

Case No 3-12/23
2-23019713-01-3-08022023

DECISION
In the name of the law

THE SUPREME COURT OF JUSTICE

1 August 2023

Chişinău Municipality

The Special Panel, established at the Supreme Court of Justice to examine the appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors consisting of:

Hearing Chairperson, Judge judges	Tamara Chişca-Doneva Mariana Pitic Ion Guzun
clerks	Natalia Arapu Oxana Gîscă
with the participation of: plaintiff plaintiff's representative, counsel representatives of the defendant, counsels	Stanislav Sorbalo Vitalie Zama Roger Gladei Valeriu Cernei Irina Sugoneaco

having examined in public court session the administrative lawsuit brought by Stanislav Sorbalo against the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, seeking that decision No 17 of 18 January 2023 on the candidacy of Stanislav Sorbalo be annulled, and that the candidate evaluation procedure be resumed.

i t e s t a b l i s h e d:

Submissions of the Participants in the Proceedings

On 8 February 2023, Stanislav Sorbalo, represented by counsel Vitalie Zama, filed an appeal against the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (hereinafter referred to as the

Commission), seeking that the appeal be allowed, the Decision No 17 of 18 January 2023 be annulled, the evaluation of candidate Stanislav Sorbalo be resumed, and that the issuance of a favorable individual administrative act be ruled.

According to the reasoning of the appeal, on 2 October 2020 Stanislav Sorbalo, Judge at the Bălți Court, Central Office, filed with the Superior Council of Magistracy his application to participate in the competition for membership in the Superior Council of Magistracy and in the Disciplinary Board of Judges.

According to Decision No 17 of 18 January 2023, the Commission decided that the plaintiff did not meet the integrity criteria as serious doubts have been found as to the candidate's compliance with the ethical integrity criterion and thus failed the evaluation.

The plaintiff contends that the decision is erroneous, unfounded, and null and void for the reasons detailed further below.

He stated that the Commission argued that on 15 August 2008, the plaintiff had issued a ruling regarding the legality of searches at the office and home of lawyer Boris Lichii, who had represented his interests in another criminal case. In relation to that, on 23 December 2008, the Disciplinary Board handed down a decision to sanction the plaintiff with a warning for violation of impartiality and gross violation of judicial ethics. However, on 22 January 2009, the Superior Council of Magistracy amended the Decision of the Disciplinary Board and put forward to the President of the Republic of Moldova the proposal to dismiss the plaintiff from the position of judge.

The plaintiff contended that the arguments in the appealed decision were inconsistent with the facts, as the detailed matters were mutually contradictory. Therefore, considering the way of acting of the Commission throughout the evaluation, the questions raised by the Commission, the situation that the candidate was put in compared to other candidates, including the fact that he had to pay to obtain expeditiously the information requested from different public institutions – he drew the conclusion that the Commission examined his case superficially, without going into the substance of the materials sent by the candidate, having had a predetermined position to fail the candidate.

In this context, he specified he did not examine any of the complaints filed by lawyer Boris Lichii. In fact, the plaintiff examined the complaints filed by SRL “Ta Gor” and the DAPE Association, the headquarters of which were registered in the same building where the office of the lawyer was registered, and the complaint filed by the former wife of that lawyer and other members of the former family. He also noted that at the time the complaints were being examined, the lawyer was divorced from his ex-wife, as confirmed by a copy of the divorce certificate. Both the lawyer's ex-wife and the lawyer himself had formed other families and were living at different addresses.

The plaintiff stated that as jurisdiction was declined following the lodging of complaints with the Court of Bălți, the Supreme Court of Justice established that it was within the jurisdiction of the Court of Bălți to examine those complaints. Given that the plaintiff was the only one able to perform the duties of an investigating judge, the complaints were assigned to him by the President of the court. Because the plaintiff hadn't come across such situations in his previous practice, he approached the management of the court and reported the situation. The management of the court, as well as many other more experienced colleagues, including from the Supreme Court of Justice, persuaded him that as long as the complaint was not filed by the lawyer Boris Lichii himself, and the latter was not a party to the proceedings, then there were no circumstances that would compel him to refrain from examining the complaints. Therefore, the plaintiff examined the complaints and adopted the decision at issue.

The plaintiff's opinion is that his ruling did not cause any damage to anyone, the incident in question having also been a one-time event that took place 15 years ago. Throughout his career as a judge, the candidate has issued thousands of decisions, but No other facts that could be imputed to the candidate as having broken the law have been established.

The plaintiff also believes that if one of the parties to the case before the judge is the lawyer who represented the judge in any type of case or proceeding before or in parallel with the case before the judge, the judge is certainly in a conflict of interest and has the obligation to recuse himself from the case. In this particular case though, lawyer Boris Lichii was not a party to the proceedings involving the examination of the complaints at issue. What is more, the Commission itself noted that the lawyer represented the candidate in 2007, while the decision was issued a year later – in August 2008.

The plaintiff recounted that he was held accountable three times for one and the same doing: the first time – under the disciplinary procedure, the second time – he faced criminal charges with all the consequences (detention, prosecution and preventive measure, etc.), and the third time – on the basis of the fail decision adopted by the Commission, the candidate can No longer stand for membership of the Superior Council of Magistracy, which is against national and international standards. What is more, Article 8(2)(a) of the Law on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors No 26 of 10 March 2022 (hereinafter referred to as the Law No 26/2022), does not provide for a specific time limit for acts committed by the candidate that could lead to the conclusion that the candidate was non-compliant, although the Law on the Superior Council of Magistracy provides that the candidate mustn't have been disciplinarily sanctioned over the last three years.

As such, the alleged failure to observe the term for filing a complaint with the investigating judge, under Article 313 of the Code of Criminal Procedure, regarding the unlawfulness of searches, was not addressed first during the questions-and-answers rounds, but at the public hearing, and then appeared in the reasoned decision of the Commission of 18 January 2023. Nonetheless, the term for filing a complaint with the investigating judge was observed: the people who filed the complaint, went first to the senior prosecutor, and afterwards – within 10 days – they went to court.

The plaintiff believes that the Judge's Code of Ethics, approved by the Superior Council of Magistracy Decision No 366/15 of 29 November 2007 was not applicable because there was No evidence indicating that the candidate had a bias or prejudice against one of the parties, or that he personally was in the possession of information about the disputed evidence relevant to the proceedings; or that the candidate or his wife or other close relatives had any financial interest in the object of the dispute or any other interest that could have affected substantially the outcome of the proceedings.

The plaintiff also claimed that the Commission examined his case superficially, that it did not consider the materials he submitted in the course of the evaluation, because at the initial stage of the evaluation, he provided the Commission with the 5-year asset declaration, which showed the donations to his son, and after some time, the Commission asked him about the source of funds used to buy a car in 2019 and an apartment in 2020. Other documents submitted by the candidate regarding the procurement of the house in 2017 were dealt with in a similar way.

The plaintiff believes that the Commission had a tendentious attitude towards him as a candidate from the very beginning, because although he complied with all the requirements and demands of the Commission and submitted the required documentation and information by the set deadlines, he was accused from the very beginning of the evaluation of not complying with the requirements and was led to believe that he would therefore not pass. When the candidate sought explanations with respect to that, the Commission informed him that a mistake had occurred.

Another situation that showed that the Commission was biased against the candidate was that the Commission withheld the positive information about the candidate, and only brought forth the negative information about him. After it became known that the Commission had adopted a decision in his regard, the candidate found out that there were natural and legal entities that submitted positive information about him, but the Commission neither referred to nor said anything about those documents.

It is the plaintiff's opinion that his personal and professional relations were affected by the appealed decision, which is an interference that is not lawful, does

not meet the legitimate aim and does not pass the proportionality test. According to the case law of the ECtHR, the dismissal or non-promotion of a person to an administrative position is an interference with that person's exercise of the right to respect for private life within the meaning of Article 8 of the European Convention on Human Rights, namely in view of the fact that private life includes the right of an individual to establish and develop relationships with other people, including professional or business relationships.

He also claimed that the appealed individual administrative act was unreasoned, as there was No express and explicit mention of the factual and legal elements that led to the adopted decision, as well as No other considerations laid down by law to justify the issued individual administrative act.

The failure to comply, or as the case the compliance of the issuing authority with the obligation to provide a full reasoning of an individual administrative act, directly affects its lawfulness. Therefore, in the absence of reasoning that meets legal requirements, the appealed decision is unlawful, which requires that it be annulled.

As a matter of law, the plaintiff based his action on Article 31, Article 118(1)-(3), Article 189(1), Article 206(1)(a) and (b), Article 208(1), Article 209(1)(a), Article 211-212, Article 224(1)(a) and (b) of the Administrative Code.

On 13 February 2023, the Commission filed a defense statement, whereby it sought that the appeal of Stanislav Sorbalo be dismissed.

The Commission argued in the reasoning of the defense statement that it discharged all its obligations set out in the Law No 26/2022 with diligence and in good faith. The burden of proof is shifted onto the candidate in the course of the evaluation procedure, but if uncertainties emerge, the Commission gives the candidate the possibility to provide additional data and information to address those uncertainties.

It said that neither the assessment of integrity, nor the decision, affected the candidate's professional status, as the legal effect of Commission decisions was explicitly and exhaustively set out in the law, and that the candidate could oppose the publication of the decision. What is more, the decision reflects a determination that there are serious doubts as to the plaintiff's compliance with the criteria of ethical and financial integrity and does not amount to a finding of non-compliance with those criteria. The appropriateness of the decision cannot be subject to judicial review.

The defendant emphasized that the plaintiff raised issues that were not relevant to the case. The plaintiff brought forth circumstances regarding his declarations of assets, property and income, but the decision makes No mention of any findings in this regard, which means there were No serious doubts about it.

Also, in the absence of any evidence as to the unlawfulness of the decision, the plaintiff criticized the applicable law by referring to the case of Xhoxhaj vs. Albania, where the plaintiff claims that the ECtHR established that the failure to set a time limit, and the focus on facts from the distant past are indicative of the violation of legal certainty.

Contrary to the plaintiff's submissions, the ECtHR established that in such procedures, placing strict temporal limits would greatly restrict the ability to evaluate; the state has a greater degree of flexibility and the implications for legal certainty should be considered on a case-by-case basis.

The Commission underscored that the plaintiff refused to accept the shifting of the burden of proof in the course of the pre-vetting process, although the law is clear in its provisions that it is specifically for the candidate to clear the serious doubts of the Commission.

Also, contradicting the plaintiff's submissions, the decision neither imposes a sanction on the plaintiff, nor does it establish any facts in this regard. Thus, the only consequence of the decision is that the plaintiff is not allowed to take part in the election of members of the Superior Council of Magistracy, and the findings in the decision have No evidentiary value for any other proceedings or processes.

It stated that it was for the Commission to assess whether or not certain circumstances are sufficient to establish the existence or absence of serious doubts as to compliance with integrity criteria. Therefore, the statements of the plaintiff – that are in fact subjective remarks about the findings of the Commission, which show disagreement with the merits of the decision – cannot be subject to judicial review.

The Commission underlined that it was not for the court to decide on the appropriateness of the decision, and that its review is to be limited to the lawfulness of the decision.

Furthermore, it stated that the plaintiff misrepresented the circumstances of the case, because he alleged that he had been accused from the very beginning of the evaluation of not complying with the requirements of the Commission, and that he would therefore not pass the evaluation. In fact, the message that the plaintiff referred to, was sent by the Commission only to acquaint him with the provisions of the Law No 26/2022 and of the Evaluation Rules, cautioning him about the applicable legal consequences, should he not provide all the documentation asked for by the set deadline. This message is actually proof of the good faith of the Commission meant to inform the candidates in advance about potential legal consequences of their action or inaction.

As a matter of fact, the contentions of the plaintiff that his examining of the complaints and his issuing of the ruling referred to above caused No harm and that the incident was a one-time event, are just circumstances that are to be considered by the Commission in its assessment of the ethical integrity criterion.

The consideration of those circumstances, however, is not tantamount to the mitigation of the Commission's serious doubts.

