



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. 47 of 31 July 2023 on the Candidacy of Ana TIPA,  
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 31 July 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*

Ana TIPA, (“the candidate”), a lawyer, 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 is a graduate of the initial training course for candidates for the position of judge at the National Institute of Justice (2021-2023). She was a judicial assistant at the Chisinau Court from 2018 to 2021. She served as a court clerk at the Botanica Court in Chisinau municipality from 2013 to 2018 and prior to that, as a court clerk in the Telenesti Court from 2008 to 2013.

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 did not submit a completed questionnaire to the Commission.

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 (hereinafter “the 5-year declaration”) 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 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 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 seven questions, including 51 sub-questions and 37 requests for further documentation. The candidate replied within the requested time period on 21 June 2023 to all questions and provided all of the requested documents.

On 28 June 2023, the Commission sent a second round of 10 questions, including 20 sub-questions and nine requests for further documentation, to clarify some issues that came out during the evaluation. The candidate was asked to reply by 1 July 2023. The candidate did not reply. The candidate was contacted by the Commission on 3 July 2023 and the candidate informed the Commission that she had not seen the second round of questions arrive by email. The candidate replied to the second round of questions on 6 July 2023.

Following the candidate's request, on 18 July 2023 the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022.

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

On 28 July 2023, the Commission sent a post-hearing request for clarifying information, containing one question, including two sub-questions. The candidate responded on 29 July 2023 within the requested time period.

*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.

The *Public Servant's Code of Conduct*, adopted by Law No. 25/2008 regarding the public servant's Code of conduct, last amended by Law No. 305/2017, was applicable over the period of time covered by the evaluation. Prior to that, Law No. 443/1995 on public service (in force until 22 December 2008) and Law No. 158/2008 on public office and status of public official (in force since 23 December 2008) were applicable 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 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*

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

#### *1. Non-compliance with the legal regime of declaring personal assets and interests; Failure to submit declarations for the period of 2014 - 2016*

##### *a. The facts*

##### *i. Failure to submit declaration for 2014 - 2016 leave period*

During the candidate's employment as a court clerk and then as a judicial assistant, she was required to file declarations in accordance with Law No. 1264/2002 concerning the declaration and control of incomes and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions and Law No. 133/2016 on the declaration of assets and personal interests. According to information from the National Integrity Authority (hereinafter "NIA"), the candidate submitted declarations on income and property/of assets and personal interests (hereinafter "annual declarations") for 2012, 2013, 2017, 2018 and 2020 but she did not submit annual declarations for 2014, 2015, 2016 and 2019.

In response to written questions from the Commission about the candidate's non-submission of annual declarations for 2014, 2015 and 2016, she stated that she did not submit annual declarations for those years because she was on maternity leave and then childcare leave. The candidate took childcare leave between 15 June 2014 until 3 April 2017 pursuant to art. 125 of the Labor Code (in force at the time). She did not submit a declaration covering the three years she was on leave upon her reinstatement as required by law. She did submit an annual declaration for 2017 signed on 30 March 2018.

In response to further questions from the Commission, the candidate stated that a few days after she was reinstated, she went to the human resources employee of the court and asked to be issued an electronic key to submit a declaration of assets and personal interests. She also claimed to have submitted a written application to be issued an electronic key. The candidate did not have a copy of the request for the release of the electronic key, and the rest of her repeated requests were oral. From what she remembered, when she repeatedly went to ask about the key, it was explained to her that the human resources employee would collect several applications from employees (who needed the key at that time) to be submitted together to the authority responsible for issuing electronic keys, and when the employee received them, the candidate would be notified. She further stated that after the 30-day deadline, when she applied again for the issuance of the electronic key, it was recommended she just submit an annual declaration for 2017.

