



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

Corrigendum/ 14 June 2023¹

*Decision No. 37 of 5 June 2023 on the Candidacy of Rodica CIOBANU,
Candidate for the Superior Council of Prosecutors*

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 25 May 2023 and 5 June 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

Rodica CIOBANU, currently working as the Director of the Public Law Department and the associate professor at the State University of Moldova (“the candidate”), was on the list of candidates submitted by the Academy of Sciences of Moldova to the Commission on 18 July 2022, for evaluation for the position of member of the Superior Council of Prosecutors.

The candidate has been a lecturer since 1999. The candidate has almost 25 years’ experience working at the Moldova State University and University of the Academy of Science of Moldova, including serving as Dean of the Faculty of Socio-humanistic Sciences at the University of Academy of Science and project manager of the Scientific Research Laboratory at the State University of Moldova.

On 3 August 2022 the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 10 August 2022. The candidate submitted the completed questionnaire to the Commission on 15 August 2022.

On 23 January 2023, the Commission sent a request to the candidate for completing and submitting by 30 January 2023 the Declaration of assets and personal interests for the past five years as required by art. 9 para. (2) of Law No. 26/2022 on certain measures relating to the

¹ Page 1, first paragraph in *I. The procedure*, deleted “Communication and Information Theory Department” and inserted “Public Law Department”.

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 29 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 10 April 2023, the Commission sent to the candidate a request for clarifying information, containing 23 questions, including 48 sub-questions and 27 requests for further documentation. The candidate replied to the Commission’s questions within the requested time period on 14 April 2023 to all the questions and provided most of the requested documentation.

On 28 April 2023, the Commission sent to the candidate a second round of questions, containing 14 questions, including 30 sub-questions and 17 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 3 May 2023 to all questions and provided all the documents requested by the Commission.

On 5 May, the Commission sent to the candidate a third round of six questions, including 10 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 11 May 2023 to all questions and provide all the requested documents.

On 18 May 2023, the Commission sent to the candidate a fourth round of one question, including one sub-question and one request for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 20 May 2023 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 25 May 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.

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).

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.]

A number of versions of ethical codes applied to prosecutors over the period of time covered by the evaluation. The codes were *Prosecutor's Code of Ethics*, approved by the Prosecutor General order No. 303/35 of 27 December 2007, *Prosecutor's Code of Ethics*, approved by the Superior Council of Prosecutors' decision No. 12-3d-228/11 of 4 October 2011, *Prosecutor's Code of Ethics and Conduct*, approved by Superior Council of Prosecutors' decision No. 12-173/15 of 30 July 2015 and *Prosecutor's Code of Ethics*, approved by the General Assembly of Prosecutors' decision No. 4 of 27 May 2016, amended by General Assembly of Prosecutors' decision No. 1 of 22 February 2019.

Opinion No. 13 (2018) of the Consultative Council of European Prosecutors (CCPE) on the "Independence, accountability and ethics of prosecutors", adopted on 23 November 2018 ("CCPE (2018) Op. No. 13") 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 of 2 May 2022, pursuant 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 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 issue:

1. Source of funds for donations/transfers from the candidate's mother-in-law to the candidate's husband (2010 – 2011; 2016 – 2021)

a. The facts

In 2010, the candidate's husband received 5,000 EUR in cash from his mother for the purpose of building a holiday home. In 2011, the candidate's husband deposited 57,500 EUR into his deposit bank account. In response to written questions from the Commission about the source of the 57,500 EUR, the candidate explained that 20,000 EUR had come from the sale of an apartment in Chisinau municipality and 37,500 EUR were from the candidate's mother in-law.

The apartment in Chisinau municipality was sold in 2011 for 331,374 MDL (est.20,279 EUR). The candidate's husband had a one-half share of this apartment and a one-quarter share belonged to his sibling and a one-quarter share belonged to his mother. The candidate was asked to explain why her husband had received the full sales proceeds, when he had only a one-half share of the apartment. In her written answers and at the hearing, the candidate indicated that her mother-in-law and her husband's sibling had contributed their share of the sales price of the apartment towards the construction of a holiday home, in which the candidate's mother-in-law will reside when she returns from abroad.