It argued that the decision issued by the Commission was appropriately reasoned, as it detailed the facts, the applicable legal rules and the conclusions of the Commission relating to the absence or presence of serious doubts with respect to plaintiff's compliance with the integrity criteria.

At the hearing, the plaintiff Stanislav Sorbalo and his counsel Vitalie Zama defended their arguments put forward in the appeal, and requested the court to allow the appeal as worded, to annul the Decision No 17 of 18 January 2023 on the candidacy of Stanislav Sorbalo, to order the resumption of evaluation and to command the issuance of a favorable individual administrative act.

The representatives of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, counsels Roger Gladei, Irina Sugoneaco and Valeriu Cernei, sustained the arguments put forward in the defense statement, and moved for the dismissal of the action as unfounded.

In addition to their arguments in the submitted defense statement, the representatives of the Commission stated that the Commission observed all the rights provided for in Article 12(4) of Law No 26/2022.

The Determination of the Court

Having heard the parties and their representatives, and having examined the administrative and judicial files, the Special Panel, established at the Supreme Court of Justice to examine the appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, finds that the action is admissible and well founded, for the reasons detailed below.

Case Examination Period

According to Article 14(7) of the Law No 26/2022, by derogation from the provisions of Article 195 of the Administrative Code No 116/2018, the appeal against the decision of the Commission shall be examined within 10 days.

A Special Panel to examine the appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors was established by Order of the Acting President No 29 of 29 March 2022, amended by Order No 35 of 14 April 2022: Vladimir Timofti – Chair, Ala Cobăneanu, Svetlana Filincova – judges, Dumitru Mardari – substitute judge.

It should be noted that the appeal filed by Stanislav Sorbalo was registered with the Supreme Court of Justice on 8 February 2023.

According to the case assignment form, this case was distributed, on 8 February 2023, via the Integrated Case Management Program to Judge-Rapporteur Ala Cobăneanu (case file page 1, vol. I).

By ruling of 8 February 2023, the Special Panel of the Supreme Court of Justice was distributed for review in administrative dispute, the appeal brought by Stanislav Sorbalo against the Commission, with participants being summoned to court on 17 February 2023, at 10:00, courtroom No 4 at the Supreme Court of Justice, on 18 Petru Rareș Street, Chișinău Municipality, (case file page 40-42, vol. I).

On 13 February 2023, the Commission submitted, by the deadline set by the court, its defense statement against the appeal filed by Stanislav Sorbalo seeking the annulment of Decision No 17 of 18 January 2023 (case file page 46-60, vol. I).

On 8 February 2023, one member of the Special Panel of the Supreme Court of Justice, applied for recusal from reviewing this appeal (case file page 75-76, vol. I), but their recusal application was rejected by ruling of 16 February 2023 of the Special Panel of the Supreme Court of Justice (case file page 86, 87-90, vol. I).

With regards to this case, note that at the court hearing of 17 February 2023, Stanislav Sorbalo put forward several motions, including one seeking that the Commission submit the translation into English of the ruling issued by Stanislav Sorbalo on 15 August 2008, which served as basis for the appealed decision, and a motion raising a constitutional challenge.

According to the minutes of the court hearing of 17 February 2023, having regard for the motions put forward by Stanislav Sorbalo, as well as for the fact that there was No more time left to continue the hearing because another hearing had been scheduled for 11:00 o'clock, the hearing was adjourned until 3 March 2023, at 10:00 (case file page 122-131, vol. I).

By Decisions of the Superior Council of Magistracy Nos 23/2 and 27/2 of 14 February 2023, the Plenary of the Superior Council of Magistracy accepted the resignations of the judges who were on the Special Panel, effective on 1 March 2023.

By ruling of 2 March 2023 of the Acting President of the Supreme Court of Justice, the casefiles that had been assigned to the judges who resigned – opened following appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors – were sent to the Unit for the Procedural Registration of Civil, Commercial and Administrative Cases for redistribution via the Integrated Case Management Program to other judges (case file page 133-135, vol. I).

By order of the Acting President of the Supreme Court of Justice No 33 of 2 March 2023 Amending Decision No 29 of 29 March 2022 and Decision No 35 of 14 April 2022, the composition of the Special Panel was changed (case file page 142, vol. I).

According to the case redistribution form of 2 March 2023, 10:41, this case was assigned to a different Judge-Rapporteur (case file page 136, vol. I).

According to the case redistribution form of 2 March 2023, 13:07, this case was assigned to a different Judge-Rapporteur (case file page 140, vol. I).

At the court hearing of 3 March 2023, the Judge-Rapporteur, member of the Special Panel of the Supreme Court of Justice, applied for recusal from the examination of the appeal (case file page 144-148), which therefore called for adjournment and a new hearing was scheduled for 15 March 2023, at 14:00.

By ruling of 6 March 2023, the Special Panel of the Supreme Court of Justice rejected the application of recusal filed by the judge (case file page 165-171, vol. I).

At the court hearing of 15 March 2023, the motion challenging constitutionality, filed by Stanislav Sorbalo, represented by counsel Vitalie Zama was examined (case file page 181-191, vol. I); the motion was accepted by ruling of 15 March 2023 of the Special Panel of the Supreme Court of Justice, and the hearing was adjourned without a date until the settlement of the matter by the Constitutional Court (case file page 195-198, vol. I).

The composition of the Special Panel was changed by Decision No 39 of 20 March 2023 “Amending Decision No 34 of 2 March 2023” because one of its judges was on medical leave since 17 March 2023, whose resignation was accepted by Decision of the Superior Council of Magistracy No 68/3 of 23 February 2023, effective on 18 April 2023; Decision of the Superior Council of Magistracy No 103/4 of 16 March 2023 amended the Decision of the Superior Council of Magistracy No 68/3 of 23 February 2023 by changing effective date of resignation of the Special Panel judge from the position of judge at the Supreme Court of Justice from 18 April 2023 to 20 March 2023.

By Decision of the Superior Council of Magistracy No 66/3 of 23 February 2023, the resignation of Supreme Court of Justice judge, member of the Special Panel was accepted, effective on 27 March 2023.

The composition of the Special Panel was changed by Order of the Acting President of the Supreme Court of Justice No 46 of 28 March 2023 Amending Decision No 39 of 20 March 2023. For the rest, the Order of the Acting President of the Supreme Court of Justice No 39 of 20 March 2023, maintaining the order of the Acting President of the Supreme Court of Justice No 34 of 2 March 2023, in the part concerning the appointment of the substitute judge, was upheld.

By Order of the Commission for Emergency Situations of the Republic of Moldova No 64 of 31 March 2023 – for the period of the state of emergency – a

provisional measure for a 30-day period was taken to suspend administrative procedures on resignation applications filed by the judges of the Supreme Court of Justice before the entry into force of the Order of the Commission for Emergency Situations of the Republic of Moldova No 64 of 31 March 2023, and to suspend the legal effect of the resignation applications already accepted, unless the termination of service occurred earlier than the effective date of the Order of the Commission for Emergency Situations of the Republic of Moldova No 64 of 31 March 2023.

By Order No 53 of 4 April 2023 Amending Orders Nos 46 of 28 March 2023, 34 of 2 March 2023 and 39 of 20 March 2023, the composition of the Special Panel, provided for in Item 1 of the Order of the Acting President of the Supreme Court of Justice No 46 of 28 March 2023 was changed, and a new composition of the Special Panel tasked with the examination of appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, was established as follows: Tamara Chișca-Doneva – Chair, Justice Mariana Pitic – judge, Justice Ion Guzun – judge. The substitute judge in the Special Panel tasked with the examination of appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, referred to in Item 2 of the Order of the Acting President of the Supreme Court of Justice No 34 of 2 March 2023, was changed.

By Order of the Commission for Emergency Situations of the Republic of Moldova No 66 of 10 April 2022 – in the context of the prompt response of the government to the issue of ensuring the operation of the Supreme Court of Justice, expressed in amendments to the regulatory framework and enshrining in it mechanisms to resolve the challenges linked to the provisional filling of judicial vacancies at the supreme judicial court, and having regard to the subsequent actions of the Superior Council of Magistracy, which – following recent legislative intervention through the Law No 65/2023 on External Assessment of Judges and Candidates for the Position of Judge of the Supreme Court of Justice, at the Plenary Meeting of the Superior Council of Magistracy on 10 April 2023 – examined the issue of announcing a competition for filling, by temporary transfer, the vacant judgeships at the Supreme Court of Justice – the specific measures in the field of justice established by the Order of the Commission for Emergency Situations of the Republic of Moldova No 64/2023 were revisited, and it was established that subitem 1.2 of item 1 of the said Order shall be repealed.

On 6 April 2023, by Inadmissibility Decision No 42, the Constitutional Court ruled on applications Nos 75g/2023, 76g/2023, 77g/2023, 86g/2023, 87g/2023, 88g/2023, 89g/2023, 90g/2023, 96g/2023, 101g/2023 and 102g/2023

challenging the constitutionality of certain provisions of Law No 26/2022 (case file page 208-222, vol. I).

Thus, following the ruling of the Constitutional Court on 6 April 2023, the participants in the proceedings were summoned to the next hearing scheduled for 11 April 2023, at 15:30 (case file page 205-207, vol. I), which was postponed due to the fact that on 10 April 2023, the Commission filed a motion to disqualify one of the judges of the Special Panel (case file page 226, vol. I).

By Decision of the Superior Council of Magistracy No 33/2 of 14 February 2023, the resignation of a Supreme Court of Justice judge, member of the Special Panel was accepted, effective on 31 March 2023. By Order No 69 of 4 May 2023 Amending Order No 29 of 29 March 2022, the Acting President of the Supreme Court of Justice appointed a substitute judge in the Special Panel tasked with the examination of appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (case file page 236, vol. I).

The Special Panel noted that the Law No 64 of 30 March 2023 on the Supreme Court of Justice and the Law No 65 of 30 March 2023 on the External Assessment of Judges and Candidates for the Position of Judge of the Supreme Court of Justice entered into force on 6 April 2023.

Article 8 of Law No 64/2023, the Plenary of the Supreme Court of Justice is formed by all the judges of the Supreme Court of Justice and has, *inter alia*, the task to establish, on an annual basis, the composition of court panels.

Having regard for the legal provisions referred to above and for the fact that during the period March-April 2023 the majority of the Supreme Court of Justice judges resigned, the Special Panel notes the impossibility of the Plenary of the Supreme Court of Justice, which is not currently deliberative, to form panels.

The transitional provisions of Law No 64/2023 on the Supreme Court of Justice, however, were amended by Law No 89 of 27 April 2023, in force since 2 May 2023, to establish when the new composition of the Supreme Court of Justice, including the Plenary, would start its work, with the effect that the President of the Supreme Court of Justice would have the power to form the panels as was previously the case.

In accordance with Article 12(8) of the Law No 65/2023, the Superior Council of Magistracy announced – by Decision No 120/6 of 10 April 2023 – a competition for filling, by temporary transfer, the judicial vacancies at the Supreme Court of Justice, and by Decision of the Superior Council of Magistracy No 142/8 of 2 May 2023, it was decided to temporarily transfer 7 judges from national courts to the Supreme Court of Justice, for a period of 6 months, starting on 10 May 2023.

The Special Panel noted that the operation of the Supreme Court of Justice was halted from 30 March 2023 to 10 May 2023, which was a period of time when both the factual and legal examination of pending cases was not possible.

The motion to disqualify a judge of the Special Panel, distributed on 15 May 2023 as per the case distribution form, was examined at the hearing of 23 May 2023, at 9:00, the deliberation and outcome regarding it having been postponed until 25 May 2023 (case file page 240-243, vol. I).

By ruling of 25 May 2023, the Special Panel of the Supreme Court of Justice rejected the motion to disqualify a Special Panel judge, filed by the Commission (case file page 244-248, vol. I).

The participants in the proceedings were summonsed to the next hearing on the case on 12 June 2023, at 11:00.

