



Independent Evaluation Commission for assessing the integrity of candidates
for the position of member in the self-administration bodies of judges and prosecutors

Comisia independentă de evaluare a integrității candidaților la funcția
de membru în organele de autoadministrare ale judecătorilor și procurorilor

Corrigendum/ 21 August 2023¹

*Decision No. 51 of 3 August 2023 on the Candidacy of Lucia POPESCU,
Candidate for the Superior Council of Magistracy*

The Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (“the Commission”) deliberated in private on 19 July 2023 and 3 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

Lucia POPESCU, national long-term expert at Expertise France Agency, (“the candidate”), was on the list of candidates submitted by the Parliament to the Commission on 5 May 2023 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was a prosecutor at the Râșcani Prosecutor’s Office in Chișinău municipality from 2011 to 2013. From 2013 to 2015, she was a prosecutor in the Section of International Legal Assistance in the General Prosecutor’s Office. From 2015 to 2016 she was a lecturer at the University of European Studies of Moldova. From 2015 to 2022 the candidate was a legal advisor and senior project coordinator at the Chișinău Office of the Council of Europe. Since March 2022, she has held the position of national long-term expert at the Expertise France Agency.

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 25 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

¹ On pages 12 and 14, *para. 2. Source of funds for cash savings of 8,000 EUR in 2020*, the word combination “purchase of a house” was changed to “purchase $\frac{3}{4}$ of a house”.

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

Written communication with candidate:

On 16 June 2023 the Commission sent to the candidate a request for clarifying information, containing six questions, including 15 sub-questions and five requests for further documentation. The candidate replied within the requested time period on 21 June 2023 to most questions but did not provide the requested documents. The candidate asked for an extension of time to submit documents and sent additional information on 27 June 2023 and 4 July 2023.

On 30 June 2023, the Commission sent a second round of four questions, including 14 sub-questions and five requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied later than the requested time period due to a miscommunication and travel abroad and answered all questions and provided some of the requested documents on 8 July 2023.

On 12 July 2023, the Commission sent a third round of one question, including six 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 13 July 2023 to all questions and provided some of the requested documents.

The candidate did not request access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022 and therefore did not receive the materials.

On 19 July 2023, the candidate took part in a public hearing of the Commission.

II. *The law relating to the evaluation*

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

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

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

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 declare bank accounts, loans and real estate in annual declarations for 2012 – 2015

a. The facts

Bank accounts

During the period of 2012 – 2015, the candidate was working as a prosecutor and was a subject of declaration according to art. 3 of Law No. 1264/2002 on declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force in 2012 – 2016).

During this period, the candidate had three bank accounts in her name. The candidate did not declare two of these accounts in any of the annual declarations on income and property (hereinafter “annual declaration”) she submitted to the National Integrity Commission (hereinafter “NIC”) over this period. The third bank account she declared only in her 2013 annual declaration and not in her 2014 and 2015 annual declarations. In addition, the candidate did not declare five active bank accounts in her husband’s name.

In the first bank account in the candidate’s name, opened in 2008, no transactions have taken place since 2009. In the second bank account in her name, opened in 2011, no transactions have taken place since 2011. The third bank account in her name, opened in 2012, which was declared in her 2013 annual declaration, was used only to receive her salary and no suspicious transactions in this account took place.

In response to written questions from the Commission, the candidate explained that during the years 2012 to 2015, she declared the amounts of salary received by her as a prosecutor and by her

husband in her annual declarations. Her personal bank accounts were not declared because she held the opinion, which she found out later was erroneous, that by declaring the salary amounts transferred to her bank account, the requirements regarding declaration of assets were fully met.

In response to written questions from the Commission, the candidate also argued that, according to her interpretation of the relevant legal framework at the time, these bank accounts were not legally her property, but the property of the bank. With respect to salary accounts, she believed that it was for the employer to select the bank and the employee was required to receive a card from that bank. For bank accounts related to loans, she believed that it was for the bank to grant the application for the loan, as a result of which a borrower entered into a credit agreement with the bank and the bank opened a bank account in the customer's name for that specific purpose.

