



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. 38 of 8 June 2023 on the Candidacy of Mariana CHERPEC,
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 April 2023 and 8 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

Mariana CHERPEC, prosecutor at the Prosecutor’s Office in Chisinau, Headquarters Office was on the list of candidates submitted by the Superior Council of Prosecutors to the Commission on 7 April 2022, as updated 13 January 2023, for evaluation for the position of member of the Superior Council of Prosecutors.

The candidate was appointed on 3 December 2010 as a prosecutor in the Center District Prosecutor’s Office, Chisinau municipality. From November 2017 until July 2019, the candidate worked at the Prosecutor’s Office in Chisinau, Office Botanica. From July 2019 to February 2023, she worked at the Prosecutor’s Office in Chisinau, Office Botanica. From July 2019 to February 2023, she worked as a prosecutor responsible for communication with the media within the Prosecutor General’s Office. Since February 2023, she is again serving as a prosecutor at the Prosecutor’s Office in Chisinau, Headquarters Office.

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 did not submit a completed questionnaire to the Commission.

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 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 27 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 collected information, those issues were raised in written questions with the candidate and during the public hearing.

Written communication with candidate:

On 23 March 2023, the Commission sent to the candidate a request for clarifying information, containing 10 questions, including 26 sub-questions and 14 requests for further documentation. The candidate replied within the requested time period on 27 March 2023 to all questions and provided all of the requested documents.

On 31 March 2023, the Commission sent a second round of five questions, including 10 sub-questions and two requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 2 April 2023 to all questions and provided all of the requested documents.

Following the candidate's request, on 20 April 2023 the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022. On 21 April 2023, the candidate, pursuant to art. 12 para. (4) lit. d) of Law No. 26/2022, sent additional information to the Commission, which she considered relevant, based on the evaluation materials received. The Commission accepted this additional information as it was not requested earlier by the Commission and could not have been presented previously and has included it in its evaluation of the candidate.

On 25 April 2023, the candidate took part in a public hearing of the Commission.

Partly in response to questions put to the candidate at the hearing and partly at the candidate's own initiative, the candidate provided additional data and information after the hearing, pursuant to art. 12 para. (4) lit. d) of Law No. 26/2022. The Commission accepts these data and information, as they further assist in the evaluation of the candidate's integrity.

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

1. Failure to submit annual declarations for 2010 and 2011

a. The facts

In December 2010, the candidate was appointed as prosecutor. Pursuant to Law No. 1264/2002 concerning the declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (hereinafter “Law No. 1264/2002”), the candidate was required to submit an income and property declaration and personal interest declaration (hereinafter “annual declaration”) to the National Integrity Commission (hereinafter “NIC”) for each year. It was not clear, however, whether the candidate had submitted annual declarations for 2010 and 2011.

When asked whether she had submitted annual declarations for 2010 and 2011, the candidate initially urged an interpretation of Law No. 1264/2002 that did not oblige her to submit a declaration for these years. Declarants of income and property included “the Prosecutor General, prosecutors and their deputies”, which according to the candidate meant persons in leadership positions because only chief prosecutors had deputies. Non-managerial prosecutors, like herself, did not have deputies and therefore, were not required to submit annual declarations. According to the candidate, the law was amended in 2012 to include the phrase “state dignitaries” and remove the phrase “Prosecutor General, prosecutors and their deputies”. As a result, non-managerial prosecutors were only required to submit declarations after 2012. This was also the year in which the NIC was established, and only at that point did non-managerial prosecutors start to submit annual declarations. As can be inferred from the website of the NIC (now National Integrity Authority, hereinafter “NIA”), the first annual declarations uploaded into the register of declarations were the declarations for 2012 submitted in 2013. The candidate filed her first annual

declaration, for 2012, at the beginning of 2013, and thereafter has submitted her annual declarations in a timely fashion.

In later written responses and at the hearing, the candidate nuanced her position and conceded that a legal obligation existed to submit annual declarations for 2010 and 2011. According to the candidate, however, until the NIC was established in March 2012, there was not a public institution empowered to verify and control annual declarations. This explains why prosecutors at all levels started to submit their annual declarations beginning in 2012. As a result, the records of prosecutors' declarations in the Register of declarations on income and property maintained by the Human Relations section of the Prosecutor General's Office date back to 2012. Records prior to that year do not appear in the Register. According to the candidate, she contacted a representative of the NIA who confirmed that annual declarations were submitted only after the creation of the NIC. Under these circumstances, the candidate believed that she had not committed any violation of the legal regime of declaring income and property.

