



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. 43 of 21 June 2023 on the Candidacy of Eduard PANEA,
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 27 May 2023 and 21 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

Eduard PANEA, Chief Prosecutor of the Leova District Prosecutor’s Office (“the candidate”), 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 as a prosecutor on 16 October 2007 to serve in the Cantemir District Prosecutor’s Office. Between 2013 and 2016, the candidate served as Deputy Prosecutor of the Cantemir District Prosecutor’s Office. Between 2016 and 2021, the candidate served as prosecutor in the Anticorruption Prosecutor's Office. The candidate has served as Chief Prosecutor of the Leova District Prosecutor’s Office since May, 2021.

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 5 July 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 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 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 eight questions, including 15 sub-questions and seven requests for further documentation. The candidate replied within the requested time period on 14 April 2023 to all questions and provided all of the requested documents.

On 2 May 2023, the Commission sent a second round of three questions, including six sub-questions and three requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 5 May 2023 to all of the questions and provided all of the requested documents.

On 12 May 2023, the Commission sent a third round of two questions, including four sub-questions, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 15 May 2023 to all questions.

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 26 May 2023, the candidate took part in a public hearing of the Commission.

Under art. 12 para. (2) of Law No. 26/2022, on its own initiative, the Commission determined to conduct a part of the hearings in a closed meeting and met with the candidate in a closed session on one issue.

On 6 June 2023, the Commission sent a post-hearing round of one question, including five sub-questions 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 7 June 2023.

II. *The law relating to the evaluation*

The Commission's evaluation of candidates' integrity consists of verifying their ethical integrity and financial integrity (art. 8 para. (1) of Law No. 26/2022).

Art. 8 para. (2) of Law No. 26/2022 provides that a candidate is deemed to meet the criterion of *ethical integrity* if:

- a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer;
- b) there are no reasonable suspicions that the candidate has committed corruption acts, acts related to corruption or corruptible acts, within the meaning of the Law on Integrity No. 82/2017;
- c) has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

A number of versions of ethical codes applied to 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. Income and expense imbalance in 2021

a. The facts

Based on the information collected by the Commission during the evaluation, it appeared that the candidate’s family’s expenses were greater than their income in 2021 by 209,718 MDL. The candidate was asked about this apparent imbalance at the hearing.

Income MDL		Expenses MDL	
Declared Annual Salary (net)	227,736 MDL	Total cash and expense withdrawals from bank accounts 2021	237,367 MDL [137,873 MDL, 97,829 MDL, 1665 MDL]
Declared allowance for child and sick allowance	186,772 MDL	Medical expenses of a family member	19,800 MDL
Declared income from sale of the car model Volkswagen Passat	77,304 MDL (3,700 EUR)	Cash savings	227,354 MDL [7,450 EUR (est. 155,854 MDL) and 71,500 MDL].
Declared wife’s allowance for child	129,592 MDL	Total Bank Accts	498,162 MDL

	[maternity allowance - 98,839 MDL and allowance for child in amount of 7,236 RON (est. 30,753 MDL)].	Adjusted balances as of 31.12.2021	[candidate's 2 bank accounts: 346,648 MDL (171,808 MDL and 174,840 MDL) wife's 2 accounts: 151,514 MDL (97,318 MDL and 12,752 RON (est. 54,196 MDL))]
Total bank savings and interest	151,561 MDL		
[Undeclared acts (2) - balance as of 31.12.2020]	[149,167 MDL]		
[Declared interest from bank deposits]	[2,394 MDL Candidate's interest - 1,761 MDL; wife's interest - 633 MDL]		
Total	772,965 MDL	Total	982,683 MDL
Difference	-209,718 MDL		

At the hearing and in response to post-hearing questions about the candidate's income and expenses, the candidate furnished additional information and documentation. The candidate's annual income was adjusted in the table to include two work allowance payments received in 2021 totaling 5,337 MDL and his bank interest income. The candidate argued that a 10,975 MDL payment from the National Office of Social Insurance for 2021 should be added to his 2021 income, however, the payment was not received until 10 January 2022 and not included on that basis. The Commission did credit an allowance payment to the candidate for 2020 because it was received in 2021. His wife's income was adjusted to reflect the childcare allowances actually paid in 2021 and other credits. The candidate was also credited with cash savings of 100,000 - 120,000 MDL which he estimated was the amount of cash he had on hand at the end of 2020 that was not in a bank account and did not have to be declared because it was below the threshold for reporting. The candidate had indicated in response to initial questions from the Commission that he might have had such cash on hand but he did not furnish any estimated amount until the post-hearing written questions.