The examination of the merits of the appeal lodged by Stanislav Sorbalo against the Commission commenced at the hearing of 12 June 2023, but the it was interrupted at the request of the plaintiff on account of the fact that on 18 October 2022 he had submitted to the Superior Council of Magistracy a request for it to revisit the Superior Council of Magistracy Decision No 14/1 of 22 January 2009 and to terminate the disciplinary action against him. Said request was placed on the agenda of the Superior Council of Magistracy for 13 May 2023.

The parties consented to adjourn until 19 June 2023 at 16:00, when the hearing of the appeal on the merits was completed and, pursuant to Article 14(9) of Law No 26/2022, it was announced that the decision would be issued on 10 July 2023, by placing it on the official website of the Supreme Court of Justice.

On 10 July 2023 the posting of the decision on the official website of the Supreme Court was postponed.

In this context and in the light of the above, the Special Panel notes that the failure to meet the 10-day time limit for the examination of the appeal was due to the complexity of the case, the conduct of the parties to the proceedings, including that of the defendant authority, the difficulty of the debate, the mass resignation at the Supreme Court of Justice, and to the impossibility to form a Special Panel to hear the appeal.

What is more, the length of time the case was pending was conditioned, *inter alia*, by the need to ensure respect for the rights of the participants in the proceedings, which cannot be regarded as a delay in the examination of the case, because the purpose of examining the appeal was to ensure observance of the parties' guaranteed right to a fair trial, which is enshrined in Article 38 of the Administrative Code and in Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Applicability of the Administrative Code

The Special Panel of the Supreme Court of Justice notes that, during the judicial proceedings, the representatives of the Commission raised the non-application of Books I and II of the Administrative Code to the examination of cases pending before the Supreme Court of Justice, an argument that cannot be accepted in the light of the following considerations.

As a matter of principle, it must be noted that the application of the Administrative Code and the limits of its application are a matter of interpretation and application of the law over which the Supreme Court of Justice has jurisdiction as a court with jurisdiction to examine administrative disputes (DCC No 163 of 1 December 2022, § 24, DCC No 2 of 18 January 2022, § 19).

It is first of all necessary to explain why the Administrative Code is applicable not only to the evaluation procedure but also to the administrative dispute procedure.

In terms of regulatory content, the Law No 26/2022 contains rules pertaining to substantive public law, procedural law and administrative dispute.

More specifically, the legal provisions regarding the definition and conditions under which the ethical/financial integrity is to be assessed are, by their nature, rules of substantive administrative law, which form the legal basis as per Article 21(1) of the Administrative Code for the issuance of the individual administrative act by the Commission. Accordingly, the provisions of Article 8(1)-(4) of the Law 26/2022 are rules of substantive administrative law. According to Articles 9(2) and 69(1) of the Administrative Code, the initiation of the evaluation procedure is the initiation of an administrative procedure, at the request of the candidate, for one of the positions of member of the bodies listed in Article 2(1) of the Law No 26/2022.

Pursuant to Article 189(1) of the Administrative Code, the initiation of administrative dispute proceedings is conditioned on a plaintiff's claim that a right has been infringed by administrative activity.

The Special Panel of the Supreme Court of Justice thus notes that the decision of the Commission is an individual administrative act within the meaning of Article 10(1) of the Administrative Code. The individual administrative act is the final output of the administrative procedure.

The pass or fail decision adopted by the Commission completes the administrative procedure under Article 78 of the Administrative Code.

Furthermore, the authors of the law noted in the explanatory note to Law No 26/2022 the following: "as a result of its work, the Commission will issue a decision. Given that such decision is an administrative act, it May be appealed in accordance with the provisions of the Administrative Code No 116/2018 with the explicit exceptions set out in this draft."

It is the lawmaker itself that called the decision of the Commission an individual administrative act that May be challenged in an administrative proceeding.

The rules of the Administrative Code on administrative proceedings and the concept of the individual administrative act are applicable to the evaluation procedure, subject to the exceptions provided for by Law No 26/2022.

The Special Panel of the Supreme Court of Justice points out that the evaluation of candidates for the positions of member of the bodies listed in Article 2(1) of the Law No 26/2022 is, by its nature, a specific field of activity within the meaning of Article 2(2) of the Administrative Code.

Although the Administrative Code establishes uniform administrative and administrative litigation proceedings, its Article 2(2) provides that certain aspects May be governed by special legislative rules as long as they are not at odds with the principles of the Administrative Code.

The special rules of the Law No 26/2022 do not preclude the application of Books I and II, with the exception of certain aspects, such as, in particular, the initiation of administrative proceedings, clarification of facts on own motion, quorum and majority, the right of the candidate to be heard, and others. The wording “certain aspects” in Article 2(2) of the Administrative Code does not mean that the Administrative Code shall not apply.

Therefore, the Special Panel of the Supreme Court of Justice notes that not applying Books I and II at all is impossible because of the central role and the organic link of the Administrative Code with the areas/sub-areas of administrative law.

According to Article 14(6) of the Law No 26/2022, an appeal against the decision of the Commission shall be heard and determined in accordance with the procedure laid down in the Administrative Code, subject to the exceptions laid down in this Law, and shall not have a suspensive effect on the Commission decisions, elections or competition in which the candidate concerned participates.

The principles governing the administrative dispute proceedings are set out in Book I of the Administrative Code, in particular Articles 21-27 and 36-43. There is an organic and substantive link between Books I and II, and III, which governs the administrative dispute proceedings, which cannot be denied or excluded under any circumstances.

Judicial review is a control of legality, which includes checking the legality of the grounds underpinning the form of administrative procedures; whether vague legal concepts were interpreted correctly; the proportionality of equal treatment, impartiality, legal certainty, reasoning; the exercise of discretionary right; whether the authority is allowed to exercise such right; the protection of legitimate expectation etc.

For the considerations stated above, the Special Panel of the Supreme Court of Justice rejects as unfounded the contention of the representatives of the Commission that Books I and II of the Administrative Code are not applicable. If this were the case, it would be tantamount to a denial of the principles of legality, own-initiative investigation, equal treatment, security of legal relationships, proportionality, impartiality of the Commission, good faith etc.

The application of the rules of administrative dispute is conditioned on the application of the same rules that refer to the administrative procedure, such as the collection of evidence under Articles 220(1), 87-93 of the Administrative Code, referrals under Articles 223, 97-114 of the Administrative Code, impartiality under Article 25 of the Administrative Code, recusals under Articles 202, 49-50 of the Administrative Code, forms of administrative activity under Articles 5, 10-15 and 189 of the Administrative Code, the concept of party in an administrative dispute under Articles 204 and 7 of the Administrative Code, legal effects of an individual administrative act, *e.g.* the enforceable nature of the Commission decision as an individual administrative act under Article 171(4) of the Administrative Code, the validity, binding force and *res judicata* of the Commission decision under Articles 139(2)-(4) and 140 of the Administrative Code etc.

The non-application of Books I and II of the Administrative Code would be virtually the same as disqualifying the Commission decision as an individual administrative act and, consequently – the same as denying access to effective judicial review.

In this context, the Special Panel of the Supreme Court of Justice thus notes that the decision of the Commission is an individual administrative act within the meaning of Article 10(1) of the Administrative Code, because: 1) it is issued by a public authority; 2) it is a decision, order or other official output; 3) it falls within the field of public law; 3) it is a regulation; 4) it relates to an individual case; 5) it has direct legal effects.

Functionally and organizationally, the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors is a “public authority” within the meaning of Articles 7, 10, 203(a) and 204 of the Administrative Code, because it was established by law, it has public law tasks by virtue of its mandate as defined in Article 8 of the Law No 26/2022, and pursues a public interest.

It is worth emphasizing that the Commission’s tasks do not pertain to the private, but to the public areas of activity, which is why it was vested, by Law No 26/2022, with powers that allow it to have a legally binding effect over those evaluated under Article 8 of the Administrative Code.

The Special Panel of the Supreme Court of Justice notes, as a matter of principle, that the concept of public authority cannot be mistaken – from a functional and organizational point of view – for that of a legal entity governed by public law, for otherwise the Commission decisions would not fall within the concept of an individual administrative act.

The Special Panel also emphasizes that the administrative procedure of evaluation has a clarifying and guiding purpose owing to the procedural nature of the formal action of evaluating candidates for the position of member of the Superior Council of Magistracy. Respect for the basic principles, safeguards and rules of administrative procedure is therefore a requirement directly rooted in the concept of the rule of law stipulated in Article 1(3) of the Constitution of the Republic of Moldova.

The Law No 180 of 7 July 2023 reinforced the understanding that the Commission is a public authority specific in its own way, i.e. it is not a legal entity of public law, although Article 7 of the Administrative Code – which has a universal meaning – includes and defines the concept of public authority both in the sense interpreted by the Parliament of the Republic of Moldova, i.e. functionally and organizationally, and in the sense of a legal entity of public law, as the case may be or require. This conclusion also follows from the indefinite pronoun “any organizational structure” in Article 7 of the Administrative Code. A public authority – in addition to the element of any organizational structure or body, established by law or other regulatory act to pursue public interests – also falls in the purview of public regime, which establishes the tasks and remits, which gives the right to impose legal force on people with whom the public authority engages in legal relations. A different interpretation and application would mean that the work of the Commission and its decisions are not binding as individual administrative acts, but represent legal acts under private law.

The Special Panel points out that a natural person can also be a public authority if they are delegated by law the tasks pertaining to public authorities and the corresponding powers to carry them out.

Furthermore, according to Article 72(6) of the Law No 100 of 22 December 2017, the interpretation law does not have retroactive effect, except in cases where the interpretation of the sanctioning rules leads to a more favorable situation.

At the same time, the representatives of the Commission did not acquire an in-depth understanding of Article 2(2) of the Administrative Code, which sets out the conditions of derogation by legal provisions from the uniform nature of the Administrative Code for “certain aspects” of administrative activity. Accepting the argument that the Commission is not a public authority would mean denying the legal reality that it carries out administrative activity of public law through

administrative procedure and that its decision is an individual administrative act subject to judicial review under administrative litigation procedure.

Thus, the public authority concept is not limited to the concept of legal entity of public law, but has its own functional meaning under Article 7 and Article 2(2) of the Administrative Code and for the purposes of Law No 26/2022.

According to Article 10(1) of the Administrative Code, the Commission's decision is related to the trait of "*any decree, decision or other official measure*" as a defining element of the individual administrative act. This reveals that the Commission does not perform legislative or judicial activity, but that it has a law implementation activity.

According to Article 10(1) of the Administrative Code, the Commission's decision fits within the concept of "*public law domain.*" According to Article 5 of the Administrative Code, the individual administrative act is one of the forms of administrative activity by means of which the law is applied. The Commission's decision applied Law No 26/2022, which regulates the substantiation of the decision, and this normative regulation falls, in its legal nature, under the substantive public law. Due to this trait, the Commission's decision is exempt of private, criminal, contraventional, and constitutional disputes to which public authorities can be party as per Article 2(3)(a)-(c) of the Administrative Code.

According to Article 10(1) of the Administrative Code, the Commission's decision is a "*regulation*" by means of which the defendant exercises unilaterally its substantive competence in line with Article 6 of Law No 26/2022. The Special Panel emphasizes that this element of the individual administrative act delimits it from other forms of administrative activity, such as the real act and the administrative contract.

According to Article 10(1) of the Administrative Code, the Commission's decision relates to "an individual case", which consists of the concrete situation of plaintiff's evaluation. This trait of the individual administrative act has the function to delimit it from the normative administrative act, which is an abstract regulation as per Article 12 of the Administrative Code.

According to Article 10(1) of the Administrative Code, the Commission's decision meets the criterion of "*with the purpose to produce direct legal effects*", which means to create, alter or terminate legal relationships under the public law. The Special Panel holds that the Commission's decision produces direct legal effects in the legal sphere of the plaintiff, in her capacity of a judge that applied for the position of member in the Superior Council of Magistracy. This criterion has the function to differentiate the individual administrative act from a simple administrative operation carried out under an administrative procedure of assessing the candidate's financial and ethical integrity.