After the hearing, the candidate provided additional documentation on her own initiative. This included a copy of the Order of the Prosecutor General No. 290-p of 19 March 2012, according to which the HR/Personnel Section of the Prosecutor General's Office was made responsible for collecting the annual declarations to be submitted by all prosecutors and public officials within the prosecution bodies. According to the candidate, this was the first order issued in the context of the implementation of Law No. 1264/2002, as amended on 19 December 2011. In addition, the candidate presented an extract from the Register No. 1 providing an overview of the annual declarations submitted by staff of the Prosecutor General's Office. According to this Register, the first declarations were submitted as of 23 March 2012.

b. The law

Art. 8 para. (5) lit. b) of Law No. 26/2022 requires the Commission to verify compliance of the candidate with the regime of declaring assets and personal interests.

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

Art. 8 para. (1) of Law No. 1264/2002 concerning the declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions, provided that the declaration of income and property shall be submitted within 20 days from the date of appointment or election to office.

Pursuant to art. 54 lit. c) of Law No. 294/2008 on Prosecutor's Office (in force in 2010 – 2011), the prosecutor is obliged: [...], to submit, in accordance with the law, a declaration of income and property.

According to art. 5 para. c) of the Prosecutor's Code of Ethics, approved by the Prosecutor General order No. 303/35 of 27 December 2007, "[I]n the performance of his/her duties, the prosecutor must also present, in accordance with the law, a declaration regarding the income and property upon being included in the prosecutor's office bodies, subsequently every year and upon dismissal."

The Evaluation Rules state that undeclared income or expenditures are relevant for financial integrity, insofar items have not been declared truthfully, and for ethical integrity, including but not limited to insofar 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)).

c. Reasoning

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests.

The candidate has been obligated to submit an annual declaration since 2010 when she became a prosecutor. The candidate did not submit annual declarations for 2010 and 2011 but has submitted annual declarations ever since.

The Commission noted that the candidate's initial explanation, that the obligation to submit annual declarations was applicable to her as a non-managerial prosecutor only as of 2012, misstates the law. From both art. 8 para. (1) of Law No. 1264/2002 concerning annual declarations and art. 5 para. c) of the *Prosecutor's Code of Ethics*, approved by Prosecutor General order No. 303/35 of 27 December 2007, the candidate was obliged to submit annual declarations prior to 2012. In later written submissions and during the public hearing, the candidate conceded that she was obligated to file declarations in 2010 and 2011.

Annual declarations filed with NIC, and later with NIA, serve a critical role in the assessment of the financial and ethical integrity of candidates. The Evaluation Rules state that undeclared income or expenditures are relevant for financial integrity, insofar items have not been declared truthfully, and for ethical integrity, including but not limited to insofar they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions. (art. 6 para. (1)). A failure to declare income necessarily raises concerns about financial and ethical integrity, which concerns are magnified in circumstances involving a complete failure to file required declarations.

The Commission found that certain circumstances relating to the candidate's non-submission of annual declarations for 2010 and 2011 were relevant to the evaluation of the candidate. The candidate admitted, both in writing and during the hearing, that she was obligated to submit annual declarations for 2010 and 2011. The candidate consistently argued, however, that all prosecutors began to file annual declarations only as of 2012. This argument was supported by

documents submitted by the candidate after the hearing. The first document was a copy of the Order of the Prosecutor General of 19 March 2012, according to which the HR/Personnel Section of the Prosecutor General's Office was made responsible for collecting the annual declarations submitted by all prosecutors and public officials within the prosecution bodies. According to the candidate, this was the first order issued in the context of the implementation of Law No. 1264/2002. The second document was an extract from Register No. 1 listing the annual declarations submitted by staff in the Prosecutor General's Office which indicates that the earliest declarations were submitted as of 23 March 2012. Furthermore, the NIC/NIA website includes only records of annual declarations submitted by prosecutors starting in 2012.