Adjustments were also made to the candidate's expenses. Although he had initially claimed that the actual deductions from his bank account provided a more accurate measure of expenses than the Consumption expenditures for population (CEP) based on National Bureau of Statistics data, he expressed concern that his total deductions might include some cash that was withdrawn and saved rather than spent. Thus, CEP for a family of four in the candidate's region was used. The medical expenses of a family member that the candidate had declared in the amount of 19,800 MDL were omitted as potentially duplicative of the CEP expense figure. Lastly, the candidate's wife's RON bank account was reduced to reflect the balance of the account as of 31 December

2021 because the amount declared by the candidate was the balance of the account in March 2022 when he submitted his 2021 declaration.

The adjusted income and expense figures, calculated in line with the “Annex: Unjustified wealth” of the Evaluation Rules, are set forth on the following table.

Income 2021 MDL		Expenses 2021 MDL	
Declared Annual Salary (net) Including bank interest and other items noted by candidate	234,692 MDL	CEP 2021 (4 pers.*3378,4 MDL)	162,164 MDL
Declared allowance for child and sick allowance excluding 10,975 MDL not paid until 01.01.2022	173,474 MDL	Cash savings Adjusted balance as of 31.12.2021.	208,854 MDL
Declared income from sale of the car model Volkswagen Passat	77,304 MDL [3,700 EUR]	Total Bank Accounts Adjusted balance as of 31.12.2021	492,012 MDL [candidate’s 2 bank accounts: 346,648 MDL (171,808 MDL and 174,840 MDL) wife’s 2 accounts: 145,364 (97,318 MDL and 11,305 RON (est.48,046 MDL)]
Declared wife’s allowance for child and other credits deposited to her account in 2021	124,001 [maternity allowance - 98,839 MDL and allowance for child in amount of 7,236 RON (est. 30,753 MDL)].		
Total bank savings and interest	153,900 MDL [149,167 MDL]		

Omitting savings interest that candidate included in above calculations for himself and wife [Undeclared accts (2) - balance as of 31.12.2020] [Balance wife's bank account-not Previously included]	[4,733 MDL]		
Savings that were not required to be declared (less than 130,540 MDL)	100,000 - 120,000 MDL		
Total	863,371- 883,371	Total	863,030 MDL
Difference	341-20,341 MDL		

Based upon the recalculations, the candidate's family income appears to have equaled or exceeded their expenses for 2021.

b. The law

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

According to art. 6 of the Evaluation Rules, 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.

The Annex to the Evaluation Rules defines the method for calculating undeclared wealth.

Art. 4 para. (1), lit. d) of Law No. 133/2016 on the declaration of assets and personal interests provides that a subject of the declaration shall declare the monetary amount in the national currency or a foreign currency which exceeds the value of 15 average monthly salaries per economy and which does not represent the object of a deposit in a financial institution.

According to the Government Decision No. 923/2020, the average monthly salaries per economy in 2021 was 8,716 MDL (15 average salaries – 130,740 MDL).

c. Reasoning

The Commission is required to find that a candidate's acquired wealth in the past 15 years corresponds to the declared revenues.

The candidate engaged in considerable dialogue with the Commission concerning his family's income and expenses in 2021, the only year about which the Commission had doubts. The initial income and expense calculations were based on the amounts declared by the candidate in his declaration of assets and personal interests for 2021 (hereinafter "annual declaration"). These did not include two bank accounts that had not been declared by the candidate, some allowances that had not been declared or were declared in 2020. Also, the balances of the bank accounts that the candidate had declared were the balances of the accounts as of March 2022 when the candidate submitted his 2021 annual declaration; these amounts had to be corrected to reflect the balances as of 31 December 2021. All of the adjustments were made based on documentation supporting the adjustments with the exception of the undeclared cash on hand that the candidate had at the beginning of 2021. The law does not require the declaration of cash on hand in annual declarations unless it exceeds a certain threshold which was 130,740 MDL in 2021. Since the candidate indicated that his cash on hand was less than that amount at the end of 2020, it was not required to be declared and thus, there was no documentation to provide confirmation of that cash.