Both in response to written questions and at the hearing, the candidate explained that at that time, a new declaration form was being used and there were inconsistent practices among her colleagues at the Prosecutor's Office as to how to fill in the annual declarations. This caused her to omit to insert information about all active bank accounts in her 2012 – 2015 annual declarations. During the course of 2014 and 2015, more discussions took place among her colleagues about how to fill in the declaration forms and it was at that time that she realized that she had held an erroneous interpretation of the law.

With respect to the bank accounts in her husband's name, the candidate explained in response to written questions that she did not declare them because she was not aware of all the relevant details about these accounts. However, the candidate declared her husband's salary in her annual declarations. Her husband, who was also a subject of declaration, declared his salary and loan related bank accounts in his annual declarations.

At the hearing, the candidate clarified that during the years both she and her husband were required to submit annual declarations, they each did so on their own. It was only during the present evaluation that she found out that her husband had not only declared his salary but also his bank accounts in his 2012 – 2015 annual declarations, whereas she had declared their salaries but not their bank accounts in her 2012 – 2015 annual declarations. She confirmed again that she should have declared both their salaries and bank accounts and that this was an omission on her part.

The candidate emphasized in both her written responses and at the hearing that the failure to declare the bank accounts was not the result of an intention to hide anything and did not result in any amounts of money being hidden from the authorities, because all the funds that were transferred through those accounts had a legal designation as a salary, a loan, etc. and all the funds were fully disclosed in her annual declarations.

During the period that the candidate was obliged to submit her annual declarations, her husband had five active bank accounts, which were not declared by the candidate. Two bank accounts,

opened in 2013 and 2014, were used for salary payments and no suspicious transactions in these accounts appeared. One bank account, opened in 2011, was used only once in 2011 for a transaction involving 500 EUR. Another bank account was opened in 2013 but no transactions were recorded on that bank account and a third bank account, opened in 2015, was used to repay a loan received that year.

Loans

The candidate and her husband took out two loans, one in 2007 and one in 2012, which were sometimes declared in some but not all of her 2012 – 2015 annual declarations.

In 2007, a loan of 360,000 MDL was taken out from a Moldovan bank with a due date of 2017. This loan was taken out by one of the candidate's husband's parents, prior to when the candidate and her husband were married in 2008. The purpose of the loan was to renovate an apartment in Chisinau municipality, which her husband co-owned with his family; he was a co-debtor on the loan. The loan was paid back in 2017 by the husband's parent who, according to the candidate, was the main borrower on the loan. The loan was not declared in the candidate's 2012, 2013 and 2014 annual declarations. The candidate explained to the Commission, both in response to written questions from the Commission and at the hearing, that she was initially not aware of the existence of this loan. Later, when she became aware of the loan [after she married her husband in August 2008], the candidate was erroneously of the opinion that because she did not have the status of borrower on the loan, she did not have to declare it. At the hearing, the candidate also stated that the law at the time was not entirely clear and left room for different interpretations. As a result of discussions with colleagues at the Prosecutor's Office, the candidate realised that her interpretation of the law at that time had not been correct. The candidate indicated that the loan was declared by her husband in his 2012 – 2015 annual declarations. The candidate therefore argued that no information was hidden from the authorities. The candidate corrected her error and included the loan in her 2015 annual declaration.

In 2012, a loan of 30,000 MDL was taken from a Moldovan bank with a due date of 2015. This loan was taken out by a family member of the candidate's husband and her husband was a guarantor on the loan. The loan was not declared in her 2012, 2013 and 2014 annual declarations. Again, both in response to written questions and at the hearing, the candidate stated that she erroneously thought she did not have to declare the loan because she did not have the status of borrower on the loan. The loan was declared by her husband in his 2012 – 2015 annual declarations. The candidate therefore argued that no information was hidden from the authorities. The candidate corrected this error and included this loan in her 2015 annual declaration.

Real estate

According to information available to the Commission, the candidate's husband has been a co-owner with his family of an apartment of 55.6 sq.m. in Chisinau municipality since 2004, as a

result of privatization. In the candidate's 2012 – 2014 annual declarations, she did not disclose this apartment as an asset owned by her husband, but she did disclose this asset in her 2015 annual declaration.