Having said that, the Special Panel notes that the decision of the Commission is an individual administrative act whereby the administrative procedure is completed. The concepts of administrative procedure defined in Article 6 of the Administrative Code and of public authority defined in Article 7 of the Administrative Code have a universal nature, being applicable to any area/sub-area of public law. These are the reasons why the Commission had and has the obligation to apply the provisions of the Administrative Code and the procedural rules laid down in Law No 26/2022 in the part related to derogations from the uniform nature of the Code.

It is therefore unacceptable that the Commission's representatives argue that the evaluation procedure is not an administrative procedure governed by the principles of the Administrative Code, such as the principle of legality (Article 21), the principle of investigation of own motion (Article 22), the principle of equal treatment (Article 23), the principle of good faith (Article 24), the principle of impartiality (Article 25), the principles of procedural language and reasonableness (Article 26, Article 27), the principle of efficiency (Article 28), the principle of proportionality (Article 29), legal certainty (Article 30), the principle of motivation of administrative acts and administrative operations (Article 31), the principle of comprehensibility (Article 32), the principle of protection of legitimate expectations and others.

As regards the existing judicial practice on the appeals lodged against the Commission, (i.e. cases Nos 3-5/2023 and 313/2023), where the court established with the force of *res judicata* that the provisions of Book I and II of the Administrative Code were not applicable to the cases filed against the Pre-Vetting Commission, the Special Panel of the Supreme Court of Justice notes that the cases at issue do not form a unified judicial practice. The role of case-law is to interpret and apply the law to specific cases. Respectively, not every decision that differs from another decision represents a case-law divergence.

The *res judicata* principle does not force the national courts to follow precedents in similar cases, as implementing legal coherence requires time and periods of case-law conflicts can, therefore, be tolerated without undermining legal certainty.

In these circumstances, the Special Panel states that a judge, according to the judicial organization rules, is not, generally, bound by the decision issued by another judge and not even by his/her prior decisions, because he/she pronounces a decision on the particular case brought before court.

Application Admissibility

According to Article 207(1) of the Administrative Code, the court shall check of its own motion if admissibility requirements for an administrative dispute application are met.

Article 189(1) of the Administrative Code provides explicitly that every person that claims that their right has been infringed by administrative activity of a public authority May file an application for an administrative dispute.

According to Article 5 of the Administrative Code, the administrative activity under the public law of public authorities includes the individual administrative act as the main form of administrative action of the authorities.

The Special Panel reasoned in the section of applicability of the Administrative Code why the Commission's decision is an individual administrative act. Therefore, in terms of application admissibility, it is emphasized that the Commission's decision is an unfavorable individual administrative act.

According to Article 11(1)(a) of the Administrative Code, individual administrative acts can be unfavorable acts – acts which impose obligations, sanctions, burdens on their addressees or affect the legitimate rights/interests of persons or which refuse, in whole or in part, to grant the requested benefit.

According to Article 17 of the Administrative Code, the prejudiced right is any right or freedom established by law that is infringed by an administrative activity.

The Special Panel notes that by means of the filed appeal, plaintiff Stanislav Sorbalo is claiming an infringement of a right by administrative activity, according to Article 189(1) of the Administrative Code, namely that by issuing Decision No 17 of 18 January 2023, the Commission violated his right to be elected to the position of member in the Superior Council of Magistracy (Article 14 of the Law on the status of judges No 544/1995), the right to self-administration of judges (Article 23¹ of the Law on Judiciary Organization No 514/1995).

By derogation from Article 209 of the Administrative Code, Article 14(1) and (2) of the Law No 26 of 10 March 2022 regulated a special time frame for filing an administrative lawsuit.

Thus, the decision of the Pre-Vetting Commission May be appealed by the evaluated candidate within 5 days from the date of receiving the reasoned decision, without following the preliminary procedure.

The evaluated candidate May appeal the unfavorable decision of the Commission before the Supreme Court of Justice, which shall form a special panel consisting of 3 judges and a substitute judge. Judges and the substitute judge shall be appointed by the President of the Supreme Court of Justice.

In this context, it is noted that Decision No 17 of 18 January 2023 of the Commission was received by Stanislav Sorbalo on 3 February 2023, which is confirmed by an abstract from the e-mail, attached to case materials (case file page 844, vol. III of the administrative file).

The quoted legal provisions are unequivocally indicative of the grounds of admissibility of the appeal in administrative litigation, specifically: the existence of an unfavorable individual administrative act sent to the addressee, rejecting his application; the substantive and territorial jurisdiction of the court to examine the appeal in administrative proceedings and the time-limit for filing suit.

The Special Panel of the Supreme Court of Justice concludes that the appeal filed by Stanislav Sorbalo is admissible because the plaintiff complied with Article 14(1) of Law No 26/2022, by filing his appeal to the Supreme Court of Justice on 8 February 2023, within the time frame laid down in the law.

With respect to the type of application for administrative litigation, the Special Panel holds the filed application as an action for injunction of a specific nature. By means of a regular action for injunction, the plaintiff, according to Articles 206(1)(b) and 224(1)(b) of the Administrative Code, aims at the annulment of the individual administrative act rejecting his/her request for obtaining a legal advantage of any kind and at obliging the public authority to issue the rejected individual administrative act. At the same time, the specificity of the filed action is about annulling the Commission's decision on failing the candidate and ruling for a resumption of the evaluation.

The Special Panel of the Supreme Court of Justice, in line with Article 219(3) of the Administrative Code, is not bound by the wording of the motions submitted by the parties to the proceeding, thus the appropriateness argument expressed in the statement of defense by the defendant will be appreciated in terms of admissibility.

Effective judicial review involves a full check of factual and legal matters, however it excludes the checking of appropriateness as per Article 225(1) of the Administrative Code and limits the review regarding the discretionary individual administrative act when the law provides for such a reason for issuance. Appropriateness is a matter of admissibility, not a matter of substance in an administrative litigation.

The Commission's argument in the submitted statement of defense that the application has to be rejected for the reason of appropriateness is unsubstantiated, as the plaintiff based the application on legality matters, not on appropriateness.

The statement of defense and the appropriateness aspects highlighted by the Commission therein deny the right to file an appeal in administrative proceedings in line with Articles 39 and 189(1) of the Administrative Code. Thus, neither the Administrative Code nor Article 14(8) of Law No 26/2022 exclude the candidate's right to file an application to court. Accepting the solution suggested by the defendant is legally unsubstantiated and contrary to the rule of law.

The Special Panel notes that provisions of Article 225(1) of the Administrative Code are clear and cannot be confused, as they regulate, in

functional unity with Articles 36, 39, 189, 190, and 207 of the Administrative Code, only aspects related to excluding or limiting the judicial review.

The Special Panel deems the Commission's decisions issued based on Article 8 of Law No 26/2022 as a mandatory administrative act, i.e. it is not issued based on discretionary right. The Commission is obliged to issue the decision regardless of whether it is favorable or not. In case of discretionary decisions, the public authority has even the right not to act and when it decides to act under administrative law, then it has the possibility to select the legal consequences, except for the situation when discretion is reduced to zero, as per Article 137(2) of the Administrative Code.

Merits of the Administrative Dispute

According to Article 6(1) of the European Convention on Human Rights, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

For the purposes of Article 13 of the European Convention on Human Rights, everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

According to Article 20(1) and (2) of the Constitution of the Republic of Moldova, any individual is entitled to effective satisfaction from the part of competent courts of law against actions infringing upon his/her legitimate rights, freedoms and interests. No law May restrict the access to justice.

According to Article 53(1) of the Constitution of the Republic of Moldova, any person prejudiced in any of his/her rights by a public authority by way of an administrative act or failure to solve a complaint within the legal term, is entitled to obtain acknowledgement of the declared right, cancellation of the act and payment of damages.

According to Article 114 of the Constitution of the Republic of Moldova, justice shall be administered in the name of the law only by the courts of law; they shall have the entire range of procedural mechanisms for a fair solution of a case, without unjustified limitation in actions to be carried out, so that, upon the fulfilment of the ultimate goal, the judicial decision would not become illusory.

Effective legal protection against administrative actions of public authorities implies a full judicial review of legality, which covers both factual and legal issues, as regulated by Articles 194(1), 219, 22, 36, and 21 of the Administrative Code.

Density of judicial review means clarifying the content of judicial review over the decisions of the Commission, which applies not only to the depth, but also to the scope of the review. This relates both to enforcement of the law and to

establishment of the facts that are relevant for a legal and founded judicial decision.

Effective judicial review involves checking all aspects of procedural and substantive legality, particularly fairness, proportionality, legal security, reasoning, correctness of factual investigation of own motion, impartiality, misinterpretation of undefined legal notions, and others. This is the only way to reach the standard of effective protection embedded in Article 53 of the Constitution of the Republic of Moldova. To this end, Article 194(1) of the Administrative Code provides that during first-level court procedure, appeal procedure, and procedure of examining challenges against judicial decisions, the factual and legal issues shall be solved of own motion.

The court's review of the work of an administrative authority of public law requires an independent determination of relevant facts, an interpretation of relevant provisions, and their subordination. Such an administrative legality review obviously excludes, as a matter of principle, a binding of justice to factual or legal findings and determinations made by other powers with respect to what is legal in the given case.

In accordance with Article 14(8) of Law No 26 of 10 March 2022, when examining the appeal against a decision of the Commission, the Special Panel of the Supreme Court of Justice May adopt one of the following decisions: a) reject the appeal; b) accept the appeal, if there are circumstances that could have led to candidate's passing the evaluation, and order to resume the evaluation of the candidate by the Pre-Vetting Commission (the constitutionality of this provision was checked by Decision of the Constitutional Court No 5 of 14 February 2023 on unconstitutionality exceptions of some provisions of Law No 26 of 10 March 2022 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors (competence of the Supreme Court of Justice in case of examining appeals filed against the decisions of the Pre-Vetting Commission)).

The Constitutional Court held that the explanatory note to the draft law does not include any argument regarding the needs to limit the judicial review of Pre-Vetting Commission's decisions. Still, based on the opinion submitted by the authorities and the content of the challenged text, the Constitutional Court deduced that the legislator intended to avoid situations where the Pre-Vetting Commission decisions are annulled for some insignificant procedural irregularities and, on the other hand, it wanted to ensure the celerity of solving appeals, in order to have sooner an operational Superior Council of Magistracy. The Constitutional Court held that these legitimate goals can fit under the overall objectives of public order and guarantee of justice authority and impartiality, as provided for in Article 54(2) of the Constitution (DCC No 5 of 14 February 2023, §78).

Thus, the Constitutional Court has ruled that, until the law is amended in accordance with the reasoning of this decision, the Special Panel of the Supreme Court of Justice, when examining appeals, May order the reevaluation of failed candidates if it finds (a) that the Pre-Vetting Commission made serious procedural errors during the evaluation procedure, affecting the fairness of evaluation, and (b) that circumstances exist which could have led to the candidate passing the evaluation (DCC No 5 of 14 February 2023, §88).

Consequently, the Special Panel of the Supreme Court of Justice found that the Constitutional Court has established a double test that has to be met for the candidate's appeal against the decision of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors to be accepted, namely: 1) the Pre-Vetting Commission made serious procedural errors during the evaluation procedure, affecting the fairness of evaluation, and 2) circumstances exist which could have led to the candidate passing the evaluation.

Law No 147 of 9 June 2023, in force as of 21 June 2023, amended Article 14(8) of Law No 26 of 10 March 2022 as follows: When examining the appeal against a decision of the Commission, the Special Panel of the Supreme Court of Justice May adopt one of the following decisions: a) reject the appeal; b) accept the appeal and order a re-evaluation of the candidates that failed the evaluation if it finds that during the evaluation procedure the Pre-Vetting Commission committed severe procedural errors that affect the fairness of the evaluation procedure and that there are circumstances that could have led to candidate's passing the evaluation. The Special Panel highlights that Article 14(8) of Law No 26 of 10 March 2022 amended by Law No 147 of 9 June 2023 design an effective judicial review, which involves the legality of the evaluation procedure and the substantive legality of the decision to fail the evaluation.

The review of the procedural legality of the Decision will be limited to whether or not the Pre-Vetting Commission committed serious procedural errors that could affect the fairness of the evaluation procedure. The review of the substantive legality of the Decision will be limited to whether there are circumstances that could have led to the candidate Stanislav Sorbalo passing the evaluation.

