

DECIZIE

29 January 2024

Mun. Chisinau

Special bench established within the Supreme Court of Justice to examine appeals against decisions of the Independent Commission for Integrity Assessment of Candidates for Members of Self-Administration Bodies of Judges and Prosecutors,

comprising:

President of the hearing, judge
Judges

Ion Malanciuc
Oxana Parfeni
Aliona Donos

Registrar

Ana Scutaru

With the participation of:

Applicant
the applicant's representative, lawyer
defendant's representative, lawyer
defendant's representative, lawyer

Marina Rusu
Isae Cherry
Roger Gladei
Valeriu Cernei

Examining in a public hearing, in the administrative litigation procedure, the appeal filed by Marina Rusu against the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of Self-Administration Bodies of Judges and Prosecutors regarding the annulment of Decision No. 22 of 27 January 2023 and ordering the resumption of the candidate's evaluation procedure,

C o n s t a t i o n :

On February 13, 2023, Marina Rusu filed an application to challenge the decision of the Independent Commission for the Integrity Assessment of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors No. 22 of January 27, 2023 on Marina Rusu's candidacy, requesting the annulment of the nominated decision and ordering the resumption of the candidate's evaluation procedure.

In motivating the appeal, the applicant invoked that, on 8 February 2012, she was appointed judge for a term of 5 years at the Cahul Court, Taraclia headquarters. Subsequently, on May 20, 2017, she was appointed judge at the Cahul Court, until reaching the age limit.

He indicated that, as a judge, he submitted to the Superior Council of

Magistracy the application and documents necessary to participate in the competition for election to the position of member of the Superior Council of Magistracy, being included

in the list of candidates. For evaluation, on April 6, 2022, the Superior Council of Magistracy submitted to the Evaluation Commission the application with the submitted documents. On 14 December 2022, he participated in hearings in the public meeting of the Evaluation Committee, where two issues were addressed: 1.

Disciplinary procedure for an alleged violation of the deadline for examining complaints of persons detained in the Penitentiary from Taraclia, 'of Fault to the judge"; 2. Issues on failure to submit the declaration on assets and personal interests, after reinstatement to office (termination of the term of suspension from the position of judge in 2017).

The applicant submitted that these issues were the basis for the adoption of Decision No. 22 of January 27, 2023 of failing to pass the evaluation, a decision it considers illegal and unfounded.

Regarding the failure to submit the declaration of assets and personal interests for the period 2014-2016, she reiterated the findings of the Evaluation Commission, namely, that she was suspended from the position of judge for the period May 5, 2014 – October 2, 2017, at her request to benefit from minor child care leave. The suspension ended on 2 October 2017, when he resumed his work as a judge. On March 30, 2018, she submitted to the National Integrity Authority the annual declaration on assets and personal interests for 2017. However, after returning to office (October 2, 2017), he did not submit a declaration as established by art. 6 para. (5) of Law nr. 133 of 17 June 2016 on the declaration of assets and personal interests, that the subject of the declaration who, in accordance with the legislation in force, has suspended employment or service relations, submits the declaration within 30 days after reinstatement, indicating in the declaration the income obtained together with the family members, his/her cohabitee during the entire undeclared period, also the assets held and personal interests referred to in Article 4 para. (1) letters b) to m) on the date of submission of the declaration.

The applicant pointed out that the Selection Board had complained about the lack of information on the income and wealth acquired by the applicant between 2014 and 2016, which prevented the defendant from fulfilling its obligation to check thoroughly the income earned by the applicant and the expenses incurred during that period. In the absence of all information, the Selection Board could not form an accurate picture of the applicant's financial situation during that period and was therefore unable to verify whether the income obtained was legitimate and whether the assets were legally acquired, as provided for in Art. 8 of Law nr. 26 of 10 March 2022 on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors.

Given the circumstances mentioned, the Evaluation Committee invoked that it had serious doubts (Art. 13 para. (5) of Law nr. 26 of 10 March 2022) on the candidate's compliance with financial and ethical integrity criteria.

With regard to those conclusions of the Selection Board, noting that the Selection Board had decided not to pass the evaluation on the basis of the finding of so-called "serious doubts" as to the candidate's compliance with the criteria of financial and ethical integrity, the applicant pointed out that 'serious doubts' must be dealt with in the light of objective circumstances which would lead the

Selection Board to believe that a candidate would not meet the criterion of ethical/financial integrity. However,

doubts should not stem from the lack of information on income and expenditure for a period, which, in her case, ended more than 6 years before the judges' assessment, and the last year of this period – 2017, was covered in the statement on income and interests submitted on 30 March 2018, Because such an approach is arbitrary/subjective.

In this regard, the applicant stated that the defendant had started from an illusory premise, namely the lack of information on revenue and expenditure, since that lack could not give rise to doubts as to its integrity. Doubts can arise only from objective information – purchase of goods whose price does not correspond to the candidate's financial situation; purchase of expensive services; Even the use of these assets could be circumstances that would raise serious doubts if a candidate did not properly justify them. On the contrary, in her case, the Evaluation Committee started from assumptions.

Moreover, the Evaluation Commission, pursuant to Law nr. 26 of 10 March 2022, verified whether between 2014 and 2016 the candidate or persons referred to in art. 6 para. (5) of the Law on declaration of assets and personal interests obtained movable/immovable property and found that these assets during that period by the data subjects were not obtained. The documents submitted, accompanied by explanations, certify the income of the husband and those from the allowances received for the care of the children. For these revenues, the Evaluation Commission did not find any discrepancy with the expenses incurred and is reasonably related to the maintenance needs by categories of population established by the National Bureau of Statistics. Respectively, the conclusion regarding serious doubts of financial integrity constitutes a manifest arbitrariness.

As regards the failure to submit the declaration on income and interests after the date of reinstatement (30 days starting with October 2, 2017), this fact, although it violates the legal regime of declaring assets and personal interests, nevertheless, in substance, does not constitute a concealment of income, which would be a matter of integrity of the judge. Violation of the legal regime of declaration of assets and personal interests cannot constitute a criterion for non-promotion of valuation, since, in principle, a formalist obligation has been omitted and which, moreover, has become time-barred.

In this context, the applicant reiterated the provisions of Art. 13 para. (5) of Law nr. 26 of March 10, 2022, according to which a candidate is considered not to meet the integrity criteria if it has been found that there are serious doubts regarding the candidate's compliance with the requirements set out in art. 8, which have not been removed by the assessee. Thus, failure to submit the declaration does not constitute grounds for generating serious doubts, if, from the information obtained by the Selection Board, it found that neither the candidate nor the persons referred to in Article 6 para. (5) of the Law on declaration of assets and personal interests, did not obtain movable/immovable property between 2014 and 2016.

With regard to the delays admitted in examining 16 complaints concerning detention conditions, the applicant noted that the Selection Board had found that the applicant had admitted delays in 16 cases under examination in her procedure. According to the findings of the Evaluation Committee, in none of the cases did

the candidate issue a decision within the three-month deadline established by law, and in some of these cases, a decision was issued within a period of up to 11 months. Evaluation committee of

concluded on the existence of serious doubts regarding the candidate's compliance with the ethical integrity criteria, regarding the admission of delays in the examination of 16 complaints regarding detention conditions in 2019, which were not removed by the candidate.

The applicant considered those findings of the Evaluation Board to be contrary to the findings contained in an irrevocable court decision, which according to the Constitution is mandatory to respect. Or, by the decision of November 29, 2021 of the Chisinau Court of Appeal, irrevocable on July 6, 2022, it was found with the force of *res judicata* the absence of disciplinary deviations of judge Marina Rusu in the way of examining the 16 cases, to which the Evaluation Commission refers.

The applicant pointed out that, in the judgment of 29 November 2021 of the Chisinau Court of Appeal, the court indicated that it could not hold the judge responsible for committing the alleged disciplinary deviations, in the absence of the subjective side, i.e. his guilt for violating the provisions of art. 473³ of the Code of Criminal Procedure, as well as failure to perform or late or improper performance of a service obligation, without reasonable justification, if it directly affected the rights of participants in the proceedings or of other persons in his capacity as judge. In light of the above, the Chisinau Court of Appeal noted that in the actions of judge Marina Rusu (Curtis) certain reasonable grounds were not established, which would prove the fact that she committed disciplinary misconduct, liable under art. 4 letters i) and j) of the Law on disciplinary liability of judges.

In conclusion, the applicant claimed that her candidacy met the integrity criteria necessary to pass the evaluation, and when issuing decision no. 22 of 27 January 2023 The evaluation committee relied on the subjective assessment of the candidate's situation and created serious doubts regarding the ethical and financial integrity from the arbitrary assessment of the factual situation, despite finding no indication of discrepancy between income and expenditure, found the lack of obtaining movable/immovable property so candidate, and members of his family during the period under examination. At the same time, the Evaluation Commission ignored the authority of an irrevocable decision of the court, making findings diametrically opposed to a court.

The applicant sought annulment of Decision No. 22 of January 27, 2023 of the Independent Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors and ordering the resumption of the evaluation procedure of candidate Marina Rusu.