Prior to the 2012 Order of the Prosecutor General, similar orders had been issued by the Office of the Prosecutor General in 2005 and 2010. With the establishment of the NIC in March 2012 and with the creation of the NIC/ NIA website, more clarity has been created about the submissions of annual declarations by prosecutors since 2012. It appears that since then, prosecutors at all levels have consistently submitted their annual declarations. Likewise, the candidate has submitted her annual declarations in a timely fashion since 2012, in accordance with her legal obligation.

The candidate has admitted her non-submission of annual declarations for 2010 and 2011 and provided reasons for this omission. Although the Commission finds that the failure to submit two annual declarations is a violation of the legal regime of declaration of assets and personal interests and, hence, affects the candidate's ethical and financial integrity as per the criteria provided for by Law No. 26/2022, the Commission concludes that in light of the specific circumstances in this instance, the failure does not rise to a level amounting to a failure of the ethical or financial integrity criteria by the candidate. The Commission takes note of the fact that prior to the creation of NIC and its website in 2012, it is unclear to what extent prosecutors were submitting their annual declarations in a consistent way and the fact that the candidate has submitted all her declarations in a timely fashion and in accordance with her legal obligations since 2012.

In light of the above circumstances, the Commission did not have serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of ethical integrity as per art. 8 para. (2) lit. c) and financial integrity as per art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 with respect to the failure to submit annual declarations for 2010 and 2011, which has mitigated the Commission's concerns regarding this issue.

2. Three disciplinary procedures against the candidate between 2014 - 2016

a. The facts

From 2010 to 2016, the candidate worked as a prosecutor in Chisinau at the Center Office. From 2014 to 2016, three disciplinary procedures were initiated against the candidate relating to her functioning as a prosecutor, resulting in the sanctions of one warning and two reprimands.

The first disciplinary decision was issued by the Superior Council of Prosecutors (hereinafter “SCP”) Disciplinary Board in its Decision No. 13-24/14 of 29 August 2014. The Disciplinary Board examined the progress and delays in a number of cases that had been assigned to the candidate and in which the Board found that the candidate had not taken the measures required by law. The candidate was disciplined under art. 62 lit. b) of the Law on the Prosecutor’s Office and received a reprimand. The Disciplinary Board concluded that “in the prosecution cases assigned to Prosecutor Mariana CHERPEC, she did not practice due diligence, did not put to use the prerogatives offered by law to expedite the investigations and did not show interest in the quality of the act of justice, and that the missing of deadlines set for examining requests concerning the adoption of solutions as set out in art. 247 of the Code of Criminal Procedure was not due to objective reasons”. The Disciplinary Board also stated that “such behavior erodes the trust and respect that justice seekers have towards prosecutors, which, in consequence, affects the image of justice as a system and tool meant to defend the rule of law.” By Decision No. 12-179/14 of 9 October 2014, the SCP upheld the decision taken by the Disciplinary Board.

On 4 September 2015, a second disciplinary procedure was initiated against the candidate in relation to a case that was assigned to her on 2 April 2015. An investigation was also initiated against a member of the criminal investigation body of the Center District Police Inspectorate, Chisinau municipality, for alleged professional negligence in connection with the same case. The disciplinary procedure against the candidate led to Decision No. 13-37/15 of 2 October 2015 of the SCP Disciplinary Board in which the disciplinary sanction “warning” was given because the Board concluded that the candidate “did not discharge her job duties pertaining to her position as set out in art. 52 of the Criminal Procedure Code. She did not give concrete instructions to the criminal investigation body and did not respond to the failures of the criminal investigation body, despite the powers conferred to her position, and did no more than extend perfunctorily the prosecution deadline”. On 26 November 2015, by Decision No. 12-261/14, the SCP upheld the Disciplinary Board Decision.

On 10 June 2016, the SCP Disciplinary Board issued Decision No. 13-18/16 which related to two criminal cases assigned to the candidate in which she was alleged to have taken no action for considerable periods of time, in excess of two years. In this Decision, it was concluded that “prosecutor Mariana CHERPEC did not discharge adequately her professional responsibilities, thereby violating the Law on Prosecutors and the Code of Ethics, i.e. the failure to discharge one’s professional responsibilities, the incorrect or tendentious interpretation or application, intentionally or through gross negligence, of the legislation [...]” and the candidate received a reprimand. On 1 August 2016, by Decision No. 12-223/16, the SCP took note of the non-contested decision of the Disciplinary Board.