The Special Panel of the Supreme Court of Justice notes that the Administrative Code regulates the concept of serious errors and particularly serious errors. In case of particularly serious errors, as per Article 141(1) of the Administrative Code, the individual administrative act shall be null and, consequently, it shall not produce legal effects since the moment of issuance. On the other hand, in case of serious errors, the individual administrative act is unlawful and produces legal effects until its final annulment. So, when an issue

of procedural legality is invoked, it has to be analyzed through the lens of both particularly serious error and serious error.

The Commission's decision is unlawful and the plaintiff would have the right to a favorable decision, because the appealed decision is viciated, especially from the perspective of proportionality, misinterpretation of undefined legal notions and fair treatment. The Commission is bound to follow proportionality and fair treatment when issuing decisions on the evaluation of candidates for Superior Council of Magistracy membership. Denying this would put under question not just the rule of law, but the purpose for which Law No 26/2022 was passed. The serious doubts of the Commission have to be analyzed/evaluated both in terms of proportionality and fair treatment.

In Decision No 17 of 18 January 2023 on the Candidacy of Stanislav Sorbalo, Candidate for the Superior Council of Magistracy and the Disciplinary Board of Judges, on the basis of Article 8(1) and (2)(a) and Article 13(5) of the Law on Measures Related to the Selection of Candidates for the Positions of Members in the Self-Administration Bodies of Judges and Prosecutors No 26 of 10 March 2022, the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors determined that the candidate did not meet the integrity criteria as serious doubts have been found as to the candidate's compliance with the ethical integrity criterion and thus fails the evaluation.

On 8 February 2023, Stanislav Sorbalo, represented by counsel Vitalie Zama, filed an appeal against the Decision on the Candidacy of Stanislav Sorbalo No 17 of 18 January 2023 of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, which he criticized harshly, and requested that it be annulled, that the evaluation of candidate be resumed, and that the issuance of a favorable individual administrative act be ruled.

In accordance with Article 14(8)(b) and (10) of Law No 26/2022, when examining an appeal against a decision of the Commission, the Special Panel of the Supreme Court of Justice May adopt the decision to allow the appeal if it finds that there were circumstances that could have led to the candidate passing the evaluation, and it May order the Commission to resume the evaluation of the candidate.

If the Commission resumes the evaluation of a candidate in accordance with para. (8)(b), the provisions of this Law on the integrity evaluation procedure shall apply accordingly.

Subsequently, the Special Panel of the Supreme Court of Justice notes that, according to Decision No 17 of 18 January 2023 – the candidate for the Superior Council of Magistracy and the Disciplinary Board of Judges did not pass the evaluation by virtue of Article 8(1) and (2)(a) of the Law No 26/2022, on the

ground that he did not meet the integrity criteria, as serious doubts were established as to the compliance of the candidate with the ethical integrity criteria.

The Special Panel of the Supreme Court of Justice notes that when the Commission faces the task to make a decision about the integrity of a candidate, it must establish whether there are serious doubts as to the compliance of the candidate with the ethical and financial integrity criteria set out in Article 8 of the Law.

Note that the law obliges the Commission to issue a reasoned decision, which must include relevant facts, reasons, and conclusion of the Commission with respect to passing or failing the evaluation.

Article 8(1), (2)(a) and Article 13(5) of Law No 26/2022 are relevant in this respect, as they stipulate that for the purposes of this law, checking the candidates' integrity shall consist of checking their ethical integrity and financial integrity.

The candidate shall be 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.

As such, 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 requirements set out in Article 8, which have not been mitigated by the evaluated person.

In addition, according to Article 5(2) of the Evaluation Rules of the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-governing bodies of judges and prosecutors pursuant to Law No 26/2022, adopted at the meeting of the Commission of 2 May 2022, with further amendments, in assessing compliance with the ethical integrity criterion, the Commission may take into consideration the gravity or severity, the surrounding context, and the willfulness, of any ethical 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 singular 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 rules and regulations.

Going back to the circumstances of this case, the Special Panel of the Supreme Court of Justice mentions that in its Decision No 17 of 18 January 2023, in chapter III “Evaluation of the candidate”, the Commission found serious doubts related to Stanislav Sorbalo, candidate for the Superior Council of Magistracy and the Disciplinary Board of Judges, in terms of the ethical integrity criteria, namely failure to recuse himself in a decision that was related to a criminal case against his former lawyer.

Having analyzed the Commission’s conclusions on this circumstance in relation to the evaluation criteria, the Special Panel finds that the appeal lodged by Stanislav Sorbalo is justified.

Effective judicial review involves checking all aspects of procedural and substantive legality, particularly fairness, proportionality, legal certainty, reasoning, correctness of factual investigation of own motion, impartiality, misinterpretation of undefined legal notions, and others. This is the only way to reach the standard of effective protection embedded in Article 53 of the Constitution of the Republic of Moldova.

The Special Panel established under the Supreme Court of Justice concludes that, based on the arguments of the plaintiff and his representative before the court, it finds circumstances that could have led to him passing the evaluation before the Commission and such circumstances justify the resumption of candidate evaluation.

According to the records attached to the candidate’s case file, on 15 October 2008, based on the notification of the Prosecutor General, the Superior Council of Magistracy ordered to start a disciplinary procedure regarding the investigative judge Stanislav Sorbalo and to submit the materials for examination to the Disciplinary Board under the Superior Council of Magistracy, because on 15 August 2008 investigative judge Stanislav Sorbalo issued a decision on the legality of searching the office and residence of lawyer Boris Lichii, who represented the plaintiff’s interests in other criminal cases, where the latter was an injured party.

On 23 December 2008, the Disciplinary Board handed down a decision to sanction investigative judge Stanislav Sorbalo with warning for violation of impartiality and gross violation of judicial ethics. On 13 January 2009, the author of the disciplinary procedure, Nicolae Clima, chair of the Superior Council of Magistracy, appealed the decision of the Disciplinary Board of 23 December 2008.

Decision No 14/1 of 22 January 2009 appealing the decision of the Disciplinary Board under the Superior Council of Magistracy of 23 December 2008 regarding Stanislav Sorbalo, investigative judge at the Court of Bălți, accepted the appeal of Nicolae Clima, chair of the Superior Council of Magistracy, amended the decision of the Disciplinary Board of 23 December

2008, and suggested to the President of the Republic of Moldova to dismiss Stanislav Sorbalo from the position of investigative judge at the Court of Bălți as per Article 25(1)(f) of the Law on the Status of the Judge.

Even though Stanislav Sorbalo appealed in court the administrative act issued to him, he lost and on 31 July 2009 the President of the Republic of Moldova issued the Decree No 2290 to dismiss Stanislav Sorbalo from the position of investigative judge at the Court of Bălți, published in the Official Gazette No 121-123, Article 322 of 7 August 2009.

On 24 December 2019, the Governmental Agent of the Republic of Moldova, pursuant to Article 449(g) of the Civil Procedure Code, filed a request to review the decision of the Supreme Court of Justice of 7 July 2009.

The conclusion of the Supreme Court of Justice of 5 February 2020 found the violation of the right of Stanislav Sorbalo guaranteed by Article 6 § 1 of the European Convention on Human Rights, accepted the review request filed by the Governmental Agent of the Republic of Moldova, quashed the decision of the Supreme Court of Justice of 7 July 2009 in the administrative dispute started by Stanislav Sorbalo against the Superior Council of Magistracy regarding the appeal of the administrative act, and kept the case in the proceedings of the Supreme Court of Justice in order to re-examine the appeal filed by Stanislav Sorbalo against the decision of Chişinău Court of Appeal of 21 April 2009. It was ruled that just satisfaction claims were to be solved by the Governmental Agent via the Government of the Republic of Moldova.

The ground for finding the violation of Stanislav Sorbalo's right guaranteed by Article 6 § 1 of the European Convention on Human Rights held by the review court was acceptance of the appeal filed by the chair of the Superior Council of Magistracy lodged beyond the legally provided term, without requesting the reinstatement of the time limit and without providing convincing reasons to determine such reinstatement and the lack of independence and impartiality of the Superior Council of Magistracy, given that it included at that time the Prosecutor General who notified the chair of the Superior Council of Magistracy of the acts committed by the plaintiff and the chair of the Superior Council of Magistracy who asked the Disciplinary Board to start a disciplinary action against the plaintiff and who challenged the solution that was favorable to the appellant. Having performed the judicial review of the Decision of Chişinău Court of Appeal of 21 April 2009, the reviewing court, through its Decision of 1 July 2020, accepted the appeal filed by Stanislav Sorbalo and his representative, counsel Gheorghe Ulianovschi, it quashed entirely the Decision of Chişinău Court of Appeal of 21 April 2009 and issued a new decision whereby it accepted the application to sue lodged by Stanislav Sorbalo against the Superior Council of Magistracy requesting to appeal the administrative act and annul the Decision

No 14/1 of 22 January 2009 “appealing the decision of the Disciplinary Board under the Superior Council of Magistracy of 23 December 2008 regarding Stanislav Sorbalo, investigative judge at the Court of Bălți”, which accepted the appeal of Nicolae Clima, chair of the Superior Council of Magistracy, amended the decision of the Disciplinary Board of 23 December 2008, and suggested to the President of the Republic of Moldova to dismiss Stanislav Sorbalo from the position of investigative judge at the Court of Bălți as per Article 25(1)(f) of the Law on the Status of the Judge.

Subsequently, the Plenary of the Superior Council of Magistracy adopted the Decision No 178/16 of 7 July 2020, whereby they accepted the request of the former investigative judge, Stanislav Sorbalo, to be reinstated, thus he was reinstated as a judge at the headquarters of the Court of Bălți.

In that regard, the Special Panel of the Supreme Court of Justice considers it appropriate to note that, in the circumstances of the case before it, the plaintiff's objections that, by means of the challenged decision, he was held liable for the same act are well founded, invoking that he was punished both under the disciplinary procedure, in the form of a warning/dismissal from his position, criminal liability, and under the pre-vetting procedure on the basis of the decision of the Commission which removed him from the competition.

On the basis of the aforementioned, the Special Panel holds that the European Court of Human Rights by its decision of 31 January 2023 adopted on the case of Stanislav Sorbalo versus the Republic of Moldova (application No 1210/10) reiterated that in the decision which ruled the retrial and in the decision issued as a result of the retrial, the Supreme Court of Justice admitted expressly the violation of Article 6 § 1 of the Convention with respect to the applicant (§§ 17 and 18 *above*). This finding of the violation related both to lateness of the appeal filed by the chair of the Superior Council of Magistracy, and to the lack of independence and impartiality of the Superior Council of Magistracy. Further, the Court highlighted that these aspects are not a controversy between the parties (see Sorbalo v. Republic of Moldova, No 1210/10, § 49, 31 January 2023).

Nevertheless, the European Court of Human Rights believes that this violation was remedied after proceedings were reopened, because under the new proceeding, which apparently observed the guarantees stipulated in Article 6 of the Convention, the appealed decision of the Superior Council of Magistracy was annulled specifically for the reason of late lodging of the appeal by the chair of the Superior Council of Magistracy and lack of independence and impartiality of the Superior Council of Magistracy. Thus, the decision of the Disciplinary Board was confirmed and the plaintiff won the disciplinary procedure against him. Upon the completion of the new proceeding, the plaintiff has been officially reinstated

and, moreover, he was paid the salary due for a period of over eleven years, i.e. much more than the initial five-year term.

Taking these elements into account, the Court considered that, in this case, as a result of the new proceedings which followed the review, the unfavorable consequences relating to the complaints based on the defects in the original proceedings had been remedied by the national authorities, pending their decision on the merits of the complaints (unlike the situation in *Eminağaoğlu v. Turkey*, No 76521/12, § 52, 9 March 2021). In this respect, it considers that this case differs from *Oleksandr Volkov v. Ukraine* (No 21722/11, §§ 207-08, ECHR 2013), wherein it directed the respondent Government to ensure the applicant's reinstatement as a judge, as the reopening of the domestic proceedings could not have constituted an adequate remedy for the violation of, *inter alia*, Article 6 of the Convention. The Court emphasized in this respect that it is important that a judge deprived of performing his duties in violation of Article 6 of the Convention, could have them reinstated them promptly and fully (see *Sorbalo v. Republic of Moldova*, No 1210/10, § 58, 31 January 2023).