On February 24, 2023, Marina Rusu filed an application to supplement the grounds in the appeal application, additionally invoking that the defendant treated unfounded that failure to submit the declaration of assets and personal interests for the period of suspension from office, in connection with the care of the minor child, would violate the legal regime of declaring assets and personal interests so much that this generated "serious doubts" about the candidate's compliance with the integrity criteria financial and ethical. This approach of the Evaluation Commission is in dissonance with the purpose set by the Law on declaration of

assets and personal interests, being a superficial treatment of the factual situation (f.d. 4-27, Vol. II).

The applicant noted that she did not deny that failure to submit the declaration on assets and interests was a violation, but in light of the purpose of Law no. According to Law no. 133 of 17 June 2016, which provides for the legal regime of these declarations, failure to submit that declaration would constitute an integrity problem, only if the purpose pursued by the subject would have been to hide unjustified enrichment, conflicts of interest, states of incompatibility, as well as violation of the legal regime of restrictions and limitations.

In addition, the applicant stated that, once the Evaluation Board found no discrepancies between income and expenditure, establishing that the candidate and her family members had not acquired movable/immovable property during her suspension from office, she had no reason to question her financial integrity. It was necessary for the defendant to observe a minimum presumption in this respect, or, according to paragraph 11 of the joint opinion of the Venice Commission and the Directorate-General for Human Rights and Rule of Law of the Council of Europe on certain measures related to the selection of candidates for administrative posts in the self-administration bodies of judges and prosecutors, Qualities of integrity and competence must be presumed unless proven otherwise.

Apart from the fact that no presumption of financial integrity mattered to the Selection Board, the defendant used general arguments regarding the so-called "lack of information on income and wealth acquired by the candidate between 2014 and 2016". For example, the defendant's argument that she was prevented from fulfilling her obligation to thoroughly check the candidate's income and expenses incurred during that period is irrational. Thus, it is not clear how the "thorough verification of expenses" can be understood and what effort a candidate should make to demonstrate "thoroughly" the expenses incurred during a period of 3 years, which ended more than 5 years before the adoption of the Law on some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors.

The applicant noted that, according to paragraph 29 of the Venice Commission's opinion, minor deviations should not provide a valid reason for rejecting a candidate. Failure to submit the declaration has all the signs of a minor violation, to which the Venice Commission refers. More precisely, as long as it explained this as a human mistake (an honest, unintentional mistake), presented information and explanations regarding income during the period of suspension from office, the Evaluation Committee had no reason to doubt that this information was incomplete and the candidate would have had income other than those presented to the Commission and which she would conceal.

It pointed out that, in similar situations of deviation from the regime of declaration of assets and personal interests, in the case of three other candidates, the defendant attested to a diametrically opposite approach and, although it did not accept the explanations of the candidates and found that their actions constituted violations of the regime of declaration of assets and personal interests, however, they were treated as trivial and that the doubts of the Commission were removed by the candidates. Thus, in the absence of a rational explanation of different treatment in similar situations, the defendant pursued an unconditional aim not to

promote it.

In addition to the above, the applicant claimed to question the good faith of the member of the Evaluation Board, Tatiana Raducanu. At the hearing on 15 December 2022, Tatiana Raducanu was outraged by the fact that the applicant, who is a judge, can say that she was "not careful" (in relation to the explanation why she did not submit the declaration on assets and interests for the period of suspension from office 2014-2016), suggesting by this expression that a judge cannot admit such a mistake. However, Tatiana Raducanu herself admitted such a "mistake", not declaring her bank accounts, which is why she considers that the opinion of this member regarding her case is flawed.

The applicant also stated that her failure to be promoted to administrative duties as a result of the arbitrary finding of alleged "serious doubts" as to financial integrity constituted an interference with the right to respect for private life within the meaning of Article 8 of the European Convention on Human Rights, namely from the perspective that it also includes aspects related to the protection of honour and reputation, as part of the right to respect for private life.

On February 20, 2023, the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of Self-Administration Bodies of Judges and Prosecutors submitted a reference, requesting the rejection of the appeal filed by Marina Rusu.

In substantiating its reference, the defendant argued that Decision No. 22 of 27 January 2023 is legal and well founded, and the applicant's allegations are unfounded, have no evidentiary support. The evaluation commission executed with diligence and good faith all the obligations provided by Law nr. 26 of 10 March 2022 on some measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, and when she found certain uncertainties, she gave the candidate the opportunity to elucidate them, by submitting additional data and information, setting a sufficient deadline.

He explained that the integrity assessment process and decision no. Article 22 of January 27, 2023 does not affect the professional status of the candidate, or, the Evaluation Commission does not replace or take over the functions of a public body in the Republic of Moldova. The decision on failure to pass the evaluation constitutes a legal basis for not admitting the candidate to elections or contests, respectively no other legal effect has legal support. In the present case, nothing prevents the candidate from continuing her professional career and exercising the duties of the office of judge.

At the same time, he stressed that, according to paragraph 39 of the Joint Opinion of the Venice Commission and the General Directorate for Human Rights and Rule of Law of the Council of Europe (Opinion no. 1069/2021 of 13 December 2021, Moldova), the revised draft law clearly shows that the results of the integrity assessment will have no effect on the candidate's career as a judge. Therefore, the assessment of the candidate's integrity, carried out in accordance with the provisions of Law nr. 26 of March 10, 2022, did not violate his legal rights and interests and did not affect his professional status.

According to the defendant, the burden of proof shifts to the candidate during the evaluation process. In the initial phase, it is the obligation of the Evaluation

Commission to accumulate data and information, making use of its legal powers (Article 6 of Law no. 26 of March 10, 2022) and in compliance with legal obligations (Article 7 of the Law

No. 26 of 10 March 2022). However, once some uncertainties arise and in order to elucidate them, the Evaluation Committee offers the candidate the opportunity to submit additional data and information (art. 10 para. (7) of Law nr. 26 of 10 March 2022). She noted that the submission of additional data and information is a right of the candidate (Art. 12 para. (4) of Law nr. 26 of March 10, 2022), but failure to exercise this right (by refusal, open or tacit, or by submitting incomplete or inconclusive data) risks leading the Evaluation Commission to conclude that there are serious doubts that the candidate does not meet the integrity criteria (art. 13 para. (5) of Law nr. 26 of 10 March 2022). Respectively, it is in the candidate's interest to take over the burden of proof, and this legislative transfer not only does not violate, but also protects effectively the candidate's rights.

The independent commission for assessing the integrity of candidates for membership in the self-administration bodies of judges and prosecutors specified that the solution it offers, by deciding whether or not to pass the evaluation, represents an assessment, according to its intimate conviction, of whether or not there are serious doubts regarding the candidate's compliance with financial and ethical integrity criteria. The selection board does not ascertain the existence or non-compliance of the candidate with the integrity criteria, but only the existence or absence of serious doubts regarding compliance.

The defendant pointed out that the conclusion in the decision regarding the existence of serious doubts regarding the applicant's compliance with the criteria of ethical and financial integrity is related to the expediency of the decision, and the court is bound to exercise review of the legality of the decision and is not entitled to execute the opportunity review. However, the court may order the resumption of the evaluation only if it finds the existence of circumstances that could lead to the promotion of the evaluation by the candidate or procedural violations, a situation which is absent in the present case. It argued that, although the applicant had set out its own view of the concept of serious doubt, it had not explained where such an understanding of that concept came from, nor had it proved that it should be understood in that way. Law nr. Article 26 of 10 March 2022 does not provide that serious doubts could not arise from the lack of Information and, respectively, can arise only from objective information.

He pointed out that, according to Art. 8 para. (6) of Law nr. 26 of March 10, 2022, in assessing the criteria set out in para. (2) to (5) and in deciding on them, the Evaluation Board shall not depend on the findings of other bodies competent in the field concerned. However, contrary to the cited legal norm, the applicant insists that the Evaluation Commission was to take into account the findings of the November 29, 2021 judgment of the Chisinau Court of Appeal. This court decision found that in the actions of judge Marina Rusu (Curtis) certain reasonable grounds were not established, which would prove the fact that she committed disciplinary misconduct. However, such a finding does not mean that the candidate's actions could not give rise to serious doubts as to whether the candidate complies with integrity criteria.

It noted that it is for the Evaluation Committee to assess whether or not

certain circumstances are sufficient to establish the existence or absence of serious doubts regarding compliance with integrity criteria. That's because

It is precisely this issue that concerns the appropriateness of the decision, which cannot be subject to judicial review.

Respectively, the following aspects invoked by the applicant are alien to judicial review (as aspects of expediency of the decision): the conclusion regarding "serious doubts" of financial integrity constitutes a manifest arbitrariness; violation of the legal regime of declaration of assets and personal interests cannot be a criterion for non-promotion of valuation, because, mainly, a formalist obligation was omitted and which, moreover, was prescribed in time; Thus, failure to submit the declaration does not constitute grounds for generating 'serious doubts'; The Commission relied on a subjective assessment of the applicant's situation and raised "serious doubts" as to the ethical and financial integrity of the arbitrary/subjective assessment of the facts, although it found no indication of a discrepancy between revenue and expenditure.

The defendant pointed out that it is not for the trial court to comment on the appropriateness of the decision and its review is to be limited to the question of legality.