In response to written questions by the Commission, the candidate explained that the failure to indicate the apartment in her 2012 – 2014 annual declarations was the result of her not being informed in detail by her husband about the properties he owned at that time. At the hearing, the candidate explained that she hadn't been aware of her husband's position as co-owner of the apartment, as after their marriage, she and her husband had never lived in the apartment but instead lived with her parents. When she found out about her husband's co-ownership of the apartment, she included it in her 2015 annual declaration. At the hearing, the candidate confirmed that it had been an omission on her part not to declare this real estate in her previous annual declarations. The candidate emphasized however that her husband had declared this asset in his 2012 – 2014 annual declarations.

b. The law

Art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 provide that in determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets and personal interests. A candidate does not meet the criterion of financial integrity under art. 8 para. (4) lit. a) of Law No. 26/2022 when assets have not been declared in the manner required by law.

In addition, art. 8 para. (4) lit. b) and para. (5) lit. c), d) and e) of Law No. 26/2022 provides that the Commission is required to verify that a candidate's wealth acquired in the past 15 years corresponds to the declared revenues, to verify the method of acquiring assets owned or possessed by the candidate or persons referred to in art. 2 para. (2), to verify the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2) and to verify the existence of loans, credits or other agreements, where the candidate or the persons referred to in art. 2 para. (2) is a contracting party.

Pursuant to art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b), c), d) and e) 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 under art. 8 para. (2) lit. c).

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

“Close persons”, as defined in Law No. 133/2016 on declaration of assets and personal interests,

are: “husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as any person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and any person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law) ”.

Art. 4 para. (1) lit. (d) of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force until 1 August 2016), provided that the subjects of declaration shall declare financial assets, i.e. bank accounts, investment funds, equivalent forms of saving and investing, investments, bonds, cheques, bills of exchange, loan certificates, other documents incorporating property rights of the declarant or their family members, direct investments in national currency or foreign currency made by them or by their family members, as well as other financial assets.

Art. 4 para. (1) lit. b) of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force until 1 August 2016), provided that subjects of declaration shall declare movable and immovable property of all kinds, owned, with the right of usufruct, use, habitation, superficies or in the possession of the declarant or members of his family on the basis of contracts of mandate, commission, fiduciary administration, and translational contracts of possession and use (rent, lease, leasing, bailment), at the date of submission of income and property.

According to art. 4 para. (1) lit. f) of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force until 1 August 2016), debts in the form of debits are required to be declared (including unpaid taxes), mortgages, guarantees issued for the benefit of third parties, loans and credits.

According to the 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

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.

During the period of 2012 – 2015, the candidate was working as a prosecutor and was a subject of declaration on income and property, according to art. 3 of Law No. 1264/2002 on the declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions. According to this law, the candidate was required to declare bank accounts, loans and real estate relating to her and to persons close to her.

The candidate made a number of omissions in connection with the annual declarations she was required to submit. The candidate's omissions involved a number of bank accounts in her name and in her husband's name, two loans for which her husband was a co-debtor or guarantor and real estate of which her husband was a co-owner. The declaration omissions occurred in connection with the annual declarations the candidate was required to submit for 2012 - 2014. In her 2015 annual declaration, the candidate corrected almost all of these omissions, except for the declaration of bank accounts.

Annual declarations filed with the NIC (and as of 2016 with the National Integrity Authority) serve a critical role in monitoring the financial and ethical integrity of prosecutors, judges and other public officials and uncovering corruption. 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 as they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions (art. 6 para. (1)). A failure to declare income and assets and financial obligations necessarily raises concerns about financial and ethical integrity.

The candidate had three bank accounts in her name, but she did not declare two of these accounts in any of her 2012 – 2015 annual declarations and declared only one bank account in her 2013 annual declaration. The candidate also did not declare five bank accounts in her husband's name. In addition, one loan in which her husband was a co-debtor, one loan in which her husband was a guarantor and an apartment, to which her husband, together with his family, has been a co-owner, were declared by the candidate only in her 2015 annual declaration, not in her previous 2012 – 2014 annual declarations.

The Commission found that the circumstances relating to the candidate and her non-declaration of bank accounts, loans and real estate in 2012 – 2015 were relevant to the evaluation of the candidate.