Based upon the adjusted income and expense information available to the Commission, the candidate's family's expenses did not appear to exceed the candidate's income in 2021.

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) of Law No. 26/2022 with respect to the candidate's wealth acquired corresponding to the candidate's declared revenues because the candidate mitigated the Commission's concerns regarding this issue.

2. Non-declaration of two bank accounts with balances exceeding 15 average monthly salaries per economy in 2020 annual declaration

a. The facts

In the candidate's 2020 annual declaration, he did not disclose a bank account maintained by him and one maintained by his wife. These bank accounts were open and active during 2020. On the date of submission of the candidate's 2020 annual declaration, the balance of the candidate's bank account was 81,432 MDL. The balance of the candidate's wife's bank account on that date was 108,465 MDL. The combined balance of these two bank accounts on that date was 189,897 MDL.

In response to written questions from the Commission and at the hearing, the candidate stated that one of the accounts was a salary account and one was for allowances. In the income section of his 2020 declaration, he had included all of their income, including salary and allowances, and in the financial assets section of the declaration he did not include the funds held in the bank accounts as the income had already been declared.

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, as per art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022. 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. 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 (hereinafter "NIA").

"Close persons", as defined in Law No. 133/2016 on declaration of assets and personal interests (in force in 2021), 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. d) of Law No. 133/2016 on declaration of assets and personal interests (in force in 2021), the subject of declaration shall declare: "the financial assets held by the subject of the declaration, and family members, his/her cohabitee/concubine, including as beneficial owners, namely the monetary amount in the national currency or a foreign currency which exceeds the value of 15 average salaries per economy and which does not represent the object of a deposit in a financial institution. Bank accounts, creation units in investment funds, equivalent forms of investments and savings, investments, bonds, checks, bills of exchange, loan certificates, other documents that include personal patrimonial rights of the subject of the declaration, of his/her family members or of his/her cohabitant, direct investments in the national currency or in a foreign currency, made by him/her or by his/her family members or his/her cohabitant, as well as other financial assets, if their combined value exceeds 15 average national salaries".

According to the Regulation on completion of the declaration of assets and personal interests in electronic form, approved by NIA's Order No. 15 of 27 February 2018, bank accounts of the subject of declaration together with the family members are reportable only if the total value of all accounts exceeds the value of 15 average salaries per economy, at the date of submission of the declaration.

According to the Government Decision No. 923/2020, the average monthly salaries per economy in 2021 was 8,716 MDL (15 average salaries – 130,740 MDL).

c. Reasoning

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests, as per art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022.

According to the law on declaration of assets and personal interests in effect when the candidate filed his 2020 annual declaration, he was required to declare all financial assets held by him and family members including bank accounts, if the overall amount exceeds the value of 15 average salaries per economy, at the date of submission of the declaration. If this threshold is exceeded, the candidate was required to indicate each account, regardless of its individual value. In 2021 when the candidate submitted his 2020 annual declaration, 15 monthly average salaries were equivalent to 130,740 MDL

The two bank accounts that were not declared in the candidate's 2020 annual declaration had a combined balance of 189,897 MDL, which exceeded the 15 monthly average salaries threshold. Under the law, the candidate was required to disclose the accounts.

When asked by the Commission about the non-disclosure of the two accounts, the candidate stated that in his 2020 declaration he had included all of his and his wife's income, including salary and allowances, and in the financial assets section of the declaration he did not include the funds held in the bank accounts as the income had already been declared.