Contrary to the applicant's claim that the Evaluation Board did not find any discrepancy with the expenses incurred and was reasonably related to the maintenance needs by categories of population established by the National Bureau of Statistics, the defendant pointed out that, on the contrary, the Evaluation Board found that the lack of information on the income and wealth acquired by the candidate between 2014 and 2016 prevented her from fulfilling her the obligation to check thoroughly the income earned by the applicant and the expenses incurred during that period. In the absence of all financial information, the Evaluation Board could not form an accurate picture of the candidate's financial situation during that period and was therefore unable to verify whether the income obtained was legitimate and whether the assets were legally acquired, as provided for in Art. 8 of Law nr. 26 of 10 March 2022.

In addition, the Evaluation Committee is required to ascertain whether or not there are serious doubts regarding the candidate's compliance with the legal integrity criteria and not the existence or lack of such compliance.

In this respect, the Evaluation Commission does not invoke the violation of the legal regime of declaring assets and personal interests as a criterion of non-promotion, or, the decision to promote or not promote a candidate constitutes an assessment of the commission, exercising the legal margin of discretion, depending on whether it finds the existence or absence of serious doubts regarding the candidate's compliance with the requirements set out in art. 8 of Law nr. 26 of March 10, 2022, which were not removed by the candidate.

At the court hearing, the applicant Marina Rusu and her representative, lawyer Isae Cireş, supported the request to appeal against the decision of the Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors nr. 22 of January 27, 2023 on Marina Rusu's candidacy, requesting her admission.

Representatives of the defendant: Independent Commission for the Evaluation of the Integrity of Candidates for Members of Judges' Self-Administration Bodies

and prosecutors, lawyers Roger Gladei and Valeriu Cernei, in the court hearing, supported the arguments invoked in the reference, requesting the dismissal of the action as unfounded. In addition to those invoked in the reference, they mentioned that the Evaluation Committee respected all the rights of the candidate, provided by art. 12 para. (4) of Law nr. 26 of 10 March 2022.

Having heard the arguments of the participants in the proceedings in support of the claims made and the objections raised, taking into account the evidence administered and the relevant legislation, the Special Panel, established within the Supreme Court of Justice, to examine appeals against the decisions of the Independent Commission for the Evaluation of the Integrity of Candidates for the position of Member of the Self-Administration Bodies of Judges and Prosecutors, establishes the following.

By Decision No. 22 of 27 January 2023 on the candidacy of Marina Rusu, candidate for the position of member of the Superior Council of Magistracy, based on art. 8 para. (1), para. (2) letters a) and c), para. (4) letter a), para. (5) (b) and Art. 13 para. (5) of Law nr. 26 of 10 March 2022 on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, The Independent Commission for the Integrity Assessment of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors decided that the candidate does not meet the integrity criteria, as serious doubts were found regarding the candidate's compliance with the criteria of ethical integrity, and financial and thus did not pass the valuation.

On February 13, 2023, Marina Rusu filed an application to challenge the decision of the Independent Commission for the Integrity Assessment of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors No. 22 of January 27, 2023 on Marina Rusu's candidacy, requesting the annulment of the decision and ordering the resumption of the candidate's evaluation procedure.

According to art. 14 para. (1) and (2) of Law nr. 26 of 10 March 2022 on some measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, the decision of the Evaluation Board may be challenged by the evaluated candidate within 5 days from the date of receipt by him of the reasoned decision, without observing the preliminary procedure. The evaluated candidate may appeal against the unfavourable decision of the Selection Board to the Supreme Court of Justice, where a special panel composed of 3 judges and an alternate judge is set up. The judges and the alternate judge are appointed by the President of the Supreme Court of Justice.

According to Art. 14 para. (6) of Law nr. 26 of 10 March 2022 on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, the application to challenge the decision of the Evaluation Commission shall be judged in accordance with the procedure provided for in the Administrative Code, with the exceptions established by this law, and shall not have suspensive effect on the decisions of the

Evaluation Commission, the election or contest in which that candidate participates.

According to art. 207 para. (1) of the Administrative Code, the court checks of its own motion whether the conditions for admissibility of an action in administrative litigation are met.

Thus, the Special Panel notes that the decision of the Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors nr. 22 of January 27, 2023 was received by Marina Rusu on February 07, 2023, which was confirmed by the extract from the electronic mail, annexed to the documents of the case.

Taking into account the provisions of Article 14 para. (1) of Law nr. 26 of 10 March 2022 on some measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, the appeal request was to be submitted within 5 days from the date of receipt by the candidate of the reasoned decision, as the case may be, from 07 February 2023.

Although the deadline expired on February 12, 2023 (Sunday), the appeal was to be filed by February 13, 2023 (Monday), or, according to the provisions of art. 112 para. (2) of the Code of Civil Procedure, if the last day of the time limit is non-working, it expires on the next working day.

In this respect, the Special Panel concludes that Marina Rusu's appeal is admissible, as the applicant complied with the legal provisions set out in Art. 14 para. (1) of Law nr. 26 of 10 March 2022 on certain measures related to the selection of candidates for membership in the self-administration bodies of judges and prosecutors, submitting the present application on 13 February 2023, within the deadline provided by law, to the Supreme Court of Justice.

With reference to the applicable normative framework, at the beginning of its analysis, the Special Court Panel points out that, during the examination of the present case, the representatives of the Evaluation Commission invoked that the provisions of the Administrative Code are not applicable to the evaluation procedure carried out by the Evaluation Commission and govern only the procedure before the courts, with the exceptions established by the special law.

On this point, the Special Panel considers that the application of the Administrative Code and its limits is a matter of interpretation and application of the law, over which the Supreme Court of Justice has jurisdiction as the competent court to examine the administrative action (DCC No. 163 of December 01, 2022, §24, DCC No. 2 of January 18, 2022, §19).

The special bench notes that, according to art. 1 of Law nr. 26/2022, this law regulates the legal relations related to the procedure for assessing the integrity of candidates for the position of member of the Superior Council of Magistracy, of the Superior Council of Prosecutors, as well as candidates for the position of member of their specialized bodies, as a mandatory stage of the process of selecting candidates and electing or appointing them to the respective positions.

In accordance with Art. 4 of Law nr. 26/2022, the Evaluation Commission has functional independence and decision-making autonomy from any natural or legal persons, regardless of their legal form of organization, including from political factions and development partners who participated in the appointment of its members.

In its activity, the Evaluation Commission is guided by the Constitution of the Republic of Moldova, this law and other normative acts regulating the fields related to its activity. The evaluation committee operates on the basis of its own rules of organization and functioning, approved by it

In accordance with art. (1) para. (1) of the Administrative Code, administrative legislation is the main legal framework that ensures the regulation of administrative relations when carrying out administrative activity and judicial control over it.

According to Art. 2 para. (2) of the Administrative Code, certain aspects related to administrative activity regarding specific fields of activity may be regulated by special legislative norms derogating from the provisions of this Code only if such regulation is absolutely necessary and does not contradict the principles of this Code

Thus, the Special Court Panel points out that, in the preamble of Law no. 26/2022, the legislator indicated that this law was adopted in order to increase the integrity of future members of the Superior Council of Magistracy, of the Superior Council of Prosecutors and their specialized bodies, as well as to increase society's confidence in the activity of self-administration bodies of judges and prosecutors, but also, in general, in the justice system.

Therefore, the evaluation of candidates for the positions of membership in the bodies listed in Article 2 para. (1) of Law nr. 26/2022 is by its nature a specific field of activity within the meaning of art. 2 para. (2) of the Administrative Code. And although the Administrative Code establishes a uniform administrative and contentious administrative procedure, nevertheless, according to Art. 2 para. (2) of the Administrative Code, certain aspects may be regulated by special legislative rules.

According to Art. 10 para. (1) of the Law on normative acts nr. 100 of December 22, 2017, the organic law is the normative act that represents a development of constitutional norms and can intervene in the areas expressly provided by the Constitution.

Art. 7 para. (3) of Law nr. 100/2017 provides that, if a conflict of norms arises between two normative acts with the same legal force, the provisions of the last normative act adopted, approved or issued shall apply, except for the situations provided for in art. 5 para. (3) and (4).

Thus, both Law nr. 26/2022, as well as the Administrative Code, are organic laws, but the first is a special one. Respectively, priority is given to Law nr. 26/2022, however, this does not exclude the application of the Administrative Code, insofar as the special law does not contain rules regulating a particular aspect. However, complete exclusion from the application of the Administrative Code is impossible from the point of view of the central role and organic link of the Administrative Code with the areas/subfields of administrative law.

The special bench cannot accept the argument of the representatives of the Evaluation Board regarding the non-application of Books I and II of the Administrative Code when examining cases pending before the Supreme Court of Justice.

At the same time, the Special Court Panel points out that by applying the provisions of the Administrative Code, the regulations of the Law cannot be distorted

Special No. 26/2022. Or, the provisions of the Administrative Code are to be applied to the extent that they do not contradict the Special Law no. 26/2022.

With regard to the legal consequences of the decision of the Evaluation Board, the Special Panel holds that the existence of an act establishing the lack of integrity of a judge or prosecutor is incompatible with the continued holding of office.