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. Two of the candidate's bank accounts did not show any transactions during 2012 – 2015. The third bank account was used only to receive her salary. No suspicious transactions were found on this account and the funds in the accounts were disclosed by the candidate in all annual declarations. Of the five bank accounts in her husband's name, two accounts were not used between 2012 – 2015, two other accounts were salary accounts on which no suspicious transactions had taken place and one account was used for the repayment of a loan. The candidate declared the income of her husband in all 2012 – 2015 annual declarations. Her husband also declared his income during these years and all bank accounts in his name. 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 based on an inconsistent practice within the Prosecution's Office in which the candidate worked at the time and a misinterpretation of the requirements of the law. The candidate herself repeatedly admitted that her interpretation of the law in the years 2012 – 2015 was incorrect and that there was no intention to hide income or assets.

As respects the two loans, not declared by the candidate in her 2012 – 2014 annual declarations, the Commission notes that the first loan was taken out prior to when she and her husband were married in 2008. According to the candidate, she was initially not informed that her husband was a co-owner of the apartment in which his parents were living or of the loan taken out for the renovation of this apartment. Later on the candidate erroneously thought she did not have to declare the loans in her annual declarations as she did not have the status of borrower on these loans. It was only in connection with her 2015 annual declaration that the candidate realised that she was required to declare the loans. Both loans had been declared by her husband in his 2012 - 2015 annual declarations. The candidate acknowledged that the non-declaration was an omission on her part and a violation of the law. The Commission did not find any ill-intent on the candidate's part or any benefit to her from not disclosing these loans.

The candidate did not disclose the apartment of which her husband is a co-owner in her 2012 – 2014 annual declarations. The candidate explained to the Commission that originally she was not aware of her husband's ownership, which was established well before she and her husband were married in 2008. She also emphasized that she and her husband did not live in the apartment after they were married. When she became more aware of the details of her husband's co-ownership, she included the apartment in her 2015 annual declaration. The candidate admitted that the non-declaration of this real estate was an omission on her part and that she should have also included this asset in her 2012 – 2014 annual declarations. Her husband has consistently declared his co-ownership of this apartment in his annual declarations.

Although the bank accounts, the loans and the real estate should have been declared in the 2012 – 2015 annual declarations, the candidate has provided detailed explanations and all necessary

information to the Commission. She has furthermore acknowledged that she failed to declare these assets/liabilities, based largely on an incorrect interpretation of the law and an inconsistent declaration practice within the prosecution's office where she worked at the time. When she became aware of the incorrect interpretation and practice, the candidate ensured that she declared the loans and the real estate in her 2015 annual declaration.

The Commission has been able to conclude that the bank accounts did not show any suspicious transactions, that both the candidate and her husband have declared all their salaries and that the loans and real estate related to her husband were consistently declared by him in his annual declarations. Even though these non-declarations constitute a violation of the legal regime on declaring assets, it does not amount to a serious doubt to disqualify the candidate.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of 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), c), d) and e) of Law No. 26/2022 with respect to non-declarations of bank accounts, loans and real estate because the candidate mitigated the Commission's concerns regarding this issue.

2. Source of funds for cash savings of 8,000 EUR in 2020

a. The facts

On 4 August 2020, the candidate and her husband purchased $\frac{3}{4}$ of a house² of 109.2 sq.m. in Chisinau municipality. On the same day, they entered into a mortgage contract with a Moldovan bank for 800,000 MDL. The cadastral value of the property is 941,911 MDL (est. 47,716 EUR). Both the candidate's husband in his annual declarations and the candidate in her declarations to the Commission declared the value of the property as 48,000 EUR. The candidate provided a copy of the sale-purchase contract for the real estate, an appraisal for the house and other documents related to this transaction.

The candidate explained in response to written questions from the Commission that the sources of funds for the purchase of the house were the mortgage of 800,000 MDL (est. 40,000 EUR) and an additional 8,000 EUR (est. 157,920 MDL) of savings, accumulated from the candidate's and her husband's salaries.

After purchasing the property, between 2020 and 2023, the candidate and her husband spent additional resources on a number of improvements and repairs to the house. The candidate explained that although the house was habitable, a number of repairs were needed, some of which were done by the candidate and her husband, with the help of family members. The candidate estimated the total costs of repairs as 210,000 MDL (40,000 MDL for 2020, 60,000 MDL for 2021, 60,000 MDL for 2022 and 50,000 MDL for 2023). The payments for these repairs,

² The term "a house" changed to "3/4 of a house".

according to the candidate, were made out of the family budget.