The candidate confirmed that the three disciplinary procedures had taken place in the period from 2014 to 2016, while she was working at the Center District Prosecutor’s Office, Chisinau municipality. At the hearing, the candidate informed the Commission that two of these procedures were initiated by the Chief Prosecutor of the Center District Prosecutor’s Office, Chisinau

municipality and the third one by the criminal prosecution unit of the Prosecutor General's Office, at the instigation of the then Deputy Prosecutor General.

In response to written questions and at the hearing, the candidate explained that the complaints were the result of a difficult relationship between the then Chief Prosecutor of the Center District Prosecutor's Office, Chisinau municipality (hereinafter "Chief Prosecutor") and the candidate, as they had different views on the role and degree of independence of a prosecutor and they regularly differed on the prosecutorial decisions to be taken in individual cases.

At the hearing, the candidate acknowledged that the Chief Prosecutor was her supervisor and was entitled to give her instructions. She also explained that although the Chief Prosecutor, under the Criminal Procedural Code, was entitled to annul decisions taken by her, he never did so and never found that her decisions were illegal or unfounded. The Chief Prosecutor, according to the candidate, was trying to influence her decision-making and yet did not want to assume responsibility for her decisions. He also did not engage in substantive discussions with her on cases and did not provide written instructions to her. Instead, he hinted to her orally how a decision should be taken, in his view. In cases where he disagreed with her draft decision, he withdrew the case from her and reassigned to another prosecutor in the office. At the hearing, the candidate stated that, although she did not have exact figures, these withdrawals and reassignments occurred around 10 to 15 times during that period.

The candidate informed the Commission at the hearing that other colleagues at the Prosecutor's Office also had issues with the working methods at the office, but they were reluctant to speak up. In her view, the candidate herself was more determined and considered it necessary to stand up and fight for the independence of prosecutors. Although her discussions with the Chief Prosecutor were of a professional nature, in the candidate's view, the Chief Prosecutor took them personally and did not appreciate her actions. As a result, the disciplinary procedures were initiated against her. The candidate perceived the actions against her as a direct result of her struggle to ensure her independence and as harassment and punishment by the Chief Prosecutor for her insubordination.

After the hearing, the candidate contacted colleagues at the Prosecutor's Office for statements relating to the situation in that office to confirm what the candidate had stated at the public hearing. According to the candidate, colleagues supported her and thanked her for her courage to speak out during the public hearing but were hesitant to produce a statement out of fear that such statements might be disclosed and could lead to negative reactions and problems for them.

In the view of the candidate, the Chief Prosecutor at the time had almost unlimited discretion in the distribution of criminal cases. This discretion gave the Chief Prosecutor the opportunity to distribute cases unequally among prosecutors. The candidate stated that the Chief Prosecutor gave her a high number of cases in order to make her violate deadlines set by law.

Both during and after the hearing, the candidate provided detailed figures relating to the distribution of work among her and her colleagues in the first three months of 2014. The Commission also requested and received information from the Centre district Prosecutor's Office, Chisinau municipality relating to the distribution of work among prosecutors at that time. According to the information from the Prosecutors' Office, between January and April 2014, there were 25 prosecutors on average working in that office. During this period, the average workload per prosecutor was 57 criminal cases in January 2014, 56 cases in February 2014, 54 cases in March 2014 and 55 cases in April 2014. According to the monthly reports submitted by the candidate to the Commission, her workload during this period was: 66 cases in January 2014, 80 cases in February 2014, 78 cases in March 2014 and 85 cases in April 2014. In addition, according to information from the Prosecutors' Office, during the months of February and March 2014, 11 new cases on average were assigned to each prosecutor in February 2014 and 8 new cases in March 2014, totaling 19 cases on average per prosecutor. However, a copy of the handwritten register of the cases assigned to all prosecutors, provided by the candidate, demonstrated that she was assigned 28 new cases during these two months.

