



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. 52 of 21 August 2023 on the Candidacy of Leonid CHIRTOACĂ,
Candidate for the Superior Council of Magistrates*

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 21 July 2023, 8 and 21 August 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

Leonid CHIRTOACĂ, currently working as an attorney at the Lawyers’ Office “Chirtoacă Leonid” (“the candidate”), was on the list of candidates submitted by the Parliament to the Commission on 5 May 2023 for evaluation for the positions of member of the Superior Council of Magistracy.

The candidate has been an attorney since 1995. From 2002 to 2005 the candidate was a senior Lecturer at the State University of Moldova, Faculty of Law and International Relations. From 2005 to 2008 the candidate was the Chief of Staff at the Ministry of Defense. From 2008 to present the candidate has been the scientific researcher – coordinator at the Institute of Legal, Political and Sociological Research of the State University of Moldova. From 2013 to 2018 the candidate served as the Chairman of the Lawyer’s Office, Buiucani district, Chisinau municipality.

On 12 May 2023, the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 1 June 2023. The candidate submitted the completed questionnaire to the Commission on 31 May 2023.

On 18 May 2023, the Commission sent a request to the candidate for completing and submitting by 25 May 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 24 May 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 8 June 2023, the Commission sent to the candidate a request for clarifying information, containing 10 questions, including 23 sub-questions and 10 requests for further documentation. The candidate replied within the requested time period on 12 June 2023 to all questions and provided most of the requested documents.

On 21 June 2023, the Commission sent a second round of three questions, including seven 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 24 June 2023 to all of the questions and provided all of the requested documents.

On 28 June 2023, the Commission sent a third round of four questions, including 12 sub-questions and four requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 2 July 2023 to all questions and provided all of the requested documents.

On 7 July 2023, the Commission sent a fourth round of four questions and 13 sub-questions and eight request for further documentation. The candidate replied within the requested time period on 8 July 2023 and provided all of the requested documents.

On 10 July 2023, the Commission sent a fifth round of one question including three sub-questions, two of which contained request for further documentation. The candidate replied within the requested time period on 12 July 2023 to all questions and provided all of the requested documents.

On 17 July 2023, the candidate submitted additional documents and explanations.

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 21 July 2023, the candidate took part in a public hearing of the Commission.

On 1 August 2023, the Commission sent a post-hearing round of one question, including one sub-question and one request for further documentation, to clarify some issues that came out during the evaluation. On the same day, the candidate asked the Commission to extend the deadline for submission of the requested documents because he planned to travel abroad to obtain them. On 4, 7 and 17 August 2023 the candidate provided additional documents.

II. *The law relating to the evaluation*

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

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

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

For lawyers, the *Code of Ethics of Lawyers from the Republic of Moldova*, adopted by Congress of Lawyers on 20 December 2002, with amendments adopted by Congress of Lawyers of 23 March 2007 and 1 July 2016, was applied over the period of time covered by the evaluation.

Art. 8 para. (4) of Law No. 26/2022 provides that a candidate shall be deemed to meet the criterion of *financial integrity* if:

- a) the candidate's assets have been declared in the manner established by law;
- b) the Evaluation Commission finds that his/her wealth acquired in the last 15 years corresponds to the declared revenues.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of the assets of persons close to candidates, as defined in Law No. 133/2016 on

declaration of assets and personal interests, as well as of the persons referred to in art. 33 para. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

Art. 8 para. (5) of Law No. 26/2022 provides that in order to assess the applicant's financial integrity, the Commission is required to verify the following:

- a) compliance by the candidate with the tax regime in the part related to the payment of taxes when using the means and income derived from the property held, as well as taxable income and the payment of import duty and export duty;
- b) compliance by the candidate with the regime of declaring assets and personal interests;
- c) the method of acquiring the property owned or possessed by the candidate or persons referred to in art. 2 para. (2), as well as the expenses associated with the maintenance of such assets;
- d) the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2);
- e) existence or not of loan, credit, leasing, insurance or other contracts capable of providing financial benefits, in which the candidate, the person defined in art. 2 para. (2) thereof, or the legal entity in which they are beneficial owners, is a contracting party;
- f) whether or not donations exist, in which the candidate or the person established in art. 2 para. (2) has the status of donor or recipient of donation;
- g) other relevant aspects to clarify the origin and justification of the candidate's wealth.