The candidate submitted two affidavits signed by her mother-in-law and her husband's sibling attesting that they had renounced their shares of the sales price in the apartment and had given their shares to the candidate's husband to use in building the holiday home. At the hearing, the candidate indicated that her mother-in-law and her husband's sibling had given up not only their shares of the apartment's sales proceeds but also their interests in a plot of land, on which the holiday home is located, in favor of the candidate's husband. She also explained that her husband's sibling, who has been living abroad, uses the holiday home when visiting the Republic of Moldova.

During the written communication and at the hearing, the candidate stated that her mother-in-law had transmitted 37,500 EUR to her son in cash for the construction of the holiday home. The candidate submitted an affidavit, signed by her mother-in-law attesting that, throughout the period that she has been working abroad, she has periodically sent money she had earned to her son for the holiday home, and that she will have her domicile at that address. The candidate also noted that her mother-in-law did not need the money abroad, where she has been living since 2002. At

the hearing, the candidate noted that her mother-in-law used different means to send money to the Republic of Moldova (via bus, bringing it herself when she travelled home, as a rule, by plane). The candidate assumed that her mother-in-law had also made transfers before 2010, because she has had a work permit since 2002 and she did not need to keep the money abroad. The candidate also explained that her husband has been managing the funds sent by his mother since 2007, when he took over this role from other family members.

In summary, during the period of 2010 – 2011 the candidate's husband received the total sum of 42,500 EUR from his mother for the purpose of building the holiday home.

In addition, during the period 2016 – 2021, the candidate's mother-in-law sent 73,215 EUR to the candidate's husband via bank transfers. Out of this amount, 40,215 EUR was intended for investment into the construction and furnishing of the holiday home. The candidate and her husband also received some nominal amounts from the candidate's mother-in-law for various family celebrations.

In response to written questions and at the hearing about the source of funds for the candidate's mother-in-law's 42,500 EUR cash donations during the period 2010 – 2011, and 73,215 EUR during the period 2016 – 2021, the candidate provided a certificate from the Social Insurance Service of the European state where the mother-in-law has been working. According to this document, during the period 2002 – 2011, the candidate's mother-in-law received total gross income of 47,420 EUR. According to the same certificate, during the period 2012 – 2020, the candidate's mother-in-law received total gross income of 112,636 EUR.

The candidate was asked how her mother-in-law had covered her living expenses for nine years (2002 – 2011) if she had transferred 42,500 EUR out of her 47,420 EUR total earnings to her son. The Commission also inquired how her mother-in-law covered her living expenses during the period 2012 – 2020, if she had transferred all but 39,421 EUR of her total earnings.

During the written communication and at the hearing, the candidate noted that the document from the European state's Social Insurance Service reflected only part of the income that her mother-in-law earned abroad. She explained that her mother-in-law had initially worked without an employment contract because her employers had not wanted to use one. Later, her mother-in-law's first contract did not reflect the actual salary that she received. According to the candidate, her mother in-law also earned income by replacing other Moldovans when they were on holiday. Additionally, her mother-in-law worked and was paid by the hour on her days off and public holidays, thus earning additional income to her primary contract. Another source of the candidate's mother-in-law's income was the monthly pension of 399 MDL that she had started to receive in the Republic of Moldova in 2006. Her monthly pension currently amounts to est. 2,200 MDL. At the hearing, the candidate explained that the pension was not being sent to her mother-in-law abroad and was accumulating in the Republic of Moldova, and therefore, it was used only when she returned to the country. The candidate's mother-in-law had started receiving her

monthly European pension of 284 EUR in August 2020. In addition, the candidate stated that, throughout her entire stay abroad, her mother-in-law had been working for families who provided shelter and covered other living expenses.

At the public hearing, the candidate stated that construction of the holiday home had started sometime in 2008 – 2009 and that her family has been living there since the end of 2014. The candidate provided the layout of the living space of the two-story holiday home and a photo of two separate entrances into the holiday home. According to the candidate, one unit is for the mother-in-law's and the candidate's husband's sibling's use and another unit is for the candidate's family. She also confirmed that in 2017, half of the holiday home had been registered in the candidate's name and the other half in her husband's name. In her written answers to the Commission, the candidate provided proof and confirmed at the hearing that the construction work and furnishing of the holiday home is still underway. The candidate explained that the holiday home was being built over a number of years and, in addition to her mother-in-law's donations, her husband's and her income were being invested. The candidate noted that, because of the protracted timeframe of the construction, it was impossible to estimate the total investment in the holiday home. The candidate's and her husband's net salary income over the period of 2007 - 2021 amounted to 5,299,455 MDL (est. 264,972 EUR).