In this case, the Special Panel highlights that the text of the decision subject to judicial review means that the Commission, with respect to the ethical integrity criterion – failure to recuse himself in a decision that was related to a criminal case against his former lawyer – used as legal ground for its solution Article 15(2) of the Law on the Status of the Judge No 544-XIII of 20 July 1995 (version in force in 2008), Article 33(2)(6) and Article 34 of the Criminal Procedure Code (version in force in 2008), Article 3(3) and Article 4 of the Judge's Code of Ethics approved by the Decision of the Superior Council of Magistracy No 366/15 of 29 November 2007.

The Special Panel holds that the legislator, based on Article 116(6) of the Constitution of the Republic of Moldova, regulated separately judge's disciplinary liability (see Article 21 of Law on the Status of the Judge No 544-XIII of 20 July 1995 and Law on disciplinary board and disciplinary liability of judges No 950-XIII of 19 July 1996 (in force in 2008)) from deontological liability (see Article 15(1)(e) of Law on the Status of the Judge No 544-XIII of 20 July 1995 and the Judge's Code of Ethics approved by the Decision of the Superior Council of Magistracy No 366/15 of 29 November 2007).

Law No 26/2022 does not vest the Commission with powers in the field of disciplinary liability.

The Venice Commission mentioned that evaluation and disciplinary liability are (or should be) two different things. Disciplinary liability requires a disciplinary offence. A negative performance, which leads to a negative overall result of an evaluation, can also originate from other factors than a disciplinary offence (CDL-AD(2022)024) § 50). Thus, a court decision on not applying a disciplinary sanction is not definitive proof of judge's compliance with the rules

of ethics and professional conduct. The conclusion that the facts do not amount to a disciplinary offence does not mean that they could not amount to professional misconduct.

According to Law No 26/2022, when assessing the integrity of a candidate for a position in the Superior Council of Magistracy, the Commission shall check the behavior of the judge in order to establish whether he/she meets the ethical and financial integrity criteria and can be recommended to the General Assembly of Judges to be elected to the position he/she aspires to. In this case, the candidate's behavior is assessed in relation both to legal provisions on this matter, and to principles that are relevant for this field. Consequently, filtering can happen ex-post/ex-ante to or in parallel with an inquiry of disciplinary acts, because they have different goals, different procedural and legal features, as well as different consequences.

In this respect, the Venice Commission mentioned that criminal/disciplinary investigations are initiated to ascertain whether a criminal/disciplinary offence has been committed, while "integrity checks look at the risk or likelihood that improper conduct will happen in the future." The burden of proof and the standard of proof will often be different. Criminal investigations seek to establish a fact beyond reasonable doubt, meaning that the burden of proof shall fall on the State. In other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability. 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 (see CDL-AD(2022)011, § 9-10).

Having analyzed the content of the appealed decision, it follows that in this case the Commission did not make a distinction between forms of judge's legal liability, namely between disciplinary liability related to disciplinary offences and deontological offences related to ethical violations.

This means that the Commission confounded ethical-moral issues regulated by the Judge's Code of Ethics approved by the Decision of the Superior Council of Magistracy No 366/15 of 29 November 2007 and the ones related to judges' disciplinary liability for committing disciplinary offences provided for by the Law on disciplinary board and disciplinary liability of judges No 950-XIII of 19 July 1996 (in force in 2008).

It was imperative to make a clear distinction between ethical procedures and legal procedures, between an ethical approach, on the one hand, and a disciplinary approach regarding magistrate's responsibility.

The Special Panel notes that deontological liability is an integral part of disciplinary liability within magistracy. Deontological behavior is determined by contemporaneous realities of democratic societies.

Thus, the Judge's Code of Ethics provides the people who fall under it with rules of conduct in concrete situations, which would help them fulfil their duties

in the institution, but also outside of the job, in order to contribute to keeping public trust in the justice system. These rules supplement the legal duties of professionals and are meant to raise their accountability when doing their job.

Whereas, in disciplinary matters, the Law on disciplinary board and disciplinary liability of judges No 950-XIII of 19 July 1996 (in force at the time when the plaintiff was sanctioned) regulates situations when the judge can be held liable from a discipline perspective, in case of committing disciplinary offences, it regulates disciplinary sanctions, provides for the discipline proceedings, for the competence of applying sanctions and ways to appeal a sanctioning decision.

Moreover, it should be noted that the Judge's Code of Ethics states that the principles it enshrines are intended to set standards for the ethical conduct of judges, which start from the premise that judges are accountable for their conduct to institutions specifically created to ensure compliance with judicial standards, institutions which are themselves independent and impartial, and from the premise that these principles have been established to complement the existing legal and ethical rules to which judges are subject, and not to replace them.

In this respect, the rationale of the Constitutional Court is indispensable, as reflected in section 120 of Decision No 42 of 6 April 2023, where it held that by means of the phrase "seriously", the legislator limited the discretionary margin of the Commission when assessing the ethical integrity of the candidates. This criterion allows the Commission to decide on failure of the candidate only if it finds violations of ethics and professional conduct that are of a high severity. This means that the candidate can discuss the seriousness of violations found by the Commission before the Special Panel of the Supreme Court of Justice, which could ultimately appreciate the "serious" nature of the found deviation, depending on the specific circumstances of the case.

At the same time, the Joint Follow-Up Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law, at its 134th Plenary Session that took place on 10-11 March 2023, mentioned that ACs may consider certain behaviors which have been the subject-matter of other proceedings or which have not been yet examined at other fora, the reports of the Commission should not undermine the authority of the final judicial decisions and respect the principle of *res judicata*, as decided in criminal or disciplinary proceedings. The Commission may not neglect a prior decision that came into force, for instance a decision of acquitting a judge/prosecutor for an act of corruption or annulment of a disciplinary sanction issued to him/her.

Furthermore, the Special Panel holds that according to Article 8(6) of Law No 26/2022, in carrying out the evaluation on the basis of the criteria laid down in paras (2) and (5) and in taking decisions thereon, the Commission shall not be bound by the findings of other bodies competent in the field concerned.

The Special Panel highlights here that the legislator allowed the Commission to make its own conclusions when assessing against criteria and adopting decisions. Moreover, the phrase “other bodies competent in the field concerned” means other state bodies that have authority in the field of checking ethical and financial integrity.

As a matter of principle, the Special Panel does not deny this right of the Commission, but in this case it has to be noted that the European Court of Human Rights issued a judgment on the case of Stanislav Sorbalo versus the Republic of Moldova by means of Decision of 31 January 2023, which is irrevocable and binding.

Also, the Constitutional Court stated that since courts have No primary competence to check ethical and financial integrity, but can only perform a judicial review of the decisions issued by the mentioned authorities, the Court believes that this text does not cover irrevocable court decisions (DCC No 92 of 25 July 2023, §26).

It is remarkable that conclusions from the fundamental judgments and decisions of the Strasbourg Court are not equal to the conclusions of other bodies competent in the field concerned by which the Commission is not bound, as ECtHR judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties [Ireland v. the United Kingdom, 18 January 1978, §154, Series A No 25, and, more recently, Jeronovičs v. Latvia (MC), §109].

In practice, it was extremely important for the Commission to take into account – when assessing the ethical integrity criterion and when issuing a decision in that respect – the conclusions of the Strasbourg Court expressed in the case of Stanislav Sorbalo versus the Republic of Moldova, where it was found that Stanislav Sorbalo had already been disciplined for violation of rules of ethics and professional conduct when passing the decision of 15 August 2008, by being dismissed from his position as an investigative judge at the Court of Bălți as per Article 25(1)(f) of the Law on the Status of the Judge, and as a result of the new proceedings that took place after the review, national authorities remedied the unfavorable consequences related to the complaints against vitiated initial proceedings and Stanislav Sorbalo won the disciplinary action against him. He has been officially reinstated and, moreover, he was paid the salary due for a period of over eleven years, i.e. much more than the initial five-year term.

Therefore, excluding the candidate from the selection on the basis of the Commission’s decision during the pre-vetting procedure is a new sanctioning of the plaintiff for the same deed that took place 15 years ago, especially since by

means of the phrase “seriously”, the legislator limited the discretionary margin of the Commission when assessing the ethical integrity of the candidates.

To this end, the Special Panel of the Supreme Court of Justice holds that checking the integrity of candidates to positions in the Superior Council of Magistracy and in its specialized bodies is a filtering process, not a judicial review and, consequently, if done appropriately, it can be deemed as achieving a balance between the advantages of this measure, in terms of helping raise the trust in the judiciary, and its possible negative effects.

It is essential for a negative evaluation to happen only in case of fundamental and serious errors and/or when there is a clear and consistent pattern of erroneous judgement, which reveals lack of competence.

In this way, as opposite to the aforementioned idea, the Commission, in its decision to fail candidate Stanislav Sorbalo, which led to him not being allowed to run for membership in the self-administration bodies of judges, has analyzed the same facts and circumstances, which were actually assessed in a distorted way.

Therefore, although the Commission states firmly that it does not assume the position of a court of law or of any other judicial body, and its actions are not a judicial or other type of verification intended to establish with certainty a particular fact, the opposite follows from the text of its decision, namely that the Commission concluded that the references to the lawyer in the conclusion of 15 August 2008 highlight the need for the candidate to have had recused himself from examining the complaints and not to preside in circumstances that would give rise to doubts about his impartiality.

Consequently, given the afore mentioned findings in corroboration with the provisions cited above, there is No doubt that the violation of rules of ethics and professional conduct by candidate Stanislav Sorbalo, when issuing the conclusion of 15 August 2008, is not a highly serious offence, therefore the solution of the Commission is obviously unreasonable.

Moreover, the disciplinary actions against judges must relate to alleged professional misconduct, which is serious and unforgivable and discredits the judiciary.

Also, the Special Panel notes here that, in the context of ethics, conduct unbecoming and impartiality, it is wrong to correlate violations of appropriate professional standards with deviations that can lead to disciplinary sanctions. Professional standards represent best practice that all judges should follow and develop and towards which all judges should aspire. Making them equivalent to deviations that justify disciplinary sanctions would discourage the further development of such standards and would lead to misunderstanding their purpose.

To justify disciplinary proceedings, misconduct must be serious and flagrant in a way that cannot be invoked simply because there has been a failure to meet the professional standards set out in the instructions.

In this context, Venice Commission (CDL-AD(2021)046) stated that the implementation of a system of integrity checks should always be strictly in line with the principle of proportionality. Indeed, the Commission can apply in practice the principle of proportionality only in cases where misconduct reached a certain severity threshold. Breaches of professional conduct cover a wide range of actions ranging from minor offences to serious misconduct giving rise (potentially) to disciplinary sanctions. This is not to say that breaches of the professional standards may not be of considerable relevance where there has been misconduct sufficient to justify and require disciplinary sanction. However, minor offences should not provide a valid ground to reject a candidate.

The criteria used to assess the assets and the integrity of the candidates should be the same that are used for any equivalent assessment process in the Republic of Moldova.

In the opinion of the Special Panel, given that in 2008, when examining these complaints, in terms of Article 8(2)(a) of Law No 26/2022, Stanislav Sorbalo did not harm any private or public interests (including public trust) and that the incident was a singular one, this circumstance could have changed the candidate's situation, because the minor misconduct that took place long ago should not provide a valid ground to reject a candidate.

Furthermore, note that should the evaluated candidate submit logical arguments and explanations to the Commission, which are true to the social-economic context of the Republic of Moldova, then the likelihood of a fact being in a way or another should be weighed and any doubt has to be treated in favor of the candidate and this is a cornerstone principle of the rule of law.

Here, the Special Panel holds that the plaintiff provided sufficient logical arguments and that the fact happened respectively and the Commission wrongly failed to consider these arguments.