In assessing and deciding upon the criteria related to financial and ethical integrity, the Commission is not to depend on the findings of other bodies competent in the field concerned (art. 8 para. (6) of Law No. 26/2022). The Commission is required to assess the information gathered about candidates using its own judgment, formed as a result of multi-faceted, comprehensive and objective review of the information. None of the submitted materials has a predetermined probative value without being assessed by the Commission (art. 10 para. (9) of Law No. 26/2022).

A candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the above-listed requirements which have not been mitigated by the evaluated person (art. 13 para. (5) of Law No. 26/2022). As noted in the recent Venice Commission Report on vetting in Kosovo, "In a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources". Also, "[I]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability". Venice Commission, CDL-AD(2022)011-e, Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), §§10,9.

Shifting the burden of proof to the candidate, once the evaluating body has identified integrity issues, has been found permissible by the European Court of Human Rights, even in the vetting of sitting judges who may lose their positions or otherwise be sanctioned as a consequence of the evaluation. In *Xhoxhaj v. Albania*, no. 15227/19, §352, 31 May 2021 the Court stated that “it is not per se arbitrary, for the purposes of the “civil” limb of Article 6 § 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC [Independent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file”.

Under art. 5 para. (1) of the Evaluation Rules of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administrative bodies of judges and prosecutors of 2 May 2022, pursuant to Law No. 26/2022, (hereinafter “Evaluation Rules”), only if a candidate fully meets all of the indicators set for the in art. 8 para. (2) - (5) of Law No. 26/2022 does the candidate satisfy the criterion of “ethical and financial integrity”.

III. Evaluation of the candidate

The Commission did not have serious doubts concerning any ethical integrity issues with respect to the candidate as per art. 8 para. (1) and (2) of Law No. 26/2022. The candidate was asked at the hearing about the following financial issues:

1. Cash savings in the amount of 45,600 EUR (2008 – 2018) and purchase of an apartment abroad (2019).

a. The facts

In his 2018 annual declaration on assets and personal interests (hereinafter “annual declaration”) submitted to the Commission, the candidate declared cash savings in the amount of 64,000 EUR. In his answers to written questions from the Commission, the candidate stated that this amount had been accumulated during the period of 1994 - 2018. The candidate also stated that 45,600 EUR of the 64,000 EUR cash savings were accumulated during the period of 2008 - 2018. In his answers to written questions from the Commission and at the hearing, the candidate indicated that he and his wife had accumulated about 19,000 EUR in cash savings before 2008. From the information available to the Commission, during 2008 – 2018, the candidate and his wife had total net income of 2,341,071 MDL (est. 120,000 EUR).

In response to written questions, the candidate provided the Commission a table with the amount of cash savings accumulated each year during the period of 2008 – 2018 and the savings accumulated prior to 2008. According to this table, the candidate’s savings at the end of 2018 totaled 64,600 EUR. At the hearing, the candidate explained that he had declared the approximate amount of 64,000 EUR cash savings in his 2018 annual declaration. While admitting that there was a difference between 64,000 EUR and the 64,600 EUR submitted to the Commission in his

follow up answers, the candidate stressed that the difference was negligible, and asked the Commission to accept 64,600 EUR as the accurate amount.

At the hearing, the candidate explained that, because of distrust in the banking system and liquidity problems, he and his wife preferred to keep money at home, where they had a safe and a security system. In response to the Commission's question how he knew precisely how much money they had saved each year during the period of 2008 – 2018, the candidate explained that his family had a modest lifestyle and they knew their expenses; thus, it had not been particularly difficult for the candidate and his wife to calculate the amounts in order to make the estimates for the Commission. However, the candidate also noted that he and his wife had been unable to recall all of the details when he had submitted a breakdown of the amount of cash savings they accumulated each year during the period of 2008 – 2018. Therefore, he submitted supplementary information on 17 July 2023.