The candidate also provided the Commission with copies of all of her activity reports for 2014 - 2016. According to these reports, the workload of the candidate was even greater than the average of 60 criminal cases she had referred to during the hearing, and instead ranged from a minimum of approximately 60 cases to 100 cases or more during this period.

At the hearing, the candidate confirmed that she had presented the figures relating to the distribution of cases amongst prosecutors to the SCP Disciplinary Board. Although the Disciplinary Board, in the view of the candidate, is obliged to consider causes and circumstances that may be relevant in the context of possible violations or omissions resulting in disciplinary proceedings, the Board did not take these figures into account. Rather, in its decision of 10 June 2016, the Disciplinary Board concluded that there was no difference between the candidate's and other prosecutors' workloads. According to the candidate, this conclusion was inexplicable and reached without the Board analyzing the information provided.

When asked by the Commission at the hearing whether the candidate had retained a copy of the materials that she submitted to the Board, the candidate indicated that she had not as she had provided all materials to the Board. She offered to request the release of these materials from the Prosecutors' Inspection. After the hearing, the candidate informed the Commission that records relating to disciplinary proceedings are preserved for only three years and therefore, any records had been destroyed.

Both in writing and during the hearing, the candidate confirmed that delays had occurred in some cases and that deadlines sometimes were not met. In her view, this was not uncommon given the workload for all prosecutors in the office at the time. But the delays were also a direct result of the unequal distribution of cases among prosecutors. In response to a question at the hearing, the candidate explained that when these procedures had been initiated against her, no centralized

Information Technology system was available in the Prosecutor's Office to track the progress in pending cases. Such a system was not introduced until 2017.

Both in writing before and after the hearing and at the hearing, the candidate commented further about the three disciplinary decisions.

Regarding the first disciplinary decision of 29 August 2014, the candidate agreed that a number of her decisions had not been taken within the deadlines set by law. Some decisions were required to be taken within five days after the assignment of the case to her, but the candidate's workload between February – April 2014, including the assignment of 28 new cases in February and March alone, had made it not possible to meet all deadlines in all instances. In the decision of 29 August 2014, the candidate was blamed, in her view, for untimely decision-making in some of these cases, but the Disciplinary Board had ignored the fact that the candidate had taken decisions in many other cases in that period. Before the SCP Disciplinary Board, the candidate had also argued that she had been on sick leave for two months in December 2013 – January 2014. After the hearing, the candidate provided copies of the medical records demonstrating her sick leave during that period.

In the second disciplinary decision of 2 October 2015, the candidate was disciplined for failure to fulfil her professional responsibilities, for not giving concrete instructions to the criminal investigation body, for not responding to the failures of the criminal investigation body and for not pursuing other actions that could have been undertaken in prosecuting this case. The decision also referred to the fact that a criminal prosecution had been initiated in relation to the police officer that had investigated the case on grounds of professional negligence. The candidate, after being provided access to the evaluation materials in this evaluation, submitted additional information relevant to this decision. This included a copy of an order of 16 December 2015 dismissing the criminal prosecution of the investigating police officer, which states that the police officer "carried out all possible actions, and other actions could not have been carried out [...]" and that the officer "took all measures to ensure the complete and objective prosecution" in this criminal case. The candidate submits that, whereas no violations were established on the part of the police officer in the investigation of the criminal case, the candidate was subjected to a disciplinary sanction for her supervision of the police officer in the same criminal case. As the decision concerning the candidate was issued on 2 October 2015, more than two months before the 16 December 2015 decision concerning the police officer, the candidate did not have any opportunity to challenge the 2 October 2015 decision, as there are no possibilities for a review of disciplinary decisions under Moldovan law.

Regarding the third disciplinary decision of 10 June 2016 in which the candidate was reprimanded for considerable delays in two criminal cases, the candidate provided detailed information in the public hearing about the complexity of one of the cases. That case involved the alleged illegal occupation of 30 land plots and included many actively involved parties and a need for cadastral and financial expert advice. The candidate informed the Commission that this case was ultimately

transferred to a special unit for exceptional cases within the General Prosecutor's Office. The candidate felt that she was unjustifiably blamed for the long duration of this case.