Thus, the exclusion, not just limitation of the right to be elected as a member of the bodies listed in Law No 26/2022 for the minor acts held by the Commission is in No way an adequate measure for the fulfilment of the purposes laid down in the law, but it is not clarified in the appealed decision. Given the urgent issue of proper operation of the judicial self-administration bodies at the moment when the decision was issued, not evaluating the candidate for minor acts [translator's note: they probably mean failing] does not only fail to fit the reasons of not passing the evaluation, but it is also an unnecessary, thus unlawful, violation of the mentioned rights.

Accordingly, the Special Panel of the Supreme Court of Justice found that even though the Commission carried out its duty to gather any relevant

information about candidate's integrity, when it received the recommendation letter of 12 August 2022 from the Dean of the Faculty of Law and Social Sciences of "Alecu Russo" State University from Bălți, which related to the professional and moral traits of Stanislav Sorbalo, the Commission did not consider it, even though it should have taken into account that a person's rights are at stake in the process of integrity assessment. This omission of the Commission is notable.

Namely, failure to consider seriously a document/record undermines the potential protection of candidate's rights in relation to any analysis of proportionality.

With respect to the plaintiff's criticism on the lack of a limitation period, meaning that the Law on the Superior Council of Magistracy provides that it is mandatory for the candidate not to have any disciplinary sanctions in the last 3 years, but it does not relate to facts imputed to the candidate, which took place almost 15 years ago, and also invoking to this end the rationale of the European Court of Human Rights in the case of Oleksandr Volkov v. Ukraine, that there was a violation of Article 6 § 1 of the Convention, since the facts examined by the HCJ in 2010 dated back to 2003 and 2006 (see paragraphs 17-18 above), therefore the applicant was placed in a difficult position, as he had to mount his defense with respect to events, some of which had occurred in the distant past, the following has to be mentioned.

The Constitutional Court, in its Decision No 42 of 6 April 2023, on the phrase "in the last 15 years" from Article 8(4)(b) of Law No 26, explained in sections 121-123 that the legislator established a quite extensive time frame, based on its competence deriving from Article 122(2) of the Constitution, according to which "the procedure and conditions of election, appointment [...] of members into the Superior Council of Magistracy shall be established by law," as well as in order to achieve the purpose of Law No 26: (i) to increase the integrity of future members of the Superior Council of Magistracy; (ii) to increase society's trust in the self-administration bodies of judges and prosecutors and overall in the justice system (see the preamble of the Law).

Having applied the desiderata of the Constitutional Court to this case, the Special Panel holds that the Constitutional Court deemed reasonable the legislator's decision to establish an extensive period of checking candidates' financial integrity, invoking European Court of Human Rights case-law, *Xhoxhaj v. Albania*, 9 February 2021, §§ 348-349, but not an extensive period of checking the candidates' ethical integrity.

In the view of the Special Panel set up within the Supreme Court of Justice in this case, although the decision of the Commission to fail the evaluation does not prevent the candidate from continuing to work as a judge, or in another position previously held in the field of law, it may affect the candidate's professional reputation – protected by the right to respect for private life – since

it includes findings regarding the candidate's lack of ethical and financial integrity (Denisov v. Ukraine [MC], 25 September 2018, §§ 107-109 and 115-116).

In this context, the plaintiff's observation is of crucial importance – integrity evaluation is an interference with the candidate's right to professional reputation, which is protected, among other things, by Article 8 of the European Convention on Human Rights.

The European Court of Human Rights established, in *Özpinar v. Turkey* (judgment of 19 October 2010, §§ 45, 46, 48), that Article 8 guarantees "private life" in a broad meaning, which includes the right to a "private social life", i.e. an individual's right to develop his or her social identity.

In this respect, that right enshrines the possibility of turning to others in order to establish and develop relationships with the peers (see, to that effect, *CampagnaNo v. Italy*, no. 77955/01, § 53, ECHR 2006-V, and *Bigaeva v. Greece*, no. 26713/05, § 22, 28 May 2009).

The European Court reiterated that there is No reason of principle why the notion of "private life" should be taken to exclude professional activities. Some restrictions imposed in the professional life may conflict with Article 8, when these have repercussions on the way a person creates his or her social identity by developing relationships with the peers. It is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing relationships with the outside world (*Niemetz*, aforementioned, § 29).

In those circumstances, the European Court is of the opinion that the inquiry into the applicant's professional and private life conducted by the inspector, during which witnesses were questioned on various aspects of the applicant's life, and the administrative revocation resulting from that inquiry, which was motivated mainly by conclusions drawn from her actions, can be regarded as interference with her right to respect for private life (see, *mutatis mutandis*, the judgments in *Vogt*, cited above, § 44, and *Smith and Grady v. the United Kingdom*, No 33985/96 and 33986/96, § 71, ECHR 1999-VI)).

Therefore, the Special Panel established under the Supreme Court of Justice concludes that, based on the arguments of the plaintiff and his representative before the court, it finds circumstances that could have led to him passing the evaluation before the Commission and such circumstances justify the resumption of candidate evaluation, as there have been mitigated the serious doubt the Commission expressed with respect to Stanislav Sorbalo's compliance with the ethical integrity criteria under Article 8 of Law No 26/2022 with respect to the candidate's failure to recuse himself in a decision that was related to a criminal case against his former lawyer, Boris Lichii.

However, it cannot be ignored in the context of equal treatment that in case of another judicial candidate who passes the evaluation, the Commission concluded that given the specific circumstances of the case, the found violations

do not amount to such a severity level that would be equivalent to non-compliance with the ethical integrity criterion.

The violation of rules of ethics and professional conduct by candidate Stanislav Sorbalo when issuing the conclusion of 15 August 2008 is not a highly serious violation, especially since Stanislav Sorbalo had already been disciplined by being dismissed from his position as investigative judge at the Court of Bălți, as per Article 25(1)(f) of the Law on the Status of the Judge and, as a result of the new proceedings that took place subsequent to the review, the unfavorable consequences related to the complaints regarding vitiated initial procedures had been remedied by the national authorities and Stanislav Sorbalo won in the disciplinary action related to him. Respectively, excluding the candidate from the selection based on the decision issued by the special Commission under the pre-vetting process is a new punishment of the plaintiff for the same act that took place 15 years ago.

From this perspective, the Special Panel is going to establish to what extent the peers, judges and prosecutors running for positions in the self-administration bodies, were treated equally or unequally in terms of the practice formed by the Commission since the beginning of the evaluation process until nowadays.

In this respect, without expressing an opinion about the quality and legality of Commission decisions regarding other candidates, the Special Panel will study by way of comparison, in terms of equal treatment, decisions to pass the evaluation issued before the case of Stanislav Sorbalo, in order to find the existence or inexistence of different treatments in similar situations, as well as decisions to pass the evaluation issued after 18 January 2023, in order to determine if the Commission changed its practices for the future, in line with Article 137(4) of the Administrative Code.

Having done that, the Special Panel identified cases in the practice of the Commission, both before and after the evaluation of Stanislav Sorbalo, where the legal regime of asset declaration was violated by other candidates – assets were not declared, difference in the price of movable/immovable property, existence of disciplinary procedures – but it accepted the candidates' explanations, finding that the latter made technical omissions, with No intent to elude the legal regime of asset declaration.

Nevertheless, in its Decision No 17 of 18 January 2023 regarding candidate Stanislav Sorbalo, the Commission did not explain the factual aspects that would show that he is appreciated as lacking integrity compared to other candidates in the same situation. Thus, as opposite to other identical cases before and after 18 January 2023, the Commission disconsidered the plaintiff's explanations and took a selective and unfounded attitude in comparison to similar situations.

With respect to the plaintiff's argument that the Commission made severe procedural errors during the evaluation procedure in terms of violating the

language of the evaluation process, expressed in lack of translation to English of documents and statements submitted by the candidate at the stage when Commission members were collecting and checking data, given that the Commission members Herman von Hebel, Victoria Henley, Nona Tsotsoria, who are English speakers and for whom the Commission Secretariat did not ensure a translation to English. [translator's note: it's a sentence without an ending]

As per Article 10(9) of Law No 26/2022, the Commission shall assess the gathered materials using its own judgement, 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.

This provision leads to the rule of direct research of evidence, freedom of evidence and direct assessment of evidence by the Commission members.

The Commission did not submit evidence proving that documents and records were translated to the language known by the foreign members of the Commission, designated by the development partners, except for the conclusion of 15 August 2008, which is equivalent to 3 Commission members not having heard the candidates. This is contrary to Article 10(9) of Law No 26/2022 and Articles 22 and 92 of the Administrative Code.

The Special Panel established under the Supreme Court of Justice notes that the state has vested the Commission with the prerogative to be guided by certain standards in order to select the candidates with highest integrity, who could ensure the proper functioning of the judicial system *as a whole*, including through the implementation of coherent policies in line with generally accepted standards.

It should be mentioned that the said Commission has only duties in relation to selecting candidates for membership in the Superior Council of Magistracy and is not empowered to set qualifiers or make findings regarding the candidate's capacity as a judge.

To the same end, the plaintiff proved to the Special Panel of the Supreme Court of Justice the plausible nature of the elements invoked in his appeal, including the ones related to the accuracy of financial operations conducted while managing, buying and selling other real estate in the context of this case.

Hence the Special Panel underlines that the Commission must analyze the plaintiff's arguments for real, not in a formal and arbitrary manner, and it should take into account the desiderata of the Constitutional Court, which deemed reasonable the legislator's decision to establish an extensive period of checking candidates' financial integrity, but not an extensive period of checking the candidates' ethical integrity.

In the same context, the Special Panel finds that the Commission failed to ensure candidate's right to have effective access to the content of the administrative case file, which gives the candidate the right to become familiar

with and make copies of any document and information related to him/her as a participant in an assessment administrative procedure. Obstructing the access to the administrative case file led to violation of another guarantee, i.e. the candidate's right to defense before the Commission.

The Special Panel deems well founded the plaintiff's argument that the time the Commission granted for submitting information was insufficient and limited, thus making it impossible to gather evidence in order to mitigate entirely the potential "serious doubts" of the Commission.

In this respect, the Special Panel emphasizes that, according to Article 82 of the Administrative Code, if the administrative procedure is to be carried out in writing as per Article 28 or is carried out in writing, the public authority, when starting the procedure, shall create a digital or hard copy folder that would include all documents and records regarding the said procedure. The digital folder shall include, as appropriate, scanned copies of paper-based documents and the authenticity of these copies shall be confirmed by the electronic signature applied by the responsible person within that public authority, electronic documents, other relevant records and information in digital format.

Scanned digital copies of official documents issued on paper and digital records on which the electronic signature was not applied are used without restriction in the relationship with the public authority and may be included in the administrative case file, unless the regulatory acts require expressly the signature to be applied on these copies/records or the observance of requirements towards electronic documents.

When included in the file, a document is referenced with continuous page numbers.

Should documents be retrieved from the file for a certain period, a mention shall be made in this respect, which must include: a) name of the retrieved document; b) number of retrieved pages; c) reason for retrieving the document; d) name of the person that ordered the retrieval of the document; e) date when the document is retrieved. This mention shall be included in the file instead of the retrieved document.

Administrative case files shall be kept until the expiry of their term of storage, which results from the applicable legal provisions in force.

In line with Article 83 of the Administrative Code, the public authority holding the administrative procedure shall grant, to the participants, access to the administrative case file.

Participants shall not have access to draft individual administrative acts before the completion of the procedure.

No access to the administrative case file is allowed if that would affect the appropriate performance of duties by the public authority or if it is necessary to

maintain a secret protected by law or if it is necessary to protect the rights of participants to the administrative procedure or of third parties.

Should it be justified, the public authority holding the administrative procedure may also allow, upon request, access to the file on the premises of another public authority or an overseas diplomatic or consular mission of the Republic of Moldova.

When accessing the case file, participants are allowed to take notes or make copies of the file. The cost of copies shall be incurred by every participant individually, which is 0.02 conventional units per page. Electronic copies of the case file, as well as electronic documents and copies thereof shall be provided free of charge.