At the hearing, the candidate identified the employee whom she dealt with about the electronic key and who also gave her the advice to only file an annual declaration for 2017. When asked at the hearing why she did not file the declaration for 2014 - 2016 leave period in paper form if she was having difficulty obtaining the electronic key, the candidate stated that at that time annual declarations could only be submitted electronically. She did not remember having the opportunity to file it in paper form, although Law No. 133/2016 allowed the submission of declarations to NIA in paper or electronic form until 1 January 2018. The candidate did not contact NIA to confirm this advice.

According to the candidate, due to the turnover in court staff, clerks enjoyed less attention and exigency than judges in filing the declarations of assets and personal interests. At the hearing, the candidate conceded that she might have been more persistent in getting the electronic key in order to fulfill her duty to file the declaration for the 2014 - 2016 leave period.

*ii. Failure to submit annual declaration for 2019*

NIA has no record of a 2019 annual declaration filed by the candidate. With respect to that annual declaration, the candidate stated that between 17 March 2020 and 16 May 2020, the country was on lockdown due to the COVID-19 pandemic. She stated that the lockdown commenced while she was on sick leave. She also stated that because the flash drive with her electronic signature was at work, she was unable to submit her 2019 annual declaration by 31 March 2020. She initially informed the Commission that after 16 May 2020, when she returned to work, she tried several times to submit the annual declaration, but did not succeed and that she only found out about the missing 2019 annual declaration when she was asked to present the 5-year declaration as part of the evaluation. On 1 April 2020, NIA published a post encouraging subjects of declaration that had not submitted their annual declaration by 31 March [2020], to do so in the upcoming days because the term of submission was extended for an undetermined period due to the state of emergency.

In response to further questions from the Commission about her failure to file a 2019 annual declaration, she explained that she was on sick leave from 23 March 2020 to 27 March 2020 and, due to the state of emergency established on 17 March 2020, she was unable to access her electronic signature which she left at the office. According to the candidate, after she returned to work on 16 May 2020, she tried several times to submit the annual declaration but did not succeed. Yet she also stated that she only found out about the failure to file the 2019 annual declaration during this evaluation. The candidate then stated that she tried several times to submit the declaration and repeated the actions of filling in the annual declaration. According to her, the program [the electronic service available on the official web site of the National Integrity Authority] was going quite slowly, and it showed that she had signed and that the annual declaration was loaded, then the page closed. When she returned to fill out the annual declaration, the data had been kept. Seeing that the data was preserved when she tried again to fill out the annual declaration (she made about three attempts), she did not insist on filling it in repeatedly.

At the hearing, the candidate confirmed that she did not receive electronic confirmation that the annual declaration had been received, which she stated she thought was a system error. She also stated that she did not check the registry of declarations of assets and personal interests on NIA's platform of declarations (hereinafter "NIA platform"), to see if the annual declaration had been filed.

After the hearing, the Commission received information from the Information Technology and Cyber Security Service (hereinafter "STISC") concerning records of the candidate logging into the NIA platform to file annual declarations. In 2020, the records indicated a single login by the candidate on 29 March 2020; there were no logins recorded in May of 2020. STISC was unable to provide any information about failed attempts to submit declarations electronically. The candidate was furnished a copy of the STISC report and asked to comment. The candidate stated that she was glad that there was evidence confirming that she accessed the NIA platform to submit her 2019 annual declaration and that she had not had material information about the exact date of her submission and that she had no intention of providing false information. She claimed that she had contacted NIA during the evaluation and was informed that the information about her accessing the NIA platform was not available and that, due to uncertainty about the exact date of accessing the NAI platform she had stated with reservation that she submitted the annual declaration when she returned to work in May.