The candidate emphasized that after the mandate of the Chief Prosecutor terminated in 2017, she has not been the subject of any disciplinary cases. To the contrary, when the candidate was working at the Prosecutor's Office in Chisinau, Botanica Office in 2018, according to the candidate, she had the best performance ratings of all prosecutors in that office. Later, she was also seconded to the Prosecutor General's Office for almost four years, which she considered a promotion.

The candidate did not file appeals of the three disciplinary decisions taken against her. Both in writing and during the public hearing, the candidate explained that she had not done so because she had no trust in the independence and impartiality of the authorities involved. She considered that it would not be in the interest of her emotional and psychological well-being to pursue appeals. She also had serious misgivings about different aspects of the procedures used in her cases.

In 2014 and 2016, the candidate's office desk and files were searched. In her view, these searches were illegal as no search warrant had been issued by a judge, which the candidate claimed was required. The candidate believes that the searches constituted an abuse of power and an interference with the inviolability of her dossiers. In a communication to the Commission after the hearing, the candidate stated that the first search took place in the middle of February 2014, only a few weeks after she returned from the two-month sick leave. In that submission, the candidate further argued that the results of these searches should have been excluded as inadmissible evidence in the context of the disciplinary proceedings pursuant to the "fruit of the poisonous tree" doctrine.

In addition, the candidate did not feel that she was truly heard by the SCP's Disciplinary Board. The hearings before the Disciplinary Board lasted only five to ten minutes. After the hearing, she was asked to leave the room for five to ten minutes and then was called back and orally informed of the decision of the Board. A written version of the decision was later sent to her. The candidate also had the impression, because the members of the Board were the same in all three cases, that the members had made up their minds prior to the hearing.

The candidate also did not trust the objectivity and impartiality of the SCP at the time and so she saw no point in challenging the decisions of the Disciplinary Board. In 2014, her chief prosecutor was a member of the SCP and in 2015 and 2016, he was a member of the qualification board. Although the candidate could not state at the public hearing whether the Chief Prosecutor had been involved in the decisions of the SCP confirming the decisions of the Disciplinary Board, she argued that the Chief Prosecutor had close relations with some members of the SCP and she was convinced that attempts were made within the Board to influence the decisions in her cases.

b. The law

According to art. 8 para. (2) lit. a) of Law No. 26/2022, 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 activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

As the three disciplinary decisions taken by the Disciplinary Board related to actions by the candidate in the period between early 2014 and 8 April 2016, both the *Prosecutor's Code of Ethics*, approved by the Superior Council of Prosecutors' decision No. 12-3d-228/11 of 4 October 2011 and the *Prosecutor's Code of Ethics and Conduct*, approved by Superior Council of Prosecutors' decision No. 12-173/15 of 30 July 2015, were applicable to the candidate at the relevant time.

The Prosecutors Code of Ethics of 4 October 2011 provides the following:

According to art. 5, lit. b), the prosecutor is obliged to respect the deontological rules of the prosecutors and to refrain from actions that compromise the honor and dignity of the prosecutor's profession.

Pursuant to art. 6, lit. a), in the performance of duties, the prosecutor shall carry out service duties fairly, impartially, consistently and promptly.

The Prosecutor's Code of Ethics and Conduct of 30 July 2015 provides the following:

Pursuant to art. 2, the prosecutor represents the public authority which, in terms of society and the public interest, ensures the application of the law, taking into account the rights of the person and the efficiency of justice.

Art. 6.1. deals with the principle of legality. According to art. 6.1.4., the prosecutor must respect the legitimate rights and interests of the parties and participants in the proceedings, natural and legal persons.

Art. 6.2. deals with the principle of independence. According to art. 6.2.1., the prosecutor must exercise his/her duties independently, impartially, honestly, irreproachably, showing a high moral standing and maximum fairness and to contribute to the efficient and effective realization of the act of justice. Independence is not a privilege, or a prerogative conferred on prosecutors in their personal interest, but a guarantee of a fair, impartial and effective justice that protects the public and private interest in society.

According to Commission's Evaluation Rules, art. 5 para. (2), in assessing a candidate's ethical

integrity, the Commission may take into account the gravity or severity, the surrounding context, and the willfulness, of any integrity incident, and as to minor incidents, whether there has been a sufficient passage of time without further reoccurrences. While determining the gravity, the Commission will take into account all circumstances, including but not limited to:

- a) whether the incident was a single event;
- b) causing no or insignificant damage to private or public interests (including public trust) – such as the occasion of an ordinary traffic violation;
- c) or not being perceived by an objective observer as an attitude of disrespect for the social order arising from disregard for its rules and regulations.