The candidate's husband was required to submit an annual declaration for 2019. In that declaration, submitted in March 2020 five months before the purchase of the house, he did not declare any cash savings. According to art. 4 para. (1) lit. d) of Law No. 133/2016, he was obliged to declare cash that exceeded the value of 15 average salaries in the economy, which was 119,295 MDL for 2020. The 8,000 EUR of savings that the candidate claimed was used to purchase the house in August 2020 amounted to 157,920 MDL.

In response to a written question by the Commission, the candidate stated that although she did not remember the exact amount of cash savings they had at the time, the cash savings were "certainly more than 100,000 MDL". At the same time, she stated that according to her husband, the savings were less than 119,295 MDL. At the hearing, the candidate confirmed that the cash savings were less than 119,295 MDL by the end of March 2020; otherwise, her husband would have declared the savings. She explained that between the end of March and the beginning of August 2020, they were able to accumulate additional savings of about 40,000 MDL because she and her husband were actively looking for real estate to buy and therefore wanted to accumulate additional savings. She also explained that they were still living with her parents at that time and both were working. The candidate was working for the Council of Europe Office in the Republic of Moldova and was not required to pay taxes on her income and her husband was working as a judge.

b. The law

Art. 8 para. (4) lit. b) and para. (5) lit. c), d) and e) of Law No. 26/2022 provides that the Commission is required to verify that a candidate's wealth acquired in the past 15 years corresponds to the declared revenues, to verify the method of acquiring assets owned or possessed by the candidate or persons referred to in art. 2 para. (2) as well as the expenses for the maintenance of such assets, to verify the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2) and to verify the existence of loans, credits or other agreements, where the candidate or the persons referred to in art. 2 para. (2) is a contracting party.

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

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

person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law) ”.

According to art. 4 para. (1) lit. d) of Law No. 133/2016 on declaration of assets and personal interests (in force in 2020), the subject of the declaration shall declare the financial assets of the subject of declaration and family members, his/her cohabitee, including as beneficial owners, namely the monetary amount in the national currency or a foreign currency which exceeds the value of 15 average national salaries and which does not represent the object of a deposit in a financial institution.

According to Government Decision No. 678/2019 on the approval of the amount of the average monthly salary in the economy, the average salary per economy in 2020 was 7,953 MDL.

The Evaluation Rules state that undeclared income or expenditures are relevant for financial integrity, including but not limited to insofar as 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) of Evaluation Rules).

c. Reasoning

The Commission is required to verify that a candidate’s 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.

On 4 August 2020, the candidate and her husband purchased $\frac{3}{4}$ of a house³ in Chisinau municipality, which was paid for by a mortgage and from savings of 8,000 EUR (est. 157,920 MDL) from the candidate’s and her husband’s salaries. In March 2020, the candidate’s husband was required to submit an annual declaration for 2019, in which he did not declare any cash savings. The husband would have been required to declare cash savings if they had exceeded the value of 15 average salaries in the economy, which was 119,295 MDL for 2020. As the 8,000 EUR of cash savings that the candidate claimed to have used to purchase the house in August 2020 amounted to 157,920 MDL, the Commission asked the candidate to explain how she and her husband were able to save around 40,000 MDL (est. 2000 EUR) over a period of five months.

The candidate explained the accumulation of the additional savings of about 40,000 MDL between the end of March and the beginning of August 2020 by the fact that she and her husband were still living with her parents at the time, were actively looking for real estate to buy and therefore wanted to accumulate additional savings. The candidate also explained that she was working for the Council of Europe Office in the Republic of Moldova, and was not required to pay taxes on her income, and that her husband was working as a judge. According to the candidate, this allowed them to accumulate the savings. The candidate was able to address any

³ Idem.

concerns the Commission may have had in relation to the source of funds to accumulate additional savings of about 40,000 MDL in the period from the end of March to beginning of August 2020.

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 ability to make sufficient savings in the period March – August 2020 in order to purchase a house on 4 August 2020, and thereby mitigated the Commission's concerns regarding this issue.

3. Contributions from candidate's husband and close family members for repayment of a loan

a. The facts

The candidate's husband is a co-owner with his family of an apartment of 55.6 sq.m. in Chisinau municipality, which was privatized in 2004. In 2007, one of his parents took out a loan of 360,000 MDL from a Moldovan bank for the period of 2007 – 2017 at an interest rate of 17% for the purpose of carrying out the renovation of this apartment. According to the candidate, the main borrower on the loan was one of the candidate's husband's parents and the rest of the family were co-debtors. The candidate informed the Commission that her husband did not incur any expenses in connection with this loan. The loan was paid back in 2017.