*iii. Omissions from annual declarations*

The candidate was asked in written questions and at the hearing about a number of omissions from her annual declarations. These included her failure to declare 10 bank accounts of her then-husband in her 2012 and 2013 annual declarations, her failure to declare a 4,000 EUR donation from her father in her 2013 annual declaration and her failure to declare three of her bank accounts in her 2020 annual declaration. In each instance, the candidate failed to properly interpret the pertinent legal provisions, which she conceded at the hearing. She also asserted that the contents of her omitted bank accounts had been declared as salary or savings and nothing had been hidden. She also claimed that court staff had informed her that she did not have to declare the donation, only the asset she ultimately purchased with the funds. She also maintained that the 4,000 EUR donation from her father was included in the 10,000 EUR settlement she received from her husband during their divorce proceedings and that, by declaring the bank account and the balance of the bank account into which the 10,000 EUR payment had been deposited in her 2020 annual declaration, she had effectively declared the 4,000 EUR donation from her father. At the hearing, the candidate revealed that the 4,000 EUR donation had been paid to a construction company towards an apartment that was under construction. She confirmed that her husband had paid her 10,000 EUR but repeatedly insisted that the 4,000 EUR donation was included in that payment although she could not explain how this was possible. She initially claimed that she had not declared her husband's bank accounts or income as she was not aware that he had bank accounts and he refused to give her information about his income. At the hearing, the candidate conceded that she had declared her husband's income in 2013.

*b. The law*

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

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

Law No. 1264/2002 concerning the declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading position (in force until 1 August 2016) required, at art. 4 para. (1) lit. d), the subject of the declaration shall declare in the annual declarations all financial assets, i.e. bank accounts, investment funds, equivalent form of saving and investing, investments, bonds, checks, bills of exchange, loan certificates, other documents incorporating the patrimonial rights of the declarant and his family members, direct investments in national currency or in foreign currency made by him or his family members, as well as other official assets.

Law No. 1264/2002 concerning the declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading position (in force until 1 August 2016) required, at art. 4 para. (1) lit. a), the subject of the declaration shall declare in annual declarations income obtained together with family members during the declaration period.

Law No. 133/2016 on declaration of assets and personal interests (in force in 2017) required, at art. 6 para. (5) that the subject of the declaration who, in accordance with the legislation in force, has employment or service agreements suspended, shall submit the declaration within 30 days after reinstatement, indicating in the declaration the income obtained together with family members, his/her cohabitant during the entire undeclared period, also the owned assets and personal interests in art. 4 para. (1) lit. b) – m) on the date of submission of the declaration.

Law No. 133/2016 on declaration of assets and personal interests (in force in 2017) provided, at art. 7 para. (3) that the declaration in electronic form shall be deemed received by the National Integrity Authority if the subject of the declaration has received the electronic receipt acknowledging its acceptance, as per Annex 3.

Law No. 133/2016 on declaration of assets and personal interests (in force in 2017) required, at art. 24 para. (2), that before 1 January 2018, the subjects of the declaration shall submit their declarations of assets and personal interest in writing, on paper support or in electronic form. As of 1 January 2018, the subjects of the declaration shall be under the obligation to submit the

declaration exclusively in electronic form, using the electronic service available on the official web site of the National Integrity Authority.

Art. 5 para. (4) of Law No. 133/2016 on declaration of assets and personal interests (in force since 1 August 2016), provides that the responsibility for the timely submission of the declaration, as well as for the truthfulness and completeness of the information lies with the person submitting it.

Art. 24 para. (1) of Law No. 158/2008 on public office and status of public official (in force in 2012 - 2020) provides that the public officials shall be obliged to submit, in accordance with the law, a declaration on income and property (declaration on assets and personal interests – since 1 August 2016).

According to art. 330<sup>2</sup> para. (2) of Contravention Code No. 218/2008 (in force in 2017 - 2019), the failure to submit the declaration of assets and personal interests by a person that was obliged to submit it, is sanctioned with a fine of 60 to 90 conventional units.

### *c. Reasoning*

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

The candidate was required to submit a declaration on assets and personal interests not later than 30 days after the date of reinstatement from her childcare leave (3 April 2017), meaning not later than 3 May 2017. The candidate did not comply with this obligation. In March 2018, she submitted only her 2017 annual declaration.