According to art. 8 para. (6) of Law No. 26/2022, in assessing the criteria set out in para. (2) - (5) and in making decisions on them, the evaluation Commission does not depend on the findings of other bodies with competence in the respective field.

c. Reasoning

Art. 8 para. (2) lit a) of Law No. 26/2022 requires the Commission to determine that a candidate 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.

From 2014 to 2016, the candidate, while working at the Center District Prosecutor's Office, Chisinau municipality, was subject to three disciplinary proceedings, leading to the sanctions of one warning and two reprimands.

The existence of three disciplinary decisions against the candidate in principle constitute a basis for serious doubts as to whether the candidate is compliant with the requirements set forth in art. 8 of Law No. 26/2022, and in particular with the requirement of ethical integrity, pursuant to art. 8 para. (2) of this Law. It is of fundamental importance that prosecutors are guided by and act in full conformity with high ethical standards, contained in the various Codes of Ethics, applicable to the candidate since she became prosecutor in 2010. Prosecutors must comply with the highest standards of integrity and responsibility in order to ensure the society's trust in the prosecutor's office.

Based on an analysis of all relevant circumstances, the Commission is required to determine whether the candidate has sufficiently mitigated the doubts that have arisen as a result of the existence of these disciplinary decisions. In doing so, the Commission is not bound by the findings or determinations of disciplinary bodies and necessarily must independently determine what significance or weight, if any, to give them.

The Commission notes that in all written rounds of questions and during the hearing the candidate

provided detailed responses, information, and documentation. The candidate provided additional documentation after the hearing, both at the request of the Commission and on her own initiative, pursuant to art. 12 para. (4) lit. d) of Law No 26/2022, which she deemed necessary to remove doubts about her integrity.

The candidate confirmed that delays had taken place in a number of cases and that deadlines provided for by law sometimes were not met. The candidate provided extensive explanations for the reasons for the delays and the resultant disciplinary proceedings.

The candidate indicated that these proceedings were initiated while she was working at the Center District Prosecutor's Office, Chisinau municipality, where she had a complicated relationship with the Chief Prosecutor, with whom she regularly disagreed on prosecutorial decisions to be taken and who, in her view, did not sufficiently respect her independence. Cases were regularly withdrawn from her and reassigned to other prosecutors. In the view of the candidate, the Chief Prosecutor did not appreciate her actions and therefore initiated the disciplinary proceedings against her.

Both the candidate and the Center District Prosecutors' Office, Chisinau municipality, provided detailed figures about the distribution of work among the prosecutors in that office at the beginning of 2014, when the first disciplinary case was brought against her. These figures corroborate that work was unequally distributed at the time and that this may have contributed to the candidate's inability to meet all deadlines imposed by law.

In this context, the Commission examined the merits of allegations against the candidate in specific cases. With respect to the first disciplinary decision of 29 August 2014, the Commission observed that the candidate did not take a number of actions and decisions as required by law. The candidate clarified in detail the circumstances in which she was required to function. Against the background of a challenging relationship with the Chief Prosecutor and returning from a two-month sick leave, the candidate was confronted with a demonstrable unequal distribution of work as compared to her colleagues, which in the perspective of the candidate was such that she was set up to fail.

In the second disciplinary decision of 2 October 2015, the candidate was disciplined for failure to fulfil her professional responsibilities, for not giving concrete instructions to the investigating police officer, for not responding to the failures of this police officer and for not pursuing other actions that could have been undertaken in prosecuting this case. At the time, a criminal prosecution for professional negligence had been undertaken against the police officer who had investigated the case. The disciplinary decision against the candidate was taken prior to the decision in relation to the criminal prosecution of the police officer. On 16 December 2015, the case against the police officer was dismissed, as the police officer was found to have carried out all possible actions, that other actions could not have been carried out, and that the officer took all measures to ensure the complete and objective prosecution of the criminal case. These

conclusions are difficult to reconcile with the findings in the decision against the candidate, according to which she failed to give concrete instructions, did not respond to failures in the investigation and failed to pursue other actions that could have been undertaken.