In response to the Commission's question about the source of the 19,000 EUR cash savings accumulated before 2008, the candidate explained that in 1994, as a new family, they had started accumulating savings to provide stability in the future. The candidate indicated that, at that time, he had been running a retail fruit business in a neighbouring country. The candidate also noted that the Commission's questions had focused on the period between 2008 – 2022, and therefore, he had not submitted information to the Commission concerning cash savings accumulated during the preceding period. On 17 July 2023, the candidate submitted a statement dated 17 July 2023, signed by V.T and R.T., attesting that, the candidate had lent them 10,000 EUR in 2008, which they repaid in 2009. This information was offered by the candidate to show that he had at least 10,000 EUR in savings in 2008. After responding to the Commission's written questions, he had decided to reach out to V.T. and R.T., to ask them to confirm that in February 2008 he had lent them 10,000 EUR for a year. In response to the Commission's questions, the candidate explained that V.T. and R.T. had needed money for their business. The candidate noted that he and V.T. had known each other since 1994 and had been friendly, but were no longer close. The candidate noted that he had informed V.T. and R.T. that their statement would be sent to the Commission, and that they might be asked about it. The candidate noted that he had decided that it was better to provide an additional document to the Commission to avoid suspicion about the source of funds that he and his wife had accumulated before 2008. The candidate noted that he had provided V.T. and R.T. with a model for the statement to be sent to the Commission and had then collected a signed copy of it. In response to the Commission's question whether he had made any efforts to verify the solvency of V.T. and R.T. in light of their low incomes (according to the information, available to the Commission, V.T.'s gross income between 2008 - 2009 was 75,023 MDL (est. 4,800 EUR) and R.T.'s gross income during the same period was 30,000 MDL (est. 1,900 EUR)), the candidate explained that this aspect had not been of concern to him, because V.T. was known to be an honest person and he owned some properties.

According to his 2022 annual declaration submitted to the Commission, the candidate and his wife own a 51.1 sq.m. apartment in one of the European States, purchased in 2019. In his responses to the Commission's questions, in writing and at the hearing, the candidate stated he

had used the savings accumulated between 1994 and 2018 (64,000 EUR) to purchase the apartment for 51,000 EUR. The candidate provided the Commission with a copy of a sales-purchase contract. In May 2019, the candidate's wife transferred 10,000 EUR from their cash savings to the candidate's bank account abroad to purchase the apartment. At the public hearing, the candidate explained that he had opened a bank account in that country before purchasing the apartment and had deposited the 52,000 EUR gradually. The candidate stated that out of this amount, 51,000 EUR was spent on the purchase of the apartment and 1,000 EUR for administrative costs. The candidate explained that, only 10,000 EUR of the 52,000 EUR were transferred through the bank. The remaining amount was transported in cash when travelling to that country. The candidate stated that, before purchasing the apartment, he and his wife had travelled there several times, taking an amount not exceeding 10,000 EUR per person each time. This was the threshold requirement set by law for declaring a cross-border cash transfer. The candidate did not declare the cash he was carrying with him because it was not required by the law. In post-hearing questions, the Commission asked the candidate to submit statement(s) from his foreign bank account (s) confirming deposits totaling 52,000 EUR. On 7 August 2023 the candidate submitted a bank statement showing the transfer of 51,000 EUR to the seller's account on 27 May 2019. On 17 August 2023 the candidate submitted statements from his foreign bank account showing that on 4 May 2019 the candidate deposited 20,000 EUR to this account and 21,000 EUR on 25 May 2019.

b. The law

Art. 8 para. (5) lit. d) of Law No. 26/2022 provides that in order to assess the candidate's financial integrity, the Commission is required to verify the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

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.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of assets of persons close to candidates, as defined in Law No. 133/2016 on declaration of assets and personal interests, as well as of third persons referred to in art.33 para. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

"Close persons", as defined in Law No. 133/2016 on declaration of assets and personal interests, are: "husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as any person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and any person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law).

According to art. 29 para. (1) sub-para. 2 of the Law No. 62/2008 regarding currency regulation (in force in 2018 - 2019), resident and non-resident natural persons have the right upon exiting the Republic of Moldova, to withdraw cash in national currency, as well as cash and traveler's checks in foreign currency in a total amount not exceeding 10,000 EUR (or their equivalent) per person/trip, without presenting to the customs authorities the confirmatory documents mentioned in sub-para. 3.

c. Reasoning

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

The candidate and his wife accumulated 45,600 EUR cash savings during the period of 2008 - 2018. During the same period, they had total net income of 2,341,071 MDL (est. 120,000 EUR). Both in response to written questions and at the hearing, the candidate confirmed that he and his wife had accumulated about 19,000 EUR in cash savings between 1994 - 2007. He maintained that this amount should be taken into consideration when calculating cash savings for the period of 2008 - 2018. The total amount of cash savings accumulated by the candidate before 2018 was 64,600 EUR.