Both in response to written questions and at the hearing, the candidate confirmed that she did not submit the declaration for the period of 2014 – 2016. She also conceded that she knew such a declaration was required, but that she did not file one because of delays in getting an electronic key issued to her and, after the 30 days to file the declaration had expired, relying on the advice of a court employee to just file her 2017 annual declaration. She claimed that she could not submit the declaration in paper form, although Law No. 133/2016 (in force in 2017) allowed the subjects of the declaration to submit their annual declarations in paper or in electronic form before 1 January 2018. The subjects of the declaration were required to submit the declaration exclusively in electronic form only as of 1 January 2018. The candidate did not contact NIA to confirm the advice that she could submit only an annual declaration for 2017.

The candidate also failed to submit an annual declaration for 2019 claiming that she tried to file it online after returning to work from the COVID-19 lockdown, but the program was not operating well and she tried repeatedly to complete the annual declaration and submit it. The candidate initially stated that she was not successful but later stated that she thought the annual declaration

had been filed because it remained filled in. The candidate did not receive electronic confirmation that her annual declaration had been submitted but she claimed she thought that was a system error. Despite these problems, she did not check NIA's registry to see if the 2019 annual declaration had been received.

Failure to submit a declaration on assets and personal interests by a person obliged to submit it constitutes a contravention as per art. 330<sup>2</sup> para. (2) of the Contravention Code. In this instance, the candidate failed to file two declarations, covering four of the nine years that she was required to submit declarations since records have been kept by the National Integrity Commission (NIA's predecessor). The regime of declaring assets and personal interests serves a critical role in monitoring the financial integrity of public officials. The failure of the subject of the declaration to comply with the requirements of the declaration regime threatens to undermine that critical safeguard. The omission of assets or income that were required to be disclosed can have serious implications. 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 complete failure to file a declaration necessarily increases the risk of serious implications.

Non-filing of annual declarations has been grounds for failing a number of candidates in the pre-vetting process for leadership positions in the self-administration bodies of judges, especially when the declarations that were not filed covered multiple years.

The candidate also omitted information about bank accounts and a donation from three annual declarations. These omissions were not of great significance and the Commission has often found such failures resulting from misinterpretation of the law mitigated under appropriate circumstances. In this instance, the candidate's omissions resulted from the candidate's misinterpretations of the law, which she conceded at the hearing. Some of the candidate's explanations, however, were inconsistent and sometimes not credible. For example, her insistence that her husband refused to provide her information about his income for her 2012 and 2013 annual declarations when she had declared his income in her 2013 annual declaration. Also, her insistence that the 4,000 EUR donation from her father was declared as part of her husband's 10,000 EUR settlement payment to her notwithstanding the fact that the donation had been paid to a construction company. The candidate's inconsistent and incomprehensible explanations on these matters undermined the candidate's credibility with respect to her explanations for not filing her returning to office declaration for 2014 - 2016 and her 2019 annual declaration. The candidate's credibility issues with respect to the failure to file her 2019 annual declaration were compounded by the STISC records which contradicted her claim that because of COVID – 19 pandemic, she was home and did not have access to her electronic key in March and so she could not file the annual declaration then, since the STISC records reveal that she logged in on 29 March 2020. The records also contradict her claim that she tried to submit the annual declaration after she returned to work in May as there were no logins by the candidate in May. The very detailed version of the events that the candidate provided to the Commission in response to written

questions and at the hearing before receipt of the STISC records was not consistent with her claim that she had indicated that she submitted the annual declaration in May with reservations because of uncertainty as to the precise timing of her attempt to submit the declaration.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criterion of financial and ethical integrity as per art. 8 para. (2) lit. c), para. (4) lit. a) and para (5) lit. b) of Law No. 26/2022 with respect to failure to submit a declaration on assets and personal interests for the leave period of 2014 – 2016 and an annual declaration for 2019, which have not been mitigated by the candidate.

#### *IV. Decision*

Based on art. 8 para. (1), (2) lit. c), para. (4) lit. a) and para. (5) lit. b) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate does not meet the financial and ethical integrity criteria as serious doubts have been found as to the candidate's compliance with the ethical and financial integrity criteria and thus fails 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 or 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