In the third disciplinary decision of 10 June 2016, the candidate was reprimanded for considerable delays in two criminal cases. At the hearing, the candidate provided detailed information about the complexity of one of these cases. That case related to the alleged illegal occupation of 30 land plots, involving many parties and a need for external cadastral and financial expert advice. The candidate informed the Commission that this case was ultimately transferred to a special unit for exceptional cases within the General Prosecutor's Office and that she felt she was unjustifiably blamed for the duration of the case. The disciplinary decision states that the case was assigned to the candidate on 20 September 2012, and she did not carry out any criminal investigation action until 14 April 2015. However, the decision also refers to the fact that a letter dated 24 March 2014 confirmed that the candidate had sent materials relating to this case to the Planning Institute of Land Management, which shows that the candidate did take some actions in relation to this case. The disciplinary decision supports the conclusion that considerable delays have taken place in the management of the two cases. This was confirmed by the candidate herself during the hearing. But she explained that these delays were the result of a high workload and of the complexity of the cases involved. The Commission observes that such delays are undesirable and should be avoided as much as possible. However, given the arguments presented by the candidate and the fact that the disciplinary decision itself seems to be based on factually erroneous considerations, the Commission concluded that the identified shortcomings were not sufficiently supported to raise serious doubts about the candidate's ethical integrity.

In relation to the proceedings leading to the three disciplinary decisions, the candidate shared a number of concerns, to explain why she did not appeal the decisions. She had no trust in the independence and impartiality of the authorities involved. Searches of her office desk had taken place in 2014 and 2016, which in her view were illegal. The candidate also did not feel that she was truly heard by the Disciplinary Board, as hearings before the Board lasted for only five to ten minutes and decisions taken were communicated to her within five to ten minutes after the hearing. The candidate also had the impression, because the members of the Board were the same in all three cases, that the members had made up their minds prior to the hearing. Finally, the candidate did not trust the objectivity and impartiality of the SCP at the time. In 2014, her Chief Prosecutor was a member of the SCP and in 2015 and 2016, he was a member of the qualification board. According to the candidate, the Chief Prosecutor had close relations with some members in the SCP and in the Board and she was convinced that attempts had been undertaken to influence the decisions in her cases.

In addition to the assessment of the facts of the three disciplinary cases, the Commission also took into account the following considerations.

The candidate argued that the overall workload of prosecutors in general is high and that this

applies in particular to the workload of prosecutors at the Center District Prosecutor's Office, Chisinau municipality. The candidate also explained that before 2017, there was no centralized IT system in the Prosecutor's Office that tracked progress on pending cases.

The candidate emphasized that, after the termination of the mandate of the Chief Prosecutor in 2017, she was not the subject of new disciplinary cases. To the contrary, according to the candidate, when she was working at the Prosecutor's Office in Botanica in 2018, she had the best performance indicators of all prosecutors working at that office. She was also seconded to the Prosecutor General's Office for almost four years, which she considered a promotion.

The Commission took into account all of the facts and arguments presented. The candidate admitted that she sometimes had not taken action or decisions in an expeditious way or in conformity with deadlines prescribed by law. The detailed information submitted about the high volume of work, the unequal distribution of work leading to an even higher workload for the candidate and the difficult working environment provide reasonable explanations for these omissions. The lack of an effective IT tool to track progress in the management of cases further complicated her work. And the fact that since 2016 no further disciplinary procedures have taken place and the candidate demonstrated high performance at a different Prosecutor's Office under a different leadership leads the Commission to the conclusion that the candidate has sufficiently mitigated the concerns the Commission had in relation to the three disciplinary decisions taken against the candidate in 2014 to 2016.

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 ethical integrity as per art. 8 para. (2) lit. a)) of Law No. 26/2022 with respect to three disciplinary decisions taken in relation to the candidate in the course of 2014 – 2016 because the candidate provided detailed information, arguments and data that 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 Superior Council of Prosecutors. If within 48 hours of sending the decision, the candidate does not notify the Commission of his or her refusal to publish the decision, the decision shall be published on the website of the Superior Council of Prosecutors 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