicated that some construction works had been undertaken in 2015. At the hearing, the candidate explained that there were multiple buildings on the land plot, one of which was used by the candidate and his family as a summer house. Some construction activities relating to the summer house took place in 2015.

Most construction activities relating to the building of the guesthouse took place in 2017 and 2018. The candidate provided detailed overviews of these construction activities and the costs incurred during those years. The activities included the demolition of a house on the land plot, excavation work, building walls, installation of windows, installing the roof. The total cost for this work was 430,000 MDL.

The candidate provided the Commission a copy of the final reception report of 10 November 2018, demonstrating the status of the guesthouse after all construction work. Between 2019 and 2020, some additional finishing and decoration work took place, relating to the interior, furniture, doors, kitchen equipment etc. According to the candidate, by the end of 2020, the property, consisting of the land plot, the guest house of 555,9 sq.m. and an auxiliary construction of 11,2 sq.m., could be put into operation for accommodation.

In 2018 and again in 2020, the candidate signed a bailment agreement with the DS company. According to these agreements, the DS company received the guest house property free of charge, and the candidate undertook to provide investment costs of 517,000 MDL. According to the candidate, this was not a loan of money but "payment in kind" and included the 430,000 MDL spent on construction materials and the construction of the guest house. In addition, some 80-90,000 MDL were needed for the payment of services. In total, by the end of 2018, the DS company owed 517,000 MDL to the candidate. The candidate provided copies of the bailment agreements to the Commission.

In 2020 and 2021, the candidate made two loans to the DS company of 110,000 MDL and 270,000 MDL respectively, to support the management of the guest house, including payment of salaries for the staff working there. By the end of 2021, the DS company had incurred a debt to the candidate totalling 900,000 MDL (est. 43,000 EUR). These figures were confirmed in a statement prepared by the candidate's wife as administrator of DS company, a copy of which was provided to the Commission. According to information from the National Bureau of Statistics and the Fiscal Report for 2021, copies of which were also provided to the Commission, the DS company's total debt in fiscal year 2021 was 1,093,263 MDL and income from sales was 120,068 MDL. At the hearing, the candidate clarified that although most of the the company's debts are owed to the candidate, the company also has some debts owed to other creditors, at a combinet total of 1,093,263 MDL. The income from sales in 2021 was from a number of events held that year and from the rental of rooms in the guesthouse. In January 2021, the candidate signed a lease agreement with the DS company for this property for 10 years.

The candidate informed the Commission that he did not take any loans from a bank or from other legal or natural persons in order to pay for construction materials and the 2020 and 2021 loans. Both in writing and during the hearing, the candidate explained that his income between 2017-2021 was more than sufficient to pay for these costs and loans.

*b. The law*

Art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 provide that in determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets and personal interests.

In addition, art. 8 para. (4) lit. b) and para. (5) lit. c), d) and e) 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 the method of acquiring assets owned or possessed by the candidate or persons referred to in art. 2 para. (2), to verify the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2) and to verify the existence of loans, credits or other agreements, where the candidate or the persons referred to in art. 2 para. (2) is a contracting party.

A candidate does not meet the criterion of financial integrity under art. 8 para. (4) lit. a) and b) of Law No. 26/022 when assets have not been declared in the manner required by law or a candidate's wealth acquired in the past 15 years does not correspond to the declared revenues. A finding that the candidate has violated the legal regime of declaring personal assets and interests is a failure to meet the criterion of ethical integrity under art. 8 para. (2) lit. c).

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 any person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and any 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) lit. a) of Law No. 133/2016 on declaration of assets and personal interests, the subject of the declaration is to declare income obtained by the subject of declaration together with the family members, the concubine/concubine in the previous fiscal year. Art. 2 of Law No. 133/2016 defines income as „any financial benefit, regardless of the source of origin, obtained by the subject of the declaration and by the family members, its concubine / concubine both in the country and abroad”.

Art. 4 para. (1), lit. b) of Law No. 133/2016 on declaration of personal property and interests, requires the subject of a declaration to declare “movable and immovable property, including unfinished property, owned with the right of usufruct, use, habitation, superficies by the subject of the declaration, including as beneficial owner, by his family members and his concubine/concubine or in their possession on the basis of mandate contracts, commission contracts, fiduciary administration, translational contracts of possession and use”.

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

### *c. Reasoning*

In 2006, the candidate purchased a land plot in a tourism zone in Rezina District for 30,500 MDL. In 2010, the candidate’s wife established a company, DS company, to undertake tourism related activities. As of 2016, the candidate invested in the construction of a guest house on this property. Most investments took place between 2017-2018 and cost 430,000 MDL. In 2018 and 2020, the candidate signed bailment agreements with DS company, according to which the company received the guest house property free of charge, and the candidate undertook to provide for the necessary investment costs. In addition, in 2020 and 2021, the candidate made two loans to the DS company of 110,000 MDL and 270,000 MDL respectively. By the end of 2021, the DS company’s debt to the candidate totalled 900,000 MDL. The candidate did not take any loans from a bank or other sources to finance the cost of construction of the guest house or the loans to the DS company.

The candidate provided many documents and detailed explanations to the Commission relating to the purchase of the land plot, the construction of the guest house, the financial support given to the DS company and the candidate’s income. He provided a copy of the sale purchase contract of the property in 2006, a copy of the 2016 building permit, a detailed overview of the costs relating to construction materials, a copy of the 2018 and 2020 bailment agreements between the candidate and the DS company, a copy of the 2018 final reception report relating to the guest house, a copy of the loan agreement for the 2020 and 2021 loans, copies of the bank transfers

related to these loans, a declaration from his wife providing an overview of the debts and income of the DS company including supporting documentation, declarations showing his income for all relevant years, a copy of his 2021 annual declaration to NIA (when he was first obliged to submit such a declaration) and financial documentation from the National Bureau of Statistics and the State Fiscal Services relating to the DS company.

Based on the documents and explanations provided, the Commission was able to verify the candidate's ownership of the property, the costs relating to the construction of the guesthouse, the bailment agreements and loans to his wife's company, the financial situation of that company and the sources of income for all related expenditures.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial integrity as per art. 8 para. (4) lit. a) and b) of and para. (5) lit. b), c), d) and e) of Law No. 26/2022 with respect to the purchase of a land plot and construction, the construction of a guest house and the support to his wife's company to manage this guesthouse.

#### *IV. Decision*

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

#### *V. Appeal and publication of the decision*

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