b. The law

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 declared revenues, pursuant to art. 8 para. (4) lit. b) of Law No. 26/2022. Pursuant to art. 8 para. (5) lit. c) and d) of Law No. 26/2022, in order to assess the candidate's financial integrity, the Commission is also required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2022 and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of assets of close persons, 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) ”.

c. Reasoning

The Commission is required to verify sources of income and the method of acquiring assets of the candidate, family members and close persons to the candidate. The Commission must also verify that the candidate's wealth acquired in the past 15 years corresponds to declared revenues.

In the periods of 2010 – 2011 and 2016 – 2021, the candidate's mother-in-law transferred 115,715 EUR (42,500 EUR in cash and 73,215 EUR via bank transfers) to her son, the candidate's husband. Out of this amount, 82,715 EUR was intended as an investment into the holiday home where the candidate's family resides and also where the mother-in-law plans to live upon her return from abroad (where she has been living and working since 2002).

The candidate provided a certificate issued by the Social Insurance Service of the European state where the candidate's mother-in-law worked indicating that, during the period of 2002 – 2011, she had declared total gross income of 47,420 EUR, and, during the period 2012 – 2020, total gross income of 112,636 EUR. Thus, the candidate's mother-in-law's official registered income between 2002 – 2011 exceeded the amount of funds transferred by her during 2010 – 2011 by 4,920 EUR. The Commission noted that the income earned and declared by her mother-in-law during the period 2012 – 2020 (112,636 EUR) was significantly higher than the amount of funds transferred by the candidate's mother-in-law during the years 2016 – 2021 (73,215 EUR). The candidate also provided proof that her mother-in-law had started receiving her Moldovan pension in 2006 and her European pension in 2020. During the written communication and at the public hearing, the candidate stated that her mother-in-law had covered her living costs abroad with additional income received as remuneration for extra work in addition to the assistance provided by her employers in the form of shelter and by covering other living costs. Although during the period of 2002 – 2011 the candidate's mother-in-law was left with rather negligible financial resources from her income, the Commission took into account that the transferred amount was still less than her official declared income and that it was credible that her employers provided her with shelter and some daily living costs in light of the nature of her employment. Thus, the candidate was able to demonstrate that her mother-in-law had sufficient income to make the donations/transfers in the amount of 115,715 EUR over the period of 2010 – 2021, and to also cover her living expenses in one of the European states.

In addition to the fact that the sources of funds were legitimate and documented, the Commission took into account the purpose of these transfers. A major part of these funds, received over time, was for the construction of the holiday home, where the candidate's mother-in-law intends to live when she returns to the Republic of Moldova. The candidate provided evidence that the holiday home is split into two parts, supporting the candidate's claim concerning the use of part of the holiday home for her mother-in-law and her husband's sibling. The Commission considered the fact that the holiday home is registered in the candidate's and her husband's names not determinative in this context. Furthermore, the candidate demonstrated that the construction and furnishing of the holiday home have been ongoing from 2008 – 2009 to the present. The candidate explained the reasons her family had settled in the unfinished holiday home in 2014 and the circumstances contributing to the protraction of the construction period. The Commission also noted that, during the period of the construction of the holiday home, the candidate and her

husband had significant income from their salaries which they were able to invest in the construction. The fact that they invested their income gradually as it was earned, also explained why the construction works have been protracted over a lengthy period of time.

In summary, the Commission noted that the candidate's explanations, both in writing and at the hearing, proved her mother-in-law's ability to make the transfers of 115,715 EUR during the period 2010 – 2021. Due to consistent and sufficient explanations and the evidence presented, the Commission's doubts regarding the source of funds of the candidate's mother-in-law were mitigated by the candidate.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial integrity as per art. 8 para. (4) lit. b) and para. (5) lit. c) and d) of Law No. 26/2022 with respect to the source of funds of her mother-in-law to transfer 115,715 EUR during the period 2010 – 2021 to the candidate's husband, because the candidate's detailed explanations mitigated the Commission's concerns regarding this issue.

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 Academy of Sciences of Moldova. 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 Academy of Sciences of Moldova 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