

D E C I S I O N

20 November, 2023

Chisinau

The special panel set up within the Supreme Court of Justice, for the examination of appeals filed against the decisions of the Independent Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (the Commission).

In the composition of:

Chairman, judge  
judges

Ion Malanciuc  
Oxana Parfeni  
Aliona Donos

clerks

Liviu Nicula  
Tatiana Capațina

Examining in a public court hearing, within the administrative litigation procedure, the challenge filed by Iurie Bejenaru against the Commission, regarding the annulment of decision No. 4 dated December 9, 2022, concerning the candidacy of Iurie Bejenaru, and ordering the resumption of the candidate's evaluation procedure by the evaluation commission.

finds :

On January 9, 2023, Iurie Bejenaru filed a challenge against the decision of the Independent Commission, decision No. 4 dated December 9, 2022, regarding Iurie Bejenaru's candidacy. He requested the annulment of the mentioned decision and the resumption of the candidate's evaluation procedure by the Evaluation Commission.

In the reasoning of the action, he invoked that he had applied for the position of member of the Superior Council of Magistracy on behalf of the judges of the Supreme Court of Justice, underwent evaluation by the Evaluation Commission, and during the verification process, he submitted an ethics questionnaire. Additionally, based on Article 9, paragraph (2) of Law No. 26/2022, he provided a declaration of assets and personal interests, along with information about the list of close persons within the judicial, prosecutorial, and public service system. Throughout the evaluation, he responded to three rounds of questions addressed by the Evaluation Commission, accompanied by copies of all requested materials. On October 27, 2022, public hearing took place, during which he participated and responded to the questions posed by the members of the Evaluation Commission.

By Decision No. 4 dated December 9, 2022, the Evaluation Commission decided that the candidate for the position of member of the Superior Council of Magistracy, Iurie Bejenaru, did not meet the integrity criteria. Serious doubts were identified regarding the candidate's compliance to ethical and financial integrity criteria, and as a result, he did not pass the evaluation.

The copy of the decision from the Evaluation Commission was received via email on January 4, 2023.

The appellant mentioned that he disagrees with the decision of the Evaluation Commission, considering it illegal, unreasoned, adopted based on excessive subjectivity, relying on presumptions of the commission members without legal and evidentiary support, and with a blatant violation of the procedure outlined in the Administrative Code.

He argued that the Evaluation Commission made an unreasoned decision, violated the principle of equal treatment for the candidate, and had no plausible grounds to conclude that the candidate for the position of member of the Superior Council of Magistracy, Iurie Bejenaru, did not meet the criteria of ethical and financial integrity and did not pass the evaluation, contrary to the provisions of Article 13, paragraphs (1) and (2) of the Law No. 26 of March 10, 2022.

Furthermore, he reported that the decision adopted by the Evaluation Commission contradicts the Joint Opinion of the Venice Commission and the Directorate General for Human Rights and the Rule of Law on the draft law on the Supreme Court of Justice from June 17-18, 2022. In paragraph 44 of the opinion, it is established that ethical evaluation actually focuses on data regarding possible corruption concerning candidates, which is another aspect of the same issue explored by financial evaluation.

Therefore, he considered that all the findings presented by the Evaluation Commission, through which his lack of ethical and financial integrity was established, have nothing in common with data regarding possible corruption in his candidacy. The conclusions of the Commission focused more on unintended omissions and subjective assumptions, which in no case confirm possible corruption in his candidacy.

He mentioned that, to justify its decision, the Evaluation Commission improperly shifted the burden of proof to the candidate, which is inadmissible and contrary to the provisions of Article 93 of the Administrative Code. This article stipulates that each participant proves the facts on which they base their claim. By derogation from the provisions of paragraph (1), each participant proves the facts exclusively attributed to their sphere.

The appellant emphasized that, in order to justify its decision, the Evaluation Commission focused on the following financial and ethical issues:

The method of acquiring the property - a plot of land in the city of xxx, obtained in 2007 within the program for improving the living conditions of judges.

In response to this question, the appellant explained to the Evaluation Commission, a position maintained in front of the court as well, that the request for the allocation of the land was based on the provisions of Article 30 of the Law on the Status of Judges No. 544-XIII of July 20, 1995, with the aim of improving living conditions. This was because he lived with a family of 4 people in an apartment with a living

area owned at that time of xxx square meters, an area deemed insufficient for 4 people.

Since the prevailing law at the time of the request for improved housing conditions stipulated that the public authority provides judges with accommodation (apartment or house) and did not explicitly indicate the possibility of requesting land for construction and development, he did not request the Local Public Authority to be obligated, in accordance with the provisions of Article 30 of the Law on the Status of Judges No. 544-XIII of July 20, 1995, to grant him a plot of land in exchange for an apartment or house. Instead, as an alternative, he requested the allocation of land at the discretion of the Local Public Authority. However, because the Local Public Authority did not have available apartments or houses (emphasizing that the legal norm providing for housing was outdated, obsolete, or even a dead norm that had never been applied to judges, and no judge had ever been allocated a house), and there were multiple unenforced court decisions at the City Hall regarding the obligation of the Local Public Authority to provide housing to public servants who were entitled to it by law, he requested the allocation of land for the construction of a house. This request was even made at the suggestion of the Local Public Authority, which informed him that they did not have available apartments or houses.

In this regard, he emphasized that all the documents submitted to the Council of Durlești were legal and in accordance with the prevailing legislation, serving as a basis for the decision. He pointed out that the Durlești City Council is an administrative-territorial unit, an integral part of Chișinău municipality.

The approval or rejection of the request was at the discretion (opportunity) of the Local Public Authority, and he could not influence the issuance of the decision in any way.