A candidate's failure to adhere to the requirements of the legal regime for declaring assets and income necessarily raises concerns about a candidate's ethical and financial integrity. As the Commission does in instances when candidates have not fully disclosed bank accounts in accordance with the law, the Commission reviewed information about the bank accounts that had not been declared in terms of the period of non-disclosure, level of activity, the type of account and the presence of any suspicious transactions. In this instance, the combined balance of the accounts was 189,897 MDL. One was a salary account, and one account was for allowances. Given the documented sources and amounts of the payments to the accounts, the activity in the accounts raised no suspicions. Given the type of the accounts, the absence of suspicious or unexplained transactions and the fact that the funds in the accounts had been disclosed as income in the candidate's 2020 declaration, the Commission finds that there was no intention or reason to hide or not disclose these bank accounts and the candidate's failure to do so was apparently from a misunderstanding of the requirements of the law.

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. 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 candidate's failure to disclose two bank accounts in his 2020 annual declaration because the candidate mitigated the Commission's concerns regarding this

issue.

3. Disciplinary proceedings against the candidate concerning alleged ethical violations involving delay

a. The facts

In 2017, the Disciplinary and Ethics Board (hereinafter “Disciplinary Board”) adopted Decision No. 13-25/17 of 17 February 2017 which imposed the disciplinary sanction of “reprimand” on the candidate. Following his appeal, the Superior Council of Prosecutors (hereinafter “SCP”) adopted Decision No.12-33/17 of 30 March 2017, changing the disciplinary sanction of “reprimand” to “warning”. The decisions arose from controls relating to alleged inactions and delays by the candidate while leading criminal investigations in five cases as deputy chief prosecutor in the Cantemir Prosecutor's Office. The chief prosecutor was also named in the disciplinary proceedings in connection with the handling of at least two of the five cases. The Disciplinary and Ethics Board ordered the cessation of disciplinary proceedings with respect to the chief prosecutor on the grounds that a disciplinary violation had not been committed. The SCP disciplinary decision imposed the sanction of “warning” for the candidate’s handling of three of the criminal matters, including the ones in which the Board had determined that there was no disciplinary violation committed by the chief prosecutor. The basis for the Board’s disciplinary action was described in the SCP decision as follows:

Criminal case No. 1 was initiated on 26 March 2015 based on art. 217¹ para. (3) lit. b) and f) of the Criminal Code (Illegal distribution of drugs, ethnobotanicals or their analogues for purposes of sale). However, from October 2015 to August 2016 (a period of 11 months), the criminal case was practically left dormant, without a complete and objective investigation being undertaken into all aspects of the case. The decision stated that the inactivity in the case was due to a passive role on the candidate’s part and on the part of the criminal investigation body. According to the results of the control, the situation was caused by indifference on the candidate’s part, as he had extended the term of the criminal investigation, issuing successive orders with similar content. On 4 December 2015, the candidate had formulated written instructions, which were ignored by the criminal investigation body. Even in these circumstances, the candidate did not react, according to the disciplinary decision.

Criminal case No. 2 was initiated on 22 October 2013 based on art.352 para. (3) of the Criminal Code (arbitrariness, that led to the violation of the public order or violation of rights of others). The candidate conducted the criminal investigation from 19 February 2014 until 22 August 2016. From 19 February 2014 to 26 September 2016 (two and one-half years), except for the addition of some documents to the materials of the case and the formulation of an instruction to the criminal investigation body, (which did not carry out the necessary actions), according to the disciplinary decision, the candidate limited himself to issuing formal, template orders to extend

the terms of the criminal investigation and did not react to the case being left inactive. The case was transferred to the Prosecutor General's Office on 26 September 2016.

Criminal case No. 3 was initiated on 10 March 2016, based on art.362¹ para. (3) lit. a) of the Criminal Code (Organizing illegal migration) and until 10 September 2016 was under the candidate's management. The SCP decision stated that due to the candidate's passive role, he did not undertake any actions on this case for two months. The term of criminal investigation was formally extended, by successive orders with similar content, without formulating written instructions to the criminal investigation officer. The candidate formally extended to the defendants the preventive measure - the obligation not to leave the country - but the candidate did not inform the police authority in the territory where the defendants lived, or, to the border authorities, which resulted in the expenditure of time and resources to conduct investigations in order to find the accused.