At the same time, according to art. 13 para. (6) of Law nr. 26/2022, the decision on not passing the evaluation constitutes the legal basis for not admitting the candidate to the elections or contest. Any other legal consequences, apart from those expressly mentioned in the law, are not stipulated at the moment.

Likewise, by Opinion no. 1069/2021 of 13 December 2021, the Venice Commission and the Directorate General concluded that the revised draft law clearly shows that the results of the integrity assessment will have no effect on the candidate's career.

Thus, the Special Panel cannot accept the idea that a possible decision not to promote would amount to a finding that the person has no integrity. However, in this case, the person would be immediately dismissed from office or subjected to another rather serious disciplinary sanction, which is not provided for by the current regulations, as mentioned above.

With reference to the margin of appreciation (discretionary right) of the Evaluation Committee, the Special Panel notes that, by Opinion no. 1069/2021 of 13 December 2021, in paragraph 11, the Venice Commission and the Directorate General note that the personal integrity of the members constituting the Superior Councils (judges and prosecutors) is an essential element of the nature of such bodies; ensures citizens' trust in justice institutions – trust in magistrates and their integrity. In a society that respects the fundamental values of democracy, citizens' trust in the action of the Superior Councils depends very much, or essentially, on the personal integrity and competence and credibility of its membership.

The Venice Commission and the Directorate-General have previously expressed their opinion, in other contexts, that critical situations in the field of justice, as extremely high levels of corruption, may justify equally radical solutions, such as a process of vetting judges in office. Ultimately, it is up to the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary creates a sufficient basis to subject all judges and prosecutors, as well as members of the SCM and SCP, to extraordinary integrity assessments. In addition to the preamble of Law nr. 26/2022 mentioned above, the Special Panel, established within the Supreme Court of Justice, also considers it necessary to mention that, according to Objective 1.2. of Strategic Directorate I "Strengthening integrity and accountability in the justice sector" of the Law approving the Strategy on ensuring the independence and integrity of the justice sector for 2022-2025 and the Action Plan for its implementation no. 211 of 06 December 2021, namely:

"The identification of effective levers to strengthen the independence of judges and prosecutors is to be correlated with increased accountability and integrity"

Their. Accountability and integrity are among the main elements of ensuring citizens' trust in the justice system and ensuring fair proceedings. Developing and promoting a culture of judicial integrity is an important element in preventing corruption, which is one of the main threats to society and the functioning of the rule of law. Currently, according to surveys, corruption and lack of integrity in the judiciary are perceived by the general public at a high level. In its Report on the fourth evaluation cycle of Moldova, GRECO is deeply concerned about indications that candidates presenting integrity risks.

The International Commission of Jurists, in its 2018 evaluation mission report, stresses the importance of combating corruption in the judiciary through firm measures and, as a matter of priority, in full harmony with the principles of the rule of law and human rights. It is concerned that many criminal investigations appear to be focused on suppressing opposition or preventing dissenting views in the judiciary rather than on actually eradicating corruption.

It is essential that actors within the justice system, individually and collectively, respect and honour the office held as a public mandate and strive to increase and maintain public trust in the system."

Next, in its recent Opinion No. 24(2021) on the evolution of Councils for Justice and their role in independent and impartial judicial systems, the CCJE recalls (§ 34) that the process of selecting members of a Council, including possible campaigns by candidates, should be transparent and ensure that candidates' qualifications, in particular their impartiality and integrity, are verified. In the opinion of the Venice Commission and the Directorate General, a distinction should be made between the verification of incumbent members and the "pre-verification" of candidates for a position in these bodies. As a matter of principle, the fixed-term security of the mandates of members of (constitutional) bodies aims to ensure their independence from external pressure. Measures that would jeopardise continuity of membership and interfere with the security of the mandate of members of this authority (vetting) would raise the suspicion that the intention behind those measures was to influence its decisions and should therefore be regarded as a last-minute measure. Integrity checks targeting candidates for SCM, SPC and their specialised bodies are a filtering process and not a judicial verification process and, as such, can be considered, if properly implemented, to strike a balance between the benefits of the measure, in terms of contributing to judicial confidence and its possible negative effects.

The Special Panel also considers relevant that, in paragraph 50 of the Opinion of 14 March 2023, the Venice Commission and the DGI indicated that they are aware that the draft Article 12 reflects Article 8 of Law no. 26/2022, which regulates the pre-vetting procedure of candidates for the position of member of the Superior Council of Magistracy and of the Superior Council of Prosecutors. However, what is allowed for the purpose of examining candidates, does not

It is necessarily allowed for the extraordinary evaluation of judges and prosecutors in office, the stakes are higher for them and for the stability of the legal order in general. Although criteria for pre-vetting can be relatively flexible and based on an overall assessment of candidates' integrity, background, relationships, etc., the dismissal of a judge or prosecutor lawfully appointed must be justified with a more precise reference to misconduct, which should be better defined by law.

In the same vein, according to the *amicus curiae* opinion of the Venice Commission, the concept of integrity assessment involves the implementation of a process of mechanisms aimed at guaranteeing the highest standards of conduct and financial integrity required for accession to public office. In a system of prior integrity check, the decision not to recruit a candidate may be justified in case of simple doubt on the basis of a risk assessment. However, the decision not to pass a candidate's assessment must be linked to an indication of illegality, such as unexplained wealth, even though it cannot be proven beyond reasonable doubt that this wealth comes from illegal sources (see CDL-AD(2022)011, § 9-10).

In its Opinion, the Venice Commission and the Directorate General also noted that the Evaluation Commission issues a negative report when it has "serious doubts" about the commission of violations by a judge or prosecutor. This rule implies that the conclusions of the Selection Board do not establish the guilt of the data subject, nor do they directly entail criminal liability, which would most likely require another (higher) standard of proof. To a certain extent, this structure reduces the potential for a conflict between the findings of the Evaluation Board and other administrative or judicial bodies mentioned above.

Also, the Constitutional Court in § 120 of the inadmissibility decision No. 42 of 06 April 2023 found that by the term "serious" the legislator limited the discretion of the Selection Board to assessing the ethical integrity of candidates. The criterion allows the Commission to decide not to promote the candidate only if it has found serious breaches of the rules of ethics and professional conduct. This implies that the candidate may question the seriousness of the infringements found by the Commission before the special panel of the Supreme Court of Justice, which may ultimately assess the 'serious' nature of the irregularity found in the light of the particular circumstances of the case. The reasoning is applicable, *mutatis mutandis*, to the terms "reprehensible" and "unexplained" in Article 8 para. (2) letter a) of the Law.

In § 123 of the inadmissibility decision no. 42 of 06 April 2023, the Constitutional Court indicated that, in order for the Council to exercise its constitutional powers to ensure the appointment, transfer, secondment, promotion to office and application of disciplinary measures to judges (see Article 123 of the Constitution), the legislator established that persons (judges and non-judges) with high professional reputation and personal integrity must be elected as members of this constitutional body verified by the Evaluation Committee in the last 15 years. Therefore, the Constitutional Court considered the decision reasonable

the legislator to establish an extended period for checking the financial integrity of candidates.

Likewise, the Constitutional Court in its inadmissibility decision no. 42 of 06 April 2023 noted in § 123, with regard to the text "serious doubts" of Article 13 para. (5) of Law nr. 26, that the contested text establishes a standard of proof applicable to the assessment procedure. Thus, when the Selection Board has to decide on the integrity of a candidate, it must ascertain whether or not there are serious doubts about the candidate's compliance with the criteria of ethical and financial integrity, established by Article 8 of the Law.

The Constitutional Court held that defining standards of proof inevitably involves the use of flexible texts. In this case, the standard of proof set by the legislator aims to guide the Selection Board in assessing the evaluation results.

The law also obliges the Evaluation Commission to issue a reasoned decision, which must include the relevant facts, reasons and conclusion of the Commission regarding the promotion or non-promotion. Moreover, the law allows the candidate to question the existence of serious doubts about his/her compliance with ethical and financial integrity criteria before the special panel of the Supreme Court of Justice.

Thus, the Special Panel of the Supreme Court notes that, although the Commission's margin of appreciation regarding "serious doubts" is not unlimited (conclusions must be based on objective data), it is quite wide. The possible risks in relation to the benefits in the event of non-admission of a candidate, although with integrity but who has not been able to dispel certain doubts about him, are much lower than if a candidate with no integrity is admitted on the ground that any doubt should be interpreted in favour of the person. This state is determined both by the increased general interest in the SCM preselection process and by the possible reduced interference in the rights of the subjects subject to evaluation, as opposed to the consequences of the vetting itself. The special bench points out that, according to art. 14 para. (8) of the Law on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors nr. 26 of March 10, 2022, when examining the application to challenge the decision of the Evaluation Commission, the special panel of judges of the Supreme Court of Justice may adopt one of the following decisions:

a) rejection of the appeal application;

b) grant the appeal request and order the re-evaluation of candidates who failed to pass the evaluation, if it finds that, during the evaluation procedure, the Selection Board has admitted serious procedural errors affecting the fairness of the evaluation procedure and that there are circumstances which could have led to the candidate passing the evaluation.