Furthermore, the Special Panel notes that the Commission had the obligation to submit to the court, as per Articles 221 and 82 of the Administrative Code, the entire administrative case file of candidate Stanislav Sorbalo, so that the court could fulfil its constitutional task of effective judicial review of factual and legal matters.

Similarly, the special provisions under Article 10(5) and Article 12(4)(c) of Law No 26/2022 and Article 2(1)(g) of the Evaluation Rules pursuant to Law No 26/2022, adopted at the meeting of the Commission of 2 May 2022, guarantee the candidate's right to access the materials gathered by the Commission and its Secretariat for the purpose of candidate's evaluation.

The Special Panel finds that during the court hearing the Special Panel accepted the request of the plaintiff and obliged the Commission to submit the entire case file of the candidate, certified and formatted in line with the applicable legal provisions. Thus, as a result of implementing the protocolary conclusion of the Supreme Court of Justice, the Commission's representatives submitted to the court and to the plaintiff the case file to which the candidate did not have access at least 3 days prior to the hearing, as provided by Article 12(4)(c) of Law No 26/2022.

Moreover, during the consideration of this administrative case, the Commission's representatives admitted that candidate Stanislav Sorbalo did not receive and the case file of candidate Stanislav Sorbalo did not include all materials gathered by the Commission, but only the records that the Commission deemed to be relevant.

These circumstances prove that the Commission violated candidate Stanislav Sorbalo's right to defense, as it did not ensure his access to the administrative case file, which is supposed to include all materials gathered by the Commission, with at least 3 days before the hearing, in line with Article 82 and 83 of the Administrative Code, in corroboration with Article 10(5), 12(4)(c) of Law No 26/2022 and Article 2(1)(g) of the Evaluation Rules under Law

No 26/2022, thus violating the right to effective participation in the administrative evaluation procedure.

Therefore, the Commission did not exercise entirely its competence to investigate the situation of its own motion, which is provided for by Article 6(f) of Law No 26/2022, which stipulates that in order to exercise its powers, the Commission shall request information from individuals or legal entities of public or private law, and gather any information relevant to the fulfilment of its mandate.

So, the legislator has given the Commission a wide range of tools and levers to gather all the necessary information. Therefore, failure to fulfil the obligation to inquire of its own motion led to the Commission passing an erroneous solution and, respectively, violation of the candidate's right to defense.

Taking into account the aforementioned circumstances, the Special Panel concludes that the decision issued by the Commission, contrary to Article 21 of the Administrative Code, does not meet the requirements of procedural and substantive legality and that the found circumstances reveal the candidate's right to a favorable evaluation decision from this point of view.

The Special Panel highlights that the terms "seriously", "wrongful", and "inexplicable" from Article 8(2)(a) of Law No 26/2022 are, in their nature, undefined legal notions (vague legal provision) that do not grant discretion to the Commission, but rather oblige it to conduct a complex and rigorous interpretation of the provision in the context of serious violations of rules of ethics and professional conduct, while in this case, the Commission noted briefly that the candidate's actions were a serious violation of the rules of ethics and professional conduct of judges.

In the same respect, the Special Panel highlights that given its constitutional function to deliver justice, the court had the ultimate competence to interpret a vague legal notion in a concrete case.

The Special Panel finds that the Commission did not analyze and reason the legitimate purpose of the issued decision. The preamble of Law No 26/2022 provides that the purpose of the Law is to increase the integrity of future members of the Superior Council of Magistracy and its specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and overall in the justice system.

It is not clear from the appealed decision and the documents submitted by the defendant which of those goals are pursued by the decision to fail the evaluation. Any of these goals would be legitimate, however none of them is analyzed and the defendant's representatives did not provide a plausible answer to this question during the court hearing.

However, it is worth mentioning that the Commission is fundamentally free to choose its legitimate goal or goals, but this has to result from the content of the decision and be confirmed by the administrative case file documents.

According to Article 29(2)(a) of the Administrative Code, a measure is proportionate if it is suitable for achieving the established purpose based on the powers laid down in the law. Therefore, the exclusion, not just limitation of the right to be elected as a member of the bodies listed in Law No 26/2022 even for the alleged minor acts held by the Commission is in No way an adequate measure for the fulfilment of the purposes laid down in the law. Given the urgent issue of proper operation of the judicial self-administration bodies at the moment when the decision was issued, not evaluating the candidate [translator's note: they probably mean failing] does not only fail to fit the reasons of not passing the evaluation, but it is also an unnecessary, thus unlawful, violation of the plaintiff's rights.

At the same time, according to Article 29(2)(b) of the Administrative Code, a measure is proportionate if it is necessary for achieving the established purpose. This element of proportionality means that the official measure must be the mildest means of reaching the regulatory purpose. The Commission did not carry out such an analysis in relation to this case. Thus, the Commission failed to analyze the regulatory alternatives of the individual case, which would have achieved the regulatory purpose in the same way. The disadvantages that other regulatory options have must be considered and are characterized as being a milder means. A milder means for the achievement of the desired purpose would have been the participation of the candidate in the election for membership in the Superior Council of Magistracy while making public some of the minor issues that were found and which are part of the social reality of the Republic of Moldova, also based on the constant amendment of the domestic legislation.

According to Article 29(2)(b)-(3) of the Administrative Code, a measure is undertaken by public authorities is proportionate if it reasonable. The measure undertaken by the public authority is reasonable only if the interference caused by it is not disproportionate in relation to its purpose. This requirement involves a balancing of values protected by law. The bigger the damage caused to the right, the more it is required for the advantage resulting from interference to be superior. It is worth mentioning that excluding the right of a judge to be a candidate for membership in the Superior Council of Magistracy involves not just an interference, but also rather an improper annulment of the right to be elected into this position. Such a solution cannot be accepted under the rule of law, as it is incompatible with the dignity of a human being and of a judge. The goal of trust in the justice system can be achieved by complex means, but in No way can it be done by reducing to nothing the idea of free, transparent, and competitive election for the membership of the Superior Council of Magistracy and its bodies. The

judge, holding such a position, is presumed to have integrity and, should the opposite be proven, then he/she shall be dismissed respectively from the judiciary by means of a disciplinary procedure or another procedure that would take into account the guarantees of his/her independence. The Special Panel notes that the purpose of Law No 26/2022 is, among other things, to boost the trust in justice, but not to transform justice into an inefficient branch of the power exposed to interference from/dependence on the political power.

To conclude on this legality aspect, the Special Panel finds that the decision of the Commission is also contrary to the proportionality principle.

The Special Panel finds that only these isolated violations of administrative procedure guarantees are severe procedural errors, which have affected the fairness of the administrative evaluation procedure and, as a consequence, the existence of some procedural circumstances that would have led to the candidate passing the evaluation.

The Special Panel notes that the State has vested the Commission with the prerogative to be guided by certain standards to select the candidates with highest integrity for membership, *inter alia*, in the Superior Council of Magistracy, who in turn could ensure the proper functioning of the judicial system as a whole, including through the implementation of coherent policies in line with generally accepted standards.

The plaintiff proved to the Special Panel of the Supreme Court of Justice the plausible nature of the elements invoked in his appeal, including the ones related to the correctness and observance of ethical and professional conduct rules.

The Special Panel holds that the found circumstances reveal the candidate's right to a different evaluation decision from the Commission than the appealed one, because their nature could lead to candidate Stanislav Sorbalo passing the evaluation.

Also, the Special Panel notes that Venice Commission recommended for the final decision on assessment to be made by the competent court, but the Parliament of the Republic of Moldova chose a different legal policy in relation to this topic. Despite that, the Special Panel highlights that, for the reason of effective protection of the rights, it has the right and the obligation to conduct a full judicial legality review of the factual and legal matters.

Even though the Special Panel established within the Supreme Court of Justice is limited in adopting a final decision, still its arguments, conclusions and findings are mandatory and enforceable for the Commission. This conclusion results directly from Article 120 of the Constitution of the Republic of Moldova, which regulates the mandatory nature of the final sentences and other judicial decisions.

The Special Panel also relies its argument on the case-law of the Constitutional Court, which stated that, even though the Special Panel of Judges

of the Supreme Court of Justice cannot oblige the Commission to pass the evaluated candidate, the arguments and conclusions made by this court when examining the appeals stay mandatory for the Commission (DCC No 42 of 6 April 2023 §143).

The Special Panel notes that, for reasons of effective judicial review, as well as of the quality of the law, the Commission is not obliged, after it is ruled to resume the evaluation procedure, to inquire other circumstances than the ones underlying the acceptance of the plaintiff's appeal.

Thus, evaluation after resumption of procedure should not transform into a vicious circular argument and activity, which is contrary to the standard of effective protection of rights, separation of powers, legal certainty, and mandatory effect of the final judicial decisions.

The Special Panel notes that the circumstances held by the Commission do not fit, from a proportionality perspective, the reasons of candidate Stanislav Sorbalo failing the evaluation. The Commission did not provide an analysis and reasoning of the legitimate purpose.

In the preamble to Law No 26/2022, the legislator provided expressly that it has adopted the mentioned law in order to increase the integrity of future members of the Superior Council of Magistracy, Superior Council of Prosecutors and their specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and overall in the justice system.

It is not clear from the appealed decision and the documents submitted by the defendant which of those goals are pursued by the decision to fail the evaluation of candidate Stanislav Sorbalo. Any of these goals would be legitimate, however none of them were analyzed by the Commission and the defendant's representatives did not provide a plausible answer to this question during the court hearing.

Therefore, the exclusion, not just limitation, of candidate Stanislav Sorbalo's right to take part and be elected as a member of the Superior Council of Magistracy for the minor acts held by the Commission is in No way an adequate measure for the fulfilment of the purposes laid down in the law, not clarified in the appealed decision. Given the issue of proper operation of the judicial self-administration bodies at the moment when the decision was issued and failing the candidate for minor acts, that does not only fail to fit the reasons of not passing the evaluation, but it is also an unnecessary and unlawful violation of the mentioned rights.

The Special Panel reiterates that the measure undertaken by the defendant public authority is reasonable only if the interference caused by it is not disproportionate in relation to its purpose. This requirement of the legislator involves a balancing of values protected by law, a weighing of the interests at

stake. The bigger the damage caused to the right, the more it is required for the advantage resulting from integrity to be superior.

Therefore, excluding the right of a judge to be a candidate for membership in the Superior Council of Magistracy involves not just an interference, but rather an improper annulment of the right to be elected into this position. Such a solution cannot be accepted under the rule of law, as it is incompatible with the dignity of a human being and of a judge.

Taking into account the aforementioned, the Special Panel finds that in this case there are legal grounds for annulling the decision of the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-governing bodies of judges and prosecutors No 17 of 18 January 2023 regarding the candidacy of Stanislav Sorbalo.

The Special Panel holds that illegality of the appealed decision leads to the annulment of the decision and ruling of a re-evaluation of the candidate. Ruling a re-evaluation is the final and implicit result that includes a loss of validity for the decision, as per Article 139(1²) of the Administrative Code (see DCC No 42 of 6 April 2023 § 143; Ramos Nunes de Carvalho e Sá v. Portugal [MC], 6 November 2018, §184 and the case-law quoted therein).

In line with Article 224(1)(b) and Article 195 of the Administrative Code, Articles 238-241 of the Civil Procedure Code, Article 14(6), (8)(b), (9) of the Law on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors No 26 of 10 March 2022, the Special Panel established within the Supreme Court of Justice to examine the appeals against the decisions issued by the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-governing bodies of judges and prosecutors

d e c i d e s:

To accept the administrative lawsuit brought by Stanislav Sorbalo against the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, seeking that decision No 17 of 18 January 2023 on the candidacy of Stanislav Sorbalo be annulled, and that the candidate evaluation procedure be resumed.

To annul the Decision of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors No 17 of 18 January 2023 on the candidacy of Stanislav Sorbalo.

To order the re-evaluation of candidate Stanislav Sorbalo by the Independent Evaluation Commission for assessing the integrity of the candidates for the

position of member in the self-governing bodies of judges and prosecutors. This decision is irrevocable.

Hearing chaired by
Judge

Tamara Chișca-Doneva

Judges

Mariana Pitic

Ion Guzun