According to the SCP decision, analogous situations were found following the verification of other criminal cases managed by the candidate.

The decision stated that the candidate was guilty of violating the responsibilities specific to the office, materialized in the imperative requirement provided by art. 6 para. (3) lit. a), c) and d) of the Law on the Prosecutor's Office, according to which prosecutors are obliged to perform their duties in strict accordance with the Constitution and the laws of the Republic of Moldova, to ensure respect for human rights and fundamental freedoms in the exercise of their duties, to respect the deontological rules of prosecutors and to refrain from acts that would discredit the image of the Prosecutor's Office or affect the prestige of the prosecutor's profession.

In the Ethics Questionnaire submitted by the candidate to the Commission, he stated that the disciplinary sanction imposed on him was carried out during the period when criminal cases were withdrawn from territorial prosecutors and transferred to specialized prosecutors, where tendentiously, in the absence of complaints, several prosecutors were subjected to disciplinary proceedings for non-compliance with the reasonable time limit for cases, although the data in the Prosecutor General's 2017 report reflected thousands of files with investigation deadlines exceeded by three years. The candidate noted that the files that were the subject of the disciplinary decision were in procedures involving other prosecution bodies, directly responsible for the criminal prosecution process, yet no deviations by them were found. The criminal cases were complex and, as a result, the criminal prosecutions were completed several years after the candidate was sanctioned.

In response to written questions, the candidate attached a copy of his appeal of the Disciplinary Board's decision that he submitted to the SCP, in which he detailed all of his arguments. He also stated that personally, he was very much affected by the arbitrary treatment of the case by the collegiate bodies, the superficial attitude toward his efforts at work and the form of persecution against him, which can be appreciated from the audio recording of the SCP meeting.

The candidate stated that when adopting its conclusions, the Disciplinary Board's decision did not take into account the measures taken by him for the efficiency of the criminal prosecution, as well as the circumstances related to the criminal prosecution process, namely:

- Adopting written directions by the candidate for the criminal investigative body.
- Conducting several joint meetings with representatives of the Cantemir Police Inspectorate and General Directorate on Criminal Prosecution where the problem of delay in prosecution in all criminal cases was discussed.
- Constant change and lack of staff at Cantemir Police Inspectorate, including the change of three investigators in two of the criminal cases.
- Lack of personnel in the Cantemir District Prosecutor's Office, including 3-4 vacant prosecutor positions for long periods.
- The workload at Cantemir District Prosecutor's Office, including the amount of work of each prosecutor.
- The fact that all the listed criminal cases were under the direct management of the Cantemir Police Inspectorate and Border Police, who independently made decisions on the investigation of the cases and what actions should be taken.
- Lack of complaints from the parties in the criminal cases about the investigation or prosecution of these cases.
- The negligent attitude of the Cantemir Police Inspectorate, which was investigated internally and where violations were admitted, but disciplinary sanctions were not imposed.

By the SCP's Decision No. 12-33/17 of 30 March 2017, the Disciplinary Board's Decision No. 13-25/17 of 25 February 2017 which imposed the disciplinary sanction of reprimand was annulled and a new decision was adopted with the disciplinary sanction of warning.

At the hearing, the candidate indicated his disagreement with the findings and conclusions in the Disciplinary Board and SCP decisions.

With respect to the alleged 11-month delay in Criminal case No. 1, the candidate noted that the case was a high-profile complex illegal drug distribution case. Several individuals were being investigated and special investigative measures were employed, including an undercover operation and wiretapping. The candidate believed that the case was sent to court not long after the candidate ceased leading the case. Given the circumstances, the candidate believed that the length of the investigation was reasonable and disagreed that the case was improperly delayed or ignored.

With respect to the alleged two-and-a-half-year delay in Criminal case No. 2, the candidate noted that the case was a complex insolvency case that was joined with other cases. The parties were opposed to the criminal investigation and did not provide support; the injured party also did not want to be involved. The candidate stated that, at every step of the investigation, he gave

instructions to the criminal investigation body including about information to be gathered. In the candidate's opinion the major issue was the attitude of the criminal investigation body – perhaps the case was too complex or difficult for them to handle. Over the course of the investigation, three different investigators were assigned. According to the candidate, as of 2020, the criminal investigation was still underway, which means that the investigation continued for four years after the candidate ceased leading it.