Therefore, taking into account the legal norms cited and the fact that the object of the present action is the decision of the Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors No. 47 of 31 July 2023 on non-promotion

evaluation by candidate Marina Rusu, the Special Court Panel mentions that, if necessary, it will verify whether serious procedural errors were admitted by the Evaluation Committee during the evaluation procedure, affecting the fairness of the evaluation procedure and the existence of circumstances that could lead to the promotion of the evaluation by the candidate.

However, when examining the present application for appeal, the Special Panel of Judges is not entitled to exceed its limits and the powers granted by the legislature to examine the application to challenge the decision of the Evaluation Board, imperatively set out in Art. 14 para. (8) of the Law on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors nr. 26 of 10 March 2022, pursuant to the Constitutional Court Decision no. 5 of 14 February 2023 on exceptions of unconstitutionality of certain provisions of the Law no.26 of 10 March 2022 on some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors.

The special bench points out that, in paragraph 81 of the judgment no. 5 of 14 February 2023 on exceptions of unconstitutionality of certain provisions of Law no. 26 of 10 March 2022, the Constitutional Court established that the law must provide for a remedy in cases where the candidate has not been ensured procedural rights during the evaluation procedure. Depending on any procedural shortcomings admitted at the assessment stage, the nature of the procedural law affected and the particular circumstances of the case, the Court holds that the failure to ensure procedural law may be considered a central issue of the dispute.

In its assessment, the Constitutional Court, verifying whether the challenged provisions pursue a legitimate aim, noted that the informative note to the draft law does not contain any argument regarding the need to limit the judicial review of the decisions of the Evaluation Commission. However, from the opinion presented by the authorities and from the content of the contested text, the Court deduced that the legislator sought to avoid situations of annulment of decisions of the Evaluation Commission due to violation of insignificant procedural rules, and, on the other hand, to ensure the speed of solving appeals in order to have a functioning Superior Council of Magistracy faster. The Court noted that these legitimate purposes can be framed in the general objectives of public order and guaranteeing the authority and impartiality of justice, established by Article 54 para. (2) of the Constitution.

Verifying whether the contested provisions allow the special panel of the Supreme Court of Justice to sufficiently examine the central issues of possible disputes, the Constitutional Court admitted that the challenged provisions are capable of achieving the objective pursued by the legislator, of avoiding situations of annulment of decisions of the Evaluation Commission due to violation of insignificant procedural rules.

In this context, the Special Panel notes that, according to art. 12 para. (4) of Law nr. 26 of March 10, 2022, the candidate has the following rights:

- a) to participate in the meetings of the Evaluation Committee and to give oral explanations;

b) be assisted by a lawyer or trainee lawyer during the assessment procedure;

c) get acquainted with the evaluation materials, at least 3 days before the hearing;

d) to submit, in writing, such additional data and information as it considers necessary to remove suspicions as to its integrity, if it has been unable to submit them previously;

e) appeal against the decision of the Selection Board.

The special bench notes that the concept of 'civil rights and obligations' cannot be interpreted solely by reference to the domestic law of the defendant State, it is an 'autonomous' concept arising from the Convention. Art. 6 § 1 applies irrespective of the status of the parties, the nature of the law governing the manner in which the challenge is established (civil, commercial, administrative law, etc.) and the authority competent to hear it (ordinary court, administrative body, etc.) [Georgiadis v. Greece, para. 34; Bochan v. Ukraine (No. 2) (MC), para. 43; Nait-Liman v. Switzerland (MC), para. 106).

The applicability of Art. 6 § 1 to civil matters depends, first of all, on the existence of a "challenge". Moreover, it must be based on a 'right' which can be claimed, at least credibly, recognised in domestic law, whether or not that right is protected by the Convention. It must be a genuine and serious challenge, which may concern both the very existence of the right and its scope or the manner in which it is exercised. Finally, the outcome of the proceedings must be directly decisive for the "civil" law in question, a very weak connection or distant consequences not being sufficient for Article 6 § 1 to be applicable (Regner v. Czech Republic (GC), paragraph 99; Károly Nagy v. Hungary (MC), para. 60; Nait-Liman v. Switzerland (MC), para. 106).

Therefore, the Special Bench concludes that, in light of Art. 6§1 ECHR, of the Judgment of the Constitutional Court nr. 5 of 14 February 2023 and Article 12 para. (4) of Law nr. 26 of 10 March 2022, in order to determine whether during the evaluation procedure the Evaluation Commission admitted some serious procedural errors, affecting the fairness of the evaluation procedure, it is to be verified whether the applicant Marina Rusu was respected the procedural rights provided by the special law.

Based on this, as well as on the wishes of the Constitutional Court in its judgment no. 5 of 14 February 2023, the Special Court Panel will not assess all the arguments raised by the applicant Marina Rusu in the appeal application, but will respond only to criticisms that fall within the criteria established by the Constitutional Court for the possible admission of the action, namely related to the alleged serious procedural errors admitted by the Evaluation Commission, which would have affected the fairness of the evaluation procedure, as well as those regarding the alleged existence of circumstances that could lead to the promotion of the evaluation by the candidate Marina Rusu.

Subsequently, the Special Chamber cannot accept the pleas raised by the applicant concerning the aspects relating to the criticisms of the questions raised by the Selection Board, to the criticisms concerning the alleged vitiation of the translation process, as well as the arguments relating to the alleged arbitrary assessment of the documents by the Selection Board, or those arguments are not

relevant to the procedure for verifying the legality of the decision not to pass the evaluation

by candidate Marina Rusu and does not fit into the criteria stated by the Constitutional Court in its Decision nr. 5 of 14 February 2023, with a view to the possible admission of his action.

The special bench observes that one of the arguments on which the applicant's action is based is the alleged lack of independence, impartiality and objectivity of some members of the Selection Board, but also their alleged political influence.

However, the Special Chamber considers that argument irrelevant and does not fall within the criterion of serious procedural error, which affected the fairness of the applicant's assessment procedure and, even more, does not fall within the circumstantial criterion which could lead to the applicant's promotion of the assessment.

In this respect, it is relevant to note that the members of the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of Self-Administration Bodies of Judges and Prosecutors were appointed by Parliament Decisions nr. 84, no. 85, no. 86 and no. 87 of 04 April 2022, which in art. Article 3 stipulates imperatively that they may be challenged in court within the time limit provided for in art. 209 of the Administrative Code.

Although the applicant knew from the moment of adoption of Law no. 26/2022 about the fact that she will undergo the integrity assessment process as a candidate for the position of member of the Superior Council of Magistracy, did not challenge the Parliament Decisions no. 84, no. 85, no. 86 and no. 87 of 04 April 2022 in the order and deadline provided for in art. 3 of these judgments and Art. 209 of the Administrative Code.

In essence, that circumstance leads to the conclusion that the applicant Marina Rusu tacitly manifested, by inaction, her agreement with the appointment by the Parliament of the Republic of Moldova of Nadezhda Hriptievschi, Tatiana Raducanu, Vitalie Miron, Herman Von Hebel, Victoria Henley and Nona Tsotsoria as members of the Evaluation Commission and that they participate in the assessment of her integrity as a candidate for the position of member of the Superior Council of Magistracy, as a mandatory step in the process of selecting candidates for those positions.

Thus, the Special Panel cannot accept as well founded the applicant's arguments regarding the lack of independence, impartiality and/or objectivity of the nominated members, or, at this stage, these arguments are irrelevant, given that the applicant demonstrated passive behavior and did not challenge the Parliament's decisions nr. 84, no. 85, no. 86 and no. 87 of 04 April 2022, thereby tacitly expressing its confidence in those members in its future evaluation.

All the more so that Article 4 para. (1) of Law nr. 26/2022 guarantees functional independence and decision-making autonomy to the Evaluation Commission from any natural or legal persons, regardless of their legal form of organization, including political factions and development partners who participated in the appointment of its members.

In this context, the Special Panel concludes that the applicant's arguments regarding the alleged serious procedural errors admitted by the Evaluation Board and which would have affected the fairness of the evaluation procedure of Marina Rusu, by participating in the evaluation process of non-independent members, are unfounded and cannot be accepted as conclusive. impartial and objective.

Next, with reference to the merits of the case, the Special Bench reiterates that, by decision no. 22 of 27 January 2023 on the candidacy of Marina Rusu, candidate for the position of member of the Superior Council of Magistracy, pursuant to art. 8 para. (2), para. (2) letters a) and c), para. (4) letters a) and b) and para. (5) letters b), c), d) and e) and art. 13 para. (5) of Law nr. 26/2022, the Commission decided that the candidate does not meet the integrity criteria because serious doubts were found about the candidate's compliance with the ethical and financial integrity criteria and, thus, does not pass the evaluation, being invoked non-compliance of the candidate with the ethical integrity criterion and the financial integrity criterion.

In this context, the provisions of Art. 8 para. (1), para. (2) letters a) and c), para. (4) letters a) and b) and para. (5) letters b), c), d) and e) of Law nr. 26/2022, which stipulates that, for the purposes of this law, the assessment of candidates' integrity consists of verifying their ethical integrity and financial integrity.