In response to written questions, the candidate provided information concerning the amount of cash savings accumulated by him and his wife each year during the period 2008 - 2018. In response to the Commission's question how he had been able to remember precisely how much money he had saved in cash each year over those 11 years, the candidate explained that it was not particularly difficult to identify how much he and his wife had saved each year because they had a modest lifestyle and knew their expenses.

As to the source of the savings, the candidate explained that he and his wife had started saving money when they were married in 1994. The candidate provided a statement from V.T. and R.T. indicating that the candidate had lent them 10,000 EUR in 2008. The candidate argued that this document supported his statement that he had accumulated 19,000 EUR prior to 2008. The Commission noted that the cash savings accumulated by the candidate and his wife between 1994-2007 preceded the period covered by the evaluation process (2008 - 2022). In view of the candidate's explanations and documents submitted concerning their income, as well as the absence of substantial purchases between 1994 - 2007, the Commission accepted that he and his wife had the ability to accumulate savings of 19,000 EUR prior to 2008. As to the cash savings of 45,600 EUR accumulated between 2008 - 2018, the Commission found that the candidate and his wife had sufficient income to accumulate these savings and pay other expenses. The candidate's consistent and detailed explanations, as well as the evidence presented, mitigated the Commission's doubts regarding the source of the candidate's cash savings.

In 2019, the candidate and his wife purchased an apartment in one of the European States for

51,000 EUR and paid 1,000 EUR for administrative costs. The candidate used their cash savings for this purchase. During the hearing, the candidate stated that 42,000 EUR of the purchase price had been taken to the other country in cash and the remaining 10,000 EUR had been transferred to the candidate's bank account in that country, which had been opened for the purpose of purchasing the apartment. The candidate noted that the cash deposits were funds that he and his wife had taken with them when they travelled to the other country several times prior to the purchase of the apartment. He indicated that, each time they had travelled abroad, they had taken less than 10,000 EUR per person, so as not to exceed the legal threshold for cross-border cash transfers by individuals. In reply to post-hearing questions, the candidate submitted bank statements illustrating that on 4 and 25 May 2019 the candidate deposited 41,000 EUR to his account and that on 25 May 2019 the account balance was 51,000 EUR (including 10,000 EUR transferred by the candidate's wife in May 2019). According to the information available to the Commission, in May 2019 the candidate and his wife travelled to the other country twice, once accompanied by their two children. According to art. 29 para. (1) sub-para. 2 of the Law No. 62/2008 on currency regulations, resident and non-resident natural persons have the right upon exiting the Republic of Moldova, to withdraw cash in national currency, as well as cash and traveller's checks in foreign currency in a total amount not exceeding 10,000 EUR (or their equivalent) per person/trip, without presenting the confirmatory documents to the customs authorities. The Commission noted that, in accordance with the law, the candidate and his wife could have taken a total of 42,000 EUR during their two trips (one time accompanied by their children) without having to declare the amounts at customs. In response to the Commission's post-hearing questions, the candidate submitted a bank statement attesting that on 27 May 2019 the candidate transferred 51,000 EUR from his foreign account to the seller's bank account.

In sum, the Commission found that the candidate provided a credible explanation about the cash savings accumulated by him and his wife during the period of 2008 – 2018 that was used to pay for their apartment abroad. The candidate timely provided both the explanations, in a clear and candid manner, as well as all related documents.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial integrity as per art. 8 para. (4) lit. b) and para. (5) lit. c) and d) of Law No. 26/2022 with respect to the source of funds for the candidate's accumulated cash savings and the purchase of an apartment because the candidate's detailed explanations mitigated the Commission's concerns regarding this issue.

IV. Decision

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

V. Appeal and publication of the decision

Pursuant to art. 14 para. (1) of Law No. 26/2022, the candidate is entitled to appeal this decision within 5 days from receiving the decision.

Pursuant to art. 13 para. (7) of Law No. 26/2022, this decision is sent by email to the candidate and to the institution responsible for organizing the election or competition, which in the present case is the Parliament. If within 48 hours of sending the decision, the candidate does not notify the Commission of his refusal to publish the decision, the decision shall be published on the website of the Parliament in a depersonalized form, except for the surname and first name of the candidate that remain public. The Commission will also publish the decision on its website if the candidate does not object to publication.

This decision was adopted unanimously by all participating members of the Commission.

Done in English and translated into Romanian.

Signature:



Herman von HEBEL
Chairman, Commission