With respect to the alleged two-month delay in Criminal case No. 3, the candidate noted that the Disciplinary Board's decision erroneously stated that he was assigned to the case from March to September 2016 when, in fact, he was transferred to another institution to work in July 2016. During the three months that he led the investigation of the illegal migration case, he issued 55 orders for banking data about account turnovers for the four or five individuals involved. The candidate disputed that he had not informed Border Police of a preventative measure imposed and stated that Border Police were informed. According to the candidate, a court decision was issued in the case in 2020 which suggests that the investigation took a number of years to complete after the candidate was transferred.

The candidate noted that he and the Chief Prosecutor of Cantemir were both subjected to the disciplinary proceedings. They were accused of violations of reasonable timelines in their handling of at least two of the same cases (Criminal cases Nos. 1 and 3). They provided the same responses to the allegations. The Disciplinary Board found no disciplinary violation had been committed by the Chief Prosecutor and ordered the proceedings terminated as to him but found the candidate liable for delayed resolution of cases and lack of promptness in three cases, including two that were dismissed as to the Chief Prosecutor.

According to the candidate, none of his acts in the three cases were annulled by a higher prosecutor or by a court.

The candidate informed the Commission that since the Disciplinary Board decision in 2017, no issues of delay in his cases have been raised by his supervisors or anyone else.

b. The law

Art. 8 para. (2) lit. a) of Law No. 26/2002 provides that the candidate shall be deemed to meet the criterion of ethical integrity if he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

The Disciplinary Board decision involved the candidate's handling of cases beginning in October 2013 up to August 2016. Both the Prosecutor's Code of Ethics, approved by the CSP's Decision No. 12-3d-228/11 of 4 October 2011 and the Prosecutor's Code of Ethics and Conduct, approved

by CSP's Decision No. 12-173/15 of 30 July 2015, were applicable to the candidate at the relevant time.

According to item 2 of the Prosecutor's Code of Ethics of 4 October 2011, the Code of Ethics aims to establish the basic principles of the prosecutor's conduct and ethics, to comply with the restrictions and special requirements towards the prosecutor, to establish the responsibilities and to ensure the impeccable behavior of the prosecutor.

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

Pursuant to item 2 of the Prosecutor's Code of Ethics and Conduct of 30 July 2015, 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.

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

Item 6.3. deals with the principle of integrity. According to item 6.3.1., the prosecutor must comply with the highest standards of integrity and responsibility in order to ensure the society's trust in the prosecutor's office.

Item 6.5. deals with the principle of professionalism. Pursuant to art. 6.5.3., the prosecutor must use the available resources optimally and responsibly; to continuously expand their knowledge and to develop their professional skills.

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.

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).

c. Reasoning

In evaluating the candidate's ethical integrity, the Commission is required to determine that the 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.

In 2017, while the candidate was working at the Cantemir District Prosecutor's Office, the Disciplinary Board adopted a decision which imposed the disciplinary sanction of "reprimand" on the candidate. Following his appeal, SCP adopted a decision changing the disciplinary sanction of "reprimand" to "warning".

The fact of a disciplinary sanction being imposed on 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, specifically with the requirement of ethical integrity, pursuant to art. 8 para. (2) of the 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 he became a prosecutor in 2007. As Item 6.3.1 of the 2011 Code of Ethics and Conduct emphasizes, a prosecutor 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 disciplinary action. In doing so, the Commission is not bound by the findings or determinations of disciplinary bodies and 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 concerning the disciplinary proceedings.

The Commission found it noteworthy that the disciplinary proceedings were initiated against both the candidate and the Chief Prosecutor of the Cantemir District Prosecutor's Office with the same allegations of delayed resolution and lack of promptness in their handling of at least two of the same cases. After the Disciplinary Board hearing, the proceedings were terminated against the Chief Prosecutor on the grounds that no disciplinary violation had been committed, without further explanation in the Board's decision. Yet the candidate was held liable for the same violations in the same cases.