A candidate shall be deemed to fulfil the criterion of ethical integrity if:

a) has not seriously infringed the rules of ethics and professional conduct of judges, prosecutors or, where appropriate, other professions, nor admitted in his work any reprehensible actions or omissions which would be inexplicable from the point of view of a legal professional and an impartial observer;

c) has not violated the legal regime of declaring assets and personal interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

A candidate shall be considered to fulfil the financial integrity criterion if:

a) the candidate's wealth was declared in the manner established by legislation;

b) The evaluation committee finds that the wealth acquired by the candidate in the last 15 years corresponds to the declared income.

In order to assess the financial integrity of the candidate, the Selection Board shall verify:

b) compliance by the candidate with the legal regime of declaring assets and personal interests;

c) the manner of acquiring the property owned or possessed by the candidate or persons specified in art. 2 para. (2) as well as expenditure relating to the maintenance of such property;

d) sources of income of the candidate and, where appropriate, of the persons specified in Article 2 para. (2);

e) whether or not there are loan, credit, leasing, insurance or other contracts that can provide financial benefits, in which the candidate, the person specified in art. 2 para. (2) or the legal person in which they are beneficial owners is a contracting party.

In accordance with Art. 13 para. (5) of Law nr. 26/2022, a candidate is considered not to meet the integrity criteria if it has been found that there are serious doubts regarding the candidate's compliance with the requirements set out in art. 8, which have not been removed by the assessee.

At the same time, in accordance with Article 2 para. (2) of Law nr. 26/2022, in the context of the evaluation of the candidates mentioned in para. (1) The assets of persons close to the candidates, as defined in Law nr. 133/2016 on the declaration of assets and personal interests, as well as of the persons referred to in art. 33 para. (4) and (5) of Law nr. 132/2016 on the National Integrity Authority.

The special bench notes that, close person, within the meaning of art. 2 of the Law on declaration of assets and personal interests nr. 133/2016, is the spouse, child, cohabitee / concubine of the subject of declaration, the person dependent on the subject of declaration, also the person related by blood or adoption to the subject of declaration (parent, brother / sister, grandfather / grandmother, nephew / niece, uncle / aunt) and the person related by affinity to the subject of declaration (brother-in-law / sister-in-law, father-in-law / mother-in-law, son-in-law / daughter-in-law).

In turn, Art. 33 para. (4) and (5) of Law nr. Law no. 132/2016 provides that the control of wealth and personal interests extends to family members, parents/in-laws and adult children of the person subject to control. If the person subject to control is in cohabitation with another person, the verification will also extend to the property of this person.

If there is an appearance that the property of the inspected person has been entered in the names of other persons, control shall extend to such property and persons. If the subject of the declaration has indicated income and goods obtained from donations or holds goods in the commodatum, control shall extend to the donor and commodator. They may be asked for clarification on the origin of income used for the acquisition and maintenance of such goods. In order to clarify these issues, the integrity inspector may request relevant information from any natural or legal person.

The special bench notes that, according to the spirit of Law No. 26/2022, the Selection Board does not ascertain whether or not a candidate meets the integrity criteria and/or the existence of which candidates have violated, but only the existence or absence of sufficient factual circumstances to reach the conclusion that there are serious doubts regarding the candidate's compliance with the legal integrity criteria or, as the case may be, insufficient to establish non-compliance.

If the Selection Board finds that there are serious doubts regarding the candidate's non-compliance with the criteria of ethical and financial integrity, it gives the candidate the opportunity to dispel these doubts by giving explanations to the questions raised and presenting evidence in support of his position. The special

bench notes that in its decision no. 22 of January 27, 2023, at compartment III "Evaluation of the candidate", the Evaluation Commission found the existence of serious doubts regarding Marina Rusu, candidate for the position of member of the Superior Council of Magistracy, regarding the integrity criteria financial and ethical, taking into account the following circumstances:

1. Failure to submit the declaration of assets and personal interests for the period 2014-2016;
2. Delays in examining 16 complaints about detention conditions.

With reference to the failure to submit the declaration of assets and personal interests for the period 2014 – 2016, the Special Court Panel notes the following.

The selection board verified the candidate's compliance with the legal regime of declaring assets and personal interests, as well as the sources of income and methods of acquiring assets by the candidate and, where applicable, by family members and persons close to the candidate.

The Commission took note of the candidate's argument that her failure to submit her returns for the three years she was on leave was not intentional.

The Selection Board found that the lack of information on the applicant's income and wealth between 2014 and 2016 prevented the Commission from fulfilling its obligation to thoroughly verify the applicant's income and expenditure incurred during that period. In the absence of all financial information, the Commission could not form an accurate picture of the applicant's financial situation during that period and was therefore unable to verify whether the income obtained was legitimate and whether the assets were legally acquired.

The special panel of judges reveals that, indeed, the candidate did not submit a declaration in the manner prescribed by the provisions of Art. 6 para. (5) of Law nr. Law no. 133 of 17 June 2016 on the declaration of assets and personal interests, for the years 2014 – 2016, period during which the employment relationship was suspended in connection with the granting of parental leave. The candidate admitted this fact during the evaluation, stating that she did not file a statement when the suspension was lifted, on the grounds that she did not know about this obligation, for which she is sorry.

At the same time, in the context of the identified problem, the Special Court Panel considers that the observance of the legal regime of the declaration of assets and personal interests by the subjects of declaration aims to prevent unjustified and illicit enrichment and to avoid conflicts of interest in their activity, including by bringing them to account for such acts.

In this context, according to art. 10 para. (2) – (3) of Law nr. 26 of 10 March 2022 on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, the Evaluation Commission and its secretariat have free and real-time access to information systems containing data necessary for the achievement of its mandate, namely, for assessing the ethical integrity and financial integrity of candidates, under the conditions of the legislation on data exchange and interoperability, except for information falling under the provisions of Law nr. 245/2008 on state secret.

In the process of assessing the integrity of candidates, the Selection Board has the right to request from natural and legal persons of public or private law, including financial institutions, the documents and information necessary to carry out the evaluation. The requested information shall be submitted to the Evaluation Board free of charge, including in electronic format, no later than 10 days from

the date of the request.

At the same time, para. (7) of the cited legal norm expressly establishes that, in order to elucidate certain uncertainties detected, the Evaluation Board may request, at any stage of the evaluation procedure, additional data and information from the evaluated candidates.

According to art. 2 point 1 letter d) of the Evaluation Regulation of the Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Member in the Self-Administration Bodies of Judges and Prosecutors, pursuant to Law nr. 26/2022, adopted at the meeting of the Selection Board on 02 May 2022, one of the main stages of the evaluation are questions and requests to send documents to candidates to the extent necessary to elucidate ethical and financial integrity issues. Candidates are to reply within the deadline set by the Commission.

Thus, it is inferred from the nominated legal norms that, in case of detection of uncertainties, the Evaluation Commission may request, at any stage of the evaluation procedure, additional data and information from the candidate, in order to remove the serious doubts that have arisen before the Commission.

On 13 September 2022, via e-mail, the Selection Board sent the first round of questions to the candidate, requesting additional data and information to clarify several issues, to which replies were to be submitted by 17 September 2022. The candidate presented her answers to questions and additional documents on September 17, 2022.

Subsequently, on September 21, 2022, Marina Rusu submitted to the Evaluation Commission additional documents to complete the information from the first round of questions.

On 09 November 2022, the Evaluation Committee submitted the second round of questions to elucidate some aspects that arose during the evaluation, setting the deadline for submission – 12 November 2022. The information was submitted on November 14, 2022.

By letter sent to the candidate on 14 November 2022, the Selection Board informed her that the replies sent to the Commission for the second round of questions indicated that copies of documents had been attached to questions No. 3 and no. 5, but these were not among the documents attached to the message.

Therefore, the Evaluation Committee requested confirmation of their dispatch.

Subsequently, on November 22, 2022, the Evaluation Commission repeatedly requested from Marina Rusu the submission of confirmatory documents for the second round of questions, setting the deadline for submission – November 24, 2022 (f.d. 486, Administrative file), which was respected by the applicant.

On December 7, 2022, Marina Rusu submitted additional documents regarding Oleg Curtis' income for the period 2013 – 2018 to the Evaluation Commission.

In order to elucidate some aspects found during the public hearings, on December 19, 2022, the Evaluation Committee requested additional data and information, to be presented by December 22, 2022, a deadline respected by the candidate.

In this regard, the Special Bench certifies that, the apparent mere failure to submit a declaration when this was not done intentionally does not constitute for the Independent Evaluation Board a circumstance that makes it impossible to positively assess a candidate. This is what it stated both in Decision No. 22

of January 27 issued in respect of Marina Rusu, as well as in Decision no. 38 of June 08, 2023 in respect of Mariana Cherpec.

The applicant invoked the differential treatment of the Independent Evaluation Board in respect of her compared to other candidates who passed the evaluation: Ioana Chironet, Sergiu Caraman, Vasile Şchiopu, Mariana Cherpec, with reference to the aspect related to the failure to submit the declaration.

The special bench rejects the applicant's argument regarding her discrimination against the candidates Ioana Chironet, Sergiu Caraman, Vasile Şchiopu, but the circumstances examined in respect of them (alleged failure to declare bank accounts, alleged failure to declare a donation or the purchase price of a car, etc.) are not comparable.