On 11 July 2016, the candidate's husband took out a mortgage loan of 350,000 MDL from a Moldovan bank, for the period of 2016 – 2032 at an interest rate of 12% for the same apartment. The candidate informed the Commission that this loan was needed to renovate the apartment, which was in a deplorable condition as a result of constant use and frequent flooding from the upstairs neighbors' apartment due to the poor condition of the pipes. The candidate also stated that her own children regularly stayed with their grandparents at the apartment and that she and her husband wanted to ensure a certain level of well-being for the parents-in-law. The candidate also explained that she considers this loan to be an investment in the apartment because of discussions about the apartment being left to her husband as an inheritance.

According to information from "LARA" real estate company (hereinafter: "LARA"), in 2007 (when the first loan for the apartment was made), similar apartments sold for approximately 31,414 EUR (est. 635,000 MDL). According to information from "LARA", in 2016 (when the second loan for the apartment was made) similar apartments sold for approximately 28,356 EUR (est. 575,000 MDL)

At the hearing, the candidate confirmed both loans and that the purpose of the loans was the renovation of the apartment. She explained that the first loan was taken by one of her parents-in-law and that she and her husband did not contribute to the repayment of this loan, as they were young professionals with modest salaries. The candidate indicated that both of her parents-in-law were doctors at the time and were able to pay back the loan. In 2016, her husband took out a loan

on the apartment for needed repairs. By that time, one of her parents-in-law had retired and she and her husband both had stable and sufficient income to repay the loan. Her parents-in-law did not contribute financially to the repayment of the loan. The candidate also provided details about the different renovations that were required to be made over the years due to regular flooding, and other necessary improvements.

b. The law

Art. 8 para. (4) lit. b) and para. (5) lit. e) of Law No. 26/2022 provides that the Commission is required to verify that a candidate's wealth acquired in the past 15 years corresponds to the declared revenues and to verify the existence of loans, credits or other agreements, where the candidate or the persons referred to in art. 2 para. (2) is a contracting party.

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 paras (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

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

c. Reasoning

The Commission is required to verify that a candidate's 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.

Since 2004, the candidate's husband has been a co-owner of an apartment in Chisinau municipality, where his parents reside. In 2007, one of his parents took out a loan of 360,000 MDL, on which her husband was a co-debtor, for the purpose of carrying out renovations to the apartment. Her husband did not incur any expenses in connection with this loan. In 2016, the candidate's husband took out a mortgage loan of 350,000 MDL on the same apartment, also for renovations. According to the candidate, the apartment was in a deplorable condition as a result of constant use and frequent flooding from the upstairs neighbors' apartment. The candidate and her husband wanted to ensure a certain level of well-being for their parents-in-law and also for her children who regularly stayed there with their grandparents.

The candidate provided detailed and consistent information about the purpose of the loans for the renovation of the apartment and the respective responsibilities of her husband and her parents-in-

law for the repayment of the loans. The first loan in 2007 was taken by one of her parents-in-law, who at the time were doctors and in a position to repay the loan. The second loan was taken by her husband, as by then, one of her parents-in-law had retired and the candidate and her husband both had stable and sufficient income to repay the loan. She and her husband did not contribute financially to the repayment of the first loan. Her husband's parents did not contribute financially to the repayment of the second loan. At the hearing, the candidate also provided details about the different renovations that were made over the years. The candidate was able to address any concerns the Commission had in relation to the purpose of the loans and the sources of funds used by her parents-in-law and by her and her husband.

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), d) and e) of Law No. 26/2022 with respect to two loans taken out in relation to the renovation of an apartment owned by the candidate's husband, his parents and sibling, 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 Parliament. If within 48 hours of sending the decision, the candidate does not notify the Commission of her refusal to publish the decision, the decision shall be published on the website of the Parliament in a depersonalized form, except for the surname and first name of the candidate that remain public. The Commission will also publish the decision on its website if the candidate does not object to publication.

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

Done in English and translated into Romanian.

Signature:



Herman von HEBEL
Chairman, Commission