In this context, the Commission examined the merits of allegations against the candidate in the specific cases. Each of the cases was complex. Criminal case No. 1, involving illegal distribution of drugs charges, required the investigation of several people and special investigative measures, including an undercover operation and wiretapping. According to the candidate, the case went to court not long after the candidate stopped leading the case. The length of the investigation did not seem unreasonable given the circumstances of the case. Similarly, Criminal case No. 3, involving illegal immigration charges, required the investigation of four to five people, according to the candidate, who stated that he issued 55 orders for banking data concerning these individuals during the four months that he was assigned to the case. He also ordered restrictive measures and disputed that the information about the measures was not provided to border police. The investigation appears to have taken several years to complete after the candidate's four-month assignment to it.

The allegation of the longest delay was in Criminal case No. 2, which involved insolvency. It was also a complex case with three additional cases joined to it. According to the candidate, the parties were opposed to the investigation and were not cooperative. The injured party was difficult to find and did not want to be involved. Three different investigators had been assigned. The candidate denied inactivity and indicated that he gave instructions at every step. He attributed the problem to the attitude of the investigative body and the possibility that the case was too complex or difficult for them. According to the candidate, the investigation was still pending four years after he stopped leading the case and it was transferred to the Prosecutor General's Office.

The Commission observes that delays are undesirable and should be avoided as much as possible. However, the delays in these matters were not all lengthy and the surrounding circumstances provided important mitigating context. The fact that the candidate was held liable for these delays while the same charges involving at least two of the same cases against the Chief Prosecutor were dismissed because no disciplinary violation was committed was difficult to reconcile.

In addition to the assessment of the facts of the cases, the Commission also took into account that the discipline of a warning was issued six years ago in 2017 and since that time, according to the candidate, he has not had issues concerning delay in his cases raised by his supervisors or anyone else. The Commission is also not aware of any new disciplinary cases being brought against him.

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 the candidate's handling of the three criminal matters that were the subject of a disciplinary warning in 2017 because the candidate provided detailed information that mitigated the Commission's concerns regarding this issue.

4. Issues regarding acquisition, importation and registration of Honda CRV m./y. 2006 and undervaluation of the car

a. The facts

In the candidate's 2018 annual declaration, he declared that in 2018 his wife acquired a Honda CRV car, m./y. 2006, valued at 1,500 EUR. The candidate informed the Commission that the car was purchased in England, through an intermediary. When his wife acquired the car, no sale-purchase contract was drawn up and the document used for the confirmation of the property was the Certificate of registration from England in the candidate's wife's name. The car was initially brought into the country through the procedure for temporary admissions without issuance of customs documents, only registration at the border. According to the candidate, the customs procedures were not completed for one year and four months.

The candidate was asked how the car was in the Republic of Moldova for a period of 1 year 4 months, contrary to the term provided by the Customs Code, which provides for temporary admission of a vehicle for up to 180 days. The candidate declared that he did not know in detail the changes in customs legislation, but the previous legislation provided a term of three years as the maximum term of residence for temporary admission of the means of transport. The candidate informed the Commission that he and his wife were never notified that the car's temporary admission had expired. According to the candidate, the timeline for completing the importation procedures at Customs Service was determined by a close relative, who needed to decide whether to keep the car and also needed to collect certain paperwork.

According to the candidate, in 2019, his wife donated the Honda CR-V to the close relative under a special purpose clause. The candidate provided a copy of the donation contract from his wife to the close relative. It is dated 5 October 2019. According to Border Police records, the car was driven out of the Republic of Moldova on 4 October 2019 and re-entered the country on 5 October 2019. According to the candidate, no issue was made at Customs Service about the temporary admission having expired. The close relative dealt with the import procedure paperwork at Customs Service. The value of the Honda CRV stated in the donation contract was 1,500 EUR. The value of the Honda CRV set at the customs office was 60,000 MDL, without customs taxes. The close relative did not pay customs fees on this car, as that person imported it under a special procedure provided by law which exempts qualified individuals from paying customs fees.