With reference to the apparent discrimination in relation to Mariana Cherpec, the Special Court notes that, in the case of both candidates, the circumstance related to the failure to submit declarations on income and interests was examined, Marina Rusu for the period 2014-2016, when she was on childcare leave, and Mariana Cherpec for 2010, 2011.

In the case of both candidates, the Independent Selection Board accepted their argument that this was not done intentionally, indicating that the mere failure to submit the declaration cannot lead to serious doubts in such a hypothesis (the non-submission is not done knowingly).

However, if in Mariana Cherpec's case, on the occasion of this finding (the non-submission was not intentional) the subject was exhausted, then in the case of Marina Rusu, the Independent Evaluation Commission revealed that due to the candidate's failure to submit the declaration, it is impossible to verify her income and expenses for the reference period.

The special bench cannot find an explanation for this different approach, nor can it be inferred from decision No. 38 of June 08, 2023, issued regarding Mariana Cherpec.

However, the importance of submitting declarations on income and interests is explained by the need for an efficient mechanism to verify whether officials/dignitaries use the "opportunities" offered by their position to reap undue benefits. Marina Rusu did not submit a declaration for the period of her stay on child care leave, meaning she was not in office, she could not abuse it to obtain benefits. Mariana Cherpec, on the contrary, during the periods for which she did not submit statements, exercised the position of prosecutor. Despite this, it is inexplicable why in the case of Marina Rusu the Independent Evaluation Commission considered that there were doubts about the revenues and expenses it could not verify, unlike the case of Mariana Cherpec, about which it found no suspicions on the same ground. It cannot be inferred from the decision issued in respect of Mariana Cherpec that the Independent Evaluation Commission verified the income and expenditure for the period in which it did not submit declarations, by contradicting other data to which it had access, in the absence of the declaration.

Subsequently, the Special Court Panel reveals that the Independent Evaluation Commission accused Marina Rusu that she could not justify the

existence of income

for the period 2014-2016, enabling it to meet at least household consumption expenditure (CPP). In other words, Marina Rusu would not have been able to justify that she had at least income equivalent to the "subsistence minimum" for herself and her family.

In this respect, the Special Panel cannot accept this approach of the Independent Review Board.

According to the Constitution, the Republic of Moldova is both a state governed by the rule of law and a social one. Being a welfare state, this means that a social assistance mechanism (payments, compensations, etc.) is provided for vulnerable groups, who are temporarily or permanently unable to provide their basic necessities for life. Being a rule of law, one of its pillars is the separation of powers and their independence from one another. An independent judiciary does not exist without an independent judge. A judge is independent only if he or she is assured of all three elements of independence: institutional, functional and financial.

The financial independence of a judge implies that the state, through its wage policy, ensures a decent living, so that he (the judge) has access to all the basic comforts of life: food, clothing, place to live, how modest it would be, a means of transport, even if not a luxury one, the possibility to go to rest, how modest it would be, etc. The concept of "financial independence of a judge" is of value well above the "subsistence minimum".

The position of the Independent Evaluation Commission that the Republic of Moldova, through its salary policy, is unable to ensure a judge, even if he is on child care leave, a "minimum of existence", let alone a decent living, is equivalent to an act of finding that the Republic of Moldova is a bankrupt state. Obviously, the Special Panel cannot accept this approach and, in its view, it is absolutely not fair to require a judge to justify himself that the payments offered to him by the state are sufficient to ensure his "subsistence minimum". It is common sense to accept in principle that the payments offered by the state to the judge are sufficient to ensure at least a "subsistence minimum", without requiring him to prove otherwise.

The special bench accepts that, when, in addition to those absolutely necessary for life (food, clothing, etc.), a judge also procures other utilities (goods, services), it is justified to take into account the presumptive calculation of expenses according to the formula: "minimum living" + utilities, in order to be able to verify whether the payments from the state justify the judge's expenses. However, if there are no data that the judge had other expenses besides the absolutely necessary and minimal ones, and in the case of Marina Rusu it was not established otherwise, in the opinion of the Special Court Panel it is incorrect to subject the judge to an absolutely thankless state of trying to prove that his way of life allows him to support himself from the payments offered by the state.

Despite the above, the Special Court Panel notes that Marina Rusu, although she was in a rather embarrassing state, tried to justify her income while she was on childcare leave. He also referred to his childcare allowance, his salary

the husband during the reference period, which although he was quite modest, but nevertheless represented a surplus to the social payments granted by the state.

The applicant also tried to argue that the statistical 'subsistence minimum' calculated by the State in her case was even lower, because her family at that time lived at the house of her mother-in-law, i.e. the mother of her ex-husband. Respectively, part of the expenses to be taken into account in calculating the minimum subsistence basket, in fact, would not have been required to bear them.

The independent evaluation commission rejected that argument, on the grounds that the applicant Marina Rusu had failed to provide evidence of her former mother-in-law's income during the reference period (2014-2016) in order to verify whether she could grant them aid.

While examining the present case, Marina Rusu administered evidence that could reveal what was the legal income of her former mother-in-law at that time.

The special panel considers that these pieces of evidence are of major importance for the evaluation of candidate Marina Rusu, her compliance with the financial integrity criterion and, although they were not presented to the Evaluation Commission, the court is obliged to accept them. According to art. 14 para. (8) of the Law on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors nr. 26 of March 10, 2022, when examining the application to challenge the decision of the Evaluation Commission, the special panel of judges of the Supreme Court of Justice may adopt one of the following decisions:

a) rejection of the appeal application;

b) grant the appeal request and order the re-evaluation of candidates who failed to pass the evaluation, if it finds that, during the evaluation procedure, the Selection Board has admitted serious procedural errors affecting the fairness of the evaluation procedure and that *there are circumstances which could have led to the candidate passing the evaluation*.

Thus, the phrase in the legal text "*and that there are circumstances that could lead to the promotion of the evaluation by the candidate*" means that candidates can present evidence that removes serious doubts even in court.

According to the Special Panel, although they were not presented to the Selection Board, either at the stage of the written questions or at the stage of the hearings, but only in court, the documents administered by the applicant demonstrate that the picture created by the Independent Evaluation Board of the applicant's income for the period 2014-2016 was not objectively real.

Thus, although the discretion of the Independent Review Board is very large, it is not unlimited (it must be based on certain objective circumstances). These circumstances, according to the Special Panel, were not established with reference to serious doubts related to "Failure to submit the declaration of assets and personal interests for the period 2014-2016". Respectively, in this regard, the conditions set out in Article 14 para. (8) of the Law on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors nr. 26 of 10 March 2022 (*exists*

circumstances that could lead to the candidate passing the evaluation), in order to order re-evaluation.

With reference to serious doubts related to delays in examining 16 complaints about detention conditions, the Special Panel of the Supreme Court of Justice points out the following.

The evaluation committee noted that it was concerned about insufficient diligence on the part of the candidate in organising her work programme and her inability to prioritise cases of importance, according to ECHR standards, which need to be examined and resolved within a reasonable period of time, given the rights that are affected.

The selection board took note of the candidate's allegations regarding the lack of cooperation from the court administration to resolve the situation regarding the clerk's long sick leave. However, the Commission did not receive confirmatory documents from the candidate regarding any request to the court administration to resolve any problem.

The Selection Board noted that all national courts face the same problem, but some judges manage in reasonable terms to successfully fulfil their duties by organising their work. In order to resolve cases efficiently, fairly and promptly, a judge must demonstrate that he or she gives due consideration to the rights of the parties to be heard and to resolve issues without unnecessary cost or delay.

The evaluation committee concluded that, while delays in judicial decisions are regrettable in all cases, when delay undermines a legal guarantee to protect the rights and safety of persons with limited protection, delay is particularly serious.

In this chapter, it is noted that, in January 2019, Marina Rusu was appointed to exercise the duties of investigating judge at the Cahul Court, Taraclia headquarters. According to the decision of the Superior Council of Magistracy nr. 444/21 of 16 October 2018, the candidate retained her competence as judge to complete the examination of several cases pending at the Criuleni Court.

Between September 24, 2019 and November 7, 2019, 16 complaints were lodged with the Superior Council of Magistracy, which were submitted by some convicts serving their sentence as deprivation of liberty to Penitentiary No. 1 - Taraclia, based in Taraclia. These convicts invoked that the magistrate concerned would have admitted the delay in examining the applications submitted in the order provided by the criminal procedure legislation.

On February 21, 2020, the Plenum of the Disciplinary Board, by Decision no. 5/2, the disciplinary proceedings initiated on the basis of complaints received were terminated. The basis of the adopted solution was the fact that, although the deadline for examining the applications of the authors of complaints was exceeded, the reasons for these exceedances cannot be attributed to the candidate and, therefore, no disciplinary deviation was found in the candidate's actions.

Decision no. 5/2 of 21 February 2020 was challenged, and by decision of the Superior Council of Magistracy nr. 227/24 of 6 October 2020, admitted

The appeal was filed, and a new decision was adopted by which a disciplinary sanction in the form of a "warning" was imposed on the magistrate.

Disagreement with such a solution, the candidate challenged Decision no. 227/24 of 6 October 2020 of the Superior Council of Magistracy, at the Chisinau Court of Appeal. As a result, on November 29, 2021, by Decision no. 3-202/21, the Chisinau Court of Appeal annulled the challenged act, consistently and the disciplinary sanction in the form of "warning". Even if the complaints submitted by the convicts were examined late in accordance with the provisions of the legislation in force, the Chisinau Court of Appeal established that the circumstances of delaying the examination of these cases were not generated for reasons attributable to the candidate.

On February 4, 2022, the Superior Council of Magistracy filed an appeal against the decision of the Chisinau Court of Appeal, and by the conclusion of the Supreme Court of Justice of July 6, 2022, the appeal was declared inadmissible.

According to Art. 8 para. (6) of Law nr. 26 of 10 March 2022 on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, in assessing the criteria set out in para. (2) to (5) and in deciding on them, the Selection Board shall not depend on the findings of other bodies competent in the field concerned.

In this chapter, as a matter of principle, the Special Court observes that the legislature allowed the Commission to draw its own conclusions when assessing integrity criteria and taking decisions.

At the same time, according to the Joint Opinion of the Venice Commission and the DGI of the Council of Europe of 14 March 2023:

- For the Venice Commission and DGI, the Evaluation Commission cannot neglect a previous decision that entered into force – for example, the decision to acquit a judge/prosecutor for committing a corruption offence or annul a disciplinary sanction imposed on him, item 54;

- The Ministry of Justice explained that the EC and SCM/SCP will be able to disregard decisions in previous disciplinary cases as "manifestly unreasonable". The Venice Commission notes that this *de facto* allows the EC to reopen any disciplinary case (even a very old one), which damages legal certainty and can be considered as undermining the constitutional role of the SCM/SPC. Again, the reopening of a disciplinary case may exceptionally be justified (e.g. when new circumstances have been discovered, in particular following an ECHR ruling), but the proposed formula leaves too much room for the EC's discretion. The Venice Commission reiterates that any reopening should be allowed only exceptionally and follow a procedure normally provided for in such situations, in order to exclude that the same matter is examined in parallel under the verification procedure and any other national procedure provided for such situations, paragraph 61;

- In conclusion, while the Venice Commission understands that Evaluation Boards may examine some conduct, which has been the subject of other procedures or which have not yet been examined in other for a, the Evaluation Board's reports should not prejudice the authority of final judicial decisions and

respect

The principle of *res judicata*, as decided in criminal or disciplinary proceedings, item 63.

The special court panel considers that the tools available to the Independent Evaluation Commission are much larger than those of other bodies that are more or less related to verifying the correctness of financial behavior (State Tax Service, National Integrity Authority, etc.). In this respect, it is absolutely natural that the Independent Evaluation Commission should not be bound by decisions issued by these bodies, especially when it is in possession of documents, testimonies, other means of obtaining information, which paint a different picture than that of the body issuing a decision.

At the same time, in the case of disciplinary proceedings concerning judges or prosecutors, who have also gone to trial, once a final solution is reached, it would be admissible to reconsider it only in the presence of exceptional circumstances. Otherwise, the principle of *res judica* would be undermined and, implicitly, the authority of the judiciary would be reduced, which is based precisely on the idea that judicial decisions are presumed to be correct and cannot be called into question.

Returning to the serious doubts of the Independent Evaluation Commission against Marina Rusu in relation to the disciplinary procedure, the Special Panel notes that there is a judicial act regarding the applicant, namely, decision no. 3-202/21 of November 29, 2021 of the Chisinau Court of Appeal, rendered irrevocable by declaring the appeal inadmissible, by which the court exposed itself on the same facts debated by the Independent Evaluation Commission. According to the decision, it was found that Marina Rusu did not commit the acts she was accused of.

The special bench notes that the Independent Evaluation Commission based its conclusions on the materials in the disciplinary file, which was obviously also available to the court and which was exposed on them. Respectively, it is not clear what were those exceptional circumstances that led the Independent Evaluation Board to question once again the circumstances that led to the initiation and examination of the disciplinary procedure. Likewise, it is not clear what were those exceptional circumstances that convinced the Independent Review Board that it would be appropriate to reach a different conclusion than that of the court.

Subsequently, the Special Panel finds that the circumstances examined by the Independent Review Board were not sufficient to draw an objective conclusion.

First of all, by exposing the volume of work Marina Rusu had at the Cahul Court and to what extent she would have had a real possibility to examine within the deadline the 16 cases that were the subject of complaints, the Independent Evaluation Commission did not take into account the total number of cases Marina Rusu had in the procedure during the reference period (2019). However, that was absolutely necessary in order to determine whether the applicant had a real opportunity, in the event of postponement, of setting the shortest possible time limit for a new hearing.

Also, there is no reference in the decision, how many cases similar to those that were the subject of complaints Marina Rusu managed to examine during the

reference period. At the hearing, Marina Rusu invoked that she had examined about 200 such cases. Although the Special Bench has no data whether the applicant's statement

Whether or not it corresponds to reality, however, the defendant's representative did not have an answer to that effect.

The decision also does not indicate how many cases out of the 16 cases that were the subject of complaints, convicts were immediately released following final rulings. However, at the hearing, Marina Rusu said that in none of the 16 cases, following the settlement, the convicts did not go to freedom immediately, but only reduced the terms of detention. At the same time, when such cases began to appear as a result of the adoption of the normative act, it tried to examine as quickly as possible the cases in which detainees had real chances to go to liberty immediately if the applications were granted.

The Independent Evaluation Board accused the applicant of making heavy use of the days of annual or sick leave, and this affected her ability to examine expeditiously certain types of cases which, according to the law, were to be examined within a maximum period of three months. However, the Independent Evaluation Commission failed to examine the fact that the applicant lived with five children in mun. Chisinau, and he fulfilled his service in Chisinau. Taraclia. Every day, to get to and from work, Marina Rusu spent about 6-8 hours in transport. This fact could not but have a negative impact on your health, or, this regime exhausts you both physically and emotionally. Obviously, this also leads to a decrease in working capacity. And it is natural that in such a situation the person uses all the opportunities provided by law to restore his health. That is to say, contrary to the opinion of the Independent Evaluation Commission, the Special Panel does not consider that a judge must sacrifice his health and not benefit from the leave to which he is entitled, as well as work 24/24 to finish the files he has in the proceedings and which, normally, he cannot examine during the eight hours of work for which he is remunerated, Not to mention that the amount of remuneration raises questions for the same commission whether it is sufficient to satisfy basic necessities of life.

This aspect is relevant in the context in which Marina Rusu was invoked the long break between the established hearings, but it is not clear from the decision to what extent it was analyzed whether or not during those periods the judge was on rest or medical leave.

In the same vein, the Special Panel cannot ignore the reality existing in the system, namely that service matters are usually resolved on the basis of oral appeals from a judge to the court management. And only if there is no reaction, in order to solve a problem, whatever its nature, logistical, organizational, etc., judges resort to written requests to court presidents. Taking into account the fact that there is a written address from Marina Rusu to the court management, dated autumn 2019, the Special Court Panel does not attest at the moment to any circumstances in order not to accept those invoked by the judge, namely that she previously addressed verbally several times to remedy the problem created (failure to examine all appeals in time), But the court management did not react at all.

In this context, the Special Panel reiterates that the margin of appreciation of the Independent Evaluation Board is very large, but not unlimited (it must be based on certain objective circumstances). These

circumstances, in the opinion of the Special Panel, were not established with reference to serious doubts related to the "Disciplinary proceedings initiated in 2019". Respectively, in this regard, the conditions set out in Article 14 para. (8) of the Law on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors nr. 26 of March 10, 2022 (*there are circumstances that could lead to the candidate passing the evaluation*), in order to order re-evaluation.

For those reasons, the Special Panel points out that, in the present case, there are legal grounds to annul the decision of the Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors nr. 22 of January 27, 2023 on Marina Rusu's candidacy.

In accordance with the provisions of Art. 224 para. (1) letter a), art. 195 of the Administrative Code, Art. 238-241 of the Code of Civil Procedure, Art. 14 para. (6), para. (8) letter b), para. (9) of the Law on certain measures related to the selection of candidates for membership in the self-administration bodies of judges and prosecutors nr. 26 of 10 March 2022, the Special Panel, established within the Supreme Court of Justice, to examine appeals against the decisions of the Independent Commission for the Integrity Assessment of Candidates for the position of Member of Self-Administration Bodies of Judges and Prosecutors,

d e c i d e:

The appeal filed by Marina Rusu against the Independent Commission for Assessing the Integrity of Candidates for Members of Self-Administration Bodies of Judges and Prosecutors on the annulment of decision no. 22 of 27 January 2023 and ordering the resumption of the candidate's evaluation procedure. Se Cancel Decision Commission Independent of assessment a integrity of candidates for membership in judges' self-administration bodies and prosecutors no. 22 of January 27, 2023 on Marina Rusu's candidacy.

The independent commission for assessing the integrity of candidates for membership in the self-administration bodies of judges and prosecutors ordered the re-evaluation of candidate Marina Rusu.

The decision is irrevocable.

President of the hearing, judge

Ion Malanciuc

Judges

Oxana Parfeni

Aliona Donos