In the candidate's annual declarations for 2019, 2020 and 2021, he declared the right of use of the Honda CRV, with the close relative listed as owner as of 2019. The candidate listed the value of the car as 1,500 EUR (est. 29,500 MDL).

According to the candidate, the car was purchased for the close relative and was immediately turned over to the relative when the car was imported in 2018. The car was never driven by the candidate's wife, who does not drive. The candidate had a right of use of the car because he would transport the close relative using the car. Since the death of the close relative in 2020, the car has not been claimed by the candidate or his wife.

At the hearing, the candidate confirmed that his wife resides in the Republic of Moldova but she also has Romanian citizenship. She does not have a Romanian driver's license. The car was purchased in his wife's name because of her Romanian citizenship to facilitate purchasing the car and to relieve the close relative from having to deal with any complications.

b. The law

According to art. 8 para. (4) lit. a) of Law No. 26/2022, the candidate shall be deemed to meet the criterion of financial integrity if the Commission finds that his/her wealth acquired in the past 15 years corresponds to the declared revenues.

Art. 8 para. (5) lit. a), b) and c) of Law No. 26/2022 provide that to assess the candidate's financial integrity, the Commission shall verify compliance by the candidate with the tax regime in the part related to the payment of taxes on using funds and income derived from the owned property, as well as taxable income and the payment of import duty and export duty; compliance by the candidate with the legal regime of declaring assets and personal interests and the method of acquiring the assets owned or possessed by the candidate or persons referred to in art. 2 para. (2), as well as the expenses for the maintenance of such assets.

Art. 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.

"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).

Art. 184¹ para. (1) of the Customs Code (in force from 2017 – 2020) provides that residents have the right to enter into the territory of the Republic of Moldova with means of transport of certain classifications for personal purposes without payment of import duties, for a period of up to 180 days in a period of 12 consecutive months. A means of transport introduced into the customs territory by persons domiciled in any foreign state may keep the means of transport in the country for a period longer than 180 days (up to three year) but only when the person who imports it is domiciled in a foreign state and has a foreign driver's license.

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.

c. Reasoning

To assess the candidate's financial integrity, the Commission is required to verify the candidate's compliance by the candidate with the tax regime, including the payment of import duty and export duty, the candidate's compliance with the legal regime of declaring assets and personal interests and the method of acquiring assets owned or possessed by the candidate or family members of the candidate.

A number of issues were raised in connection with the Honda CRV car, including who was the real owner of the car, whether import taxes should have been paid at customs when the car re-entered the country on 5 October 2019 and whether the value of the car had been sub-evaluated in the candidate's 2018 – 2021 annual declarations.

The candidate provided considerable detail about the purchase, importation and registration of the Honda CRV both in response to written questions and at the hearing. From that information, it appears that the car was intended for and used by the close relative, not by the candidate or his wife, and that the candidate's declarations about ownership and right of use of the car in his annual declarations were accurate. There was no sale-purchase contract and the value set at Customs Service was devised by customs on its own. The candidate consistently declared the value of the car as 1,500 EUR, which seemed consistent with its age.

Because the car was intended for the close relative from the outset, was continuously possessed and used by the relative and has not been claimed by the candidate or his wife since the death of the close relative, any doubts about the *de facto* ownership of the car were dispelled. Because the close relative as the owner of the car was entitled an exemption from import duty under a special procedure and was the true owner of the car, any concerns about evasion of import duty were also dispelled. Because the car was purchased for the close relative and under the control of that person from the time the car first entered the country, the delay in completing the Customs registration appears attributable primarily to that person, although the candidate's wife was technically still the legal owner of the car. While prosecutors should respect and follow the law, any violation here was technically minor and not directly or completely attributable to the candidate. In the view of the Commission, it was not significant enough to create a serious doubt about the candidate's ethical integrity.

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 and ethical integrity as per art. 8 para. (2) lit. a) and c), para. (4) lit. a) and b) and para. (5) lit. a), b) and c) of Law No. 26/2022 with respect to the importation and registration of the Honda CRV, the non-payment of import duty and the accuracy of the candidate's declarations about the car in his 2018 – 2021 annual declarations because the candidate 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