Furthermore, Decision No. 4/24 of October 2, 2007, made by the Durlești City Council, was challenged in court by the Territorial Office of Chișinău of the State Chancellery. However, it remained in force and was upheld by final court judgments. Moreover, the fact that a criminal case was initiated against the decision-makers at the Durlești City Hall cannot be considered as receiving the land illegally. Furthermore, concerning the councilors of the Durlești Council, a first-instance acquittal verdict was issued, and at the moment, the prosecutors' appeal is being examined at the Court of Appeals in Chișinău.

The appellant emphasized that after receiving the land, it was fenced, an orchard with fruit trees was planted, and he began accumulating funds for the construction of the house. He cannot be blamed for not making construction efforts on the allocated land or obtaining any relevant permits between 2007 and 2016, as this was due to justified reasons.

In this regard, the appellant explained that in 2010, he fell seriously ill, requiring urgent and costly medical intervention abroad. The funds accumulated for the construction of the house were used for restoring his health. Subsequently, the remaining accumulated funds were declared for the first time in accordance with the amended legislation in 2016 as cash.

Regarding the question from the Evaluation Commission about whether it is ethical or not to receive the land, given that the law did not directly provide for allocation for the purpose of improving living conditions, he communicated that he did not request the obligation of granting the land but only its allocation as an alternative to an apartment or house, considering it also a moral obligation towards his family to

provide them with suitable housing.

At the same time, in response to the Evaluation Commission's question, he explained that it would not have been ethical, having acquired this land, to request a preferential-priced apartment designated for judges, an opportunity that most judges in the country have taken advantage of. They have acquired apartments at preferential prices while already owning residential property.

Additionally, he pointed out that only in 2016, after accepting the succession following his father's death and improving the living conditions of the family, the mentioned land was sold. The price of the land was determined through direct negotiations between the parties involved in the contract, and a copy of the contract was presented to the Evaluation Commission.

The appellant emphasized that the Evaluation Commission erroneously interpreted the provisions of Article 30 of the Law on the Status of Judges No. 544-XIII of July 20, 1995. In his situation, he did not request the obligation of the local public administration to allocate land based on Article 30 of the mentioned law. Instead, due to the unavailability of apartments or houses by the local public administration, he requested, as an alternative, the allocation of the land plot. The prevailing legislation did not prohibit such a request.

1. Method of acquiring assets/Source of income – a house of xxx square meters and a plot of land of xxx in Chisinau, obtained by the candidate's parents in 2008.

In response to this question, the appellant explained to the Evaluation Commission, a position maintained in front of the court as well, that the residential house in xxx was acquired by his parents from their own sources, accumulated throughout their lives. This was the only property acquired by his parents during their lifetime.

The appellant stated that he does not have any information regarding the sources and incomes accumulated by his parents, as they are no longer alive and had passed away before the initiation of the pre-vetting process. He emphasized that he could not anticipate the questions of the Evaluation Commission and could not obtain any concrete information about the sources and incomes accumulated by his parents throughout their lives.

Furthermore, in this context, he drew the attention of the court to the provisions of Article 46 of the Constitution of the Republic of Moldova, provisions omitted by the Evaluation Commission, which state that the lawful nature of acquisition is presumed. The right to private property is guaranteed, and the right to inherit private property is also guaranteed.

Regarding the ownership of a ½ share in the house located in the city of xxx, he stated that, through the will No. 89 dated January 15, 2013, his father, Vasile Bejenaru, bequeathed, from his estate, an equal share of 1/3 in the residential house located in xxx, to each of his sons: Leonid Bejenaru, Valerii Bejenaru, and Iurie Bejenaru (a copy of the will was presented to the Evaluation Commission).

Through the renunciation statement of December 28, 2015, his brother, Valerii Bejenaru, renounced both the testamentary and legal inheritance, in favor of Iurie Bejenaru.

Through the renunciation statement dated January 15, 2016, his brother, Leonid Bejenaru, renounced both the testamentary and legal inheritance in favor of Iurie Bejenaru. As a result of the brothers renouncing their testamentary and legal inheritance shares, Iurie Bejenaru became the owner of a ½ share of the property located in xxx.

The renunciation of their brothers from testamentary and legal inheritance shares was conditioned by the transmission and assumption of his moral and material responsibility for the care of their mother, a commitment he fulfilled until her death on February 28, 2021.

Regarding the inheritance left after the mother's death, he communicated that through the will No. 90 dated January 15, 2013, his mother, Valentina Bejenaru, bequeathed from her estate, in equal parts, a 1/3 share of the residential house located in xxx, to each of her sons: Leonid Bejenaru, Valerii Bejenaru, and Iurie Bejenaru.

In these circumstances, the appellant, taking into account the provisions of Articles 2390-2391 of the Civil Code, mentioned that after the death of the mother, none of the testamentary heirs or their successors officially renounced the inheritance within the legal timeframe. Therefore, it is considered that all of them have accepted the inheritance after the mother's death.

Given that the current legislation only establishes a timeframe for renouncing inheritance and does not impose any specific deadlines for formalizing notarial acts, and considering that his brother, Valeriu Bejenaru, has been abroad for an extended period, working in France, as of now, no requests have been submitted to the notary to formalize the notarial acts regarding the inheritance left after the death of the mother.

Furthermore, he specified that, based on the donation contract dated March 11, 2011, Eugen Bejenaru (his son) became the owner of the individual residential house with an area of xxx, including accessory constructions and the corresponding land with an area of xxx. According to the donation contract No. 4155 dated March 11, 2011, Eugen Bejenaru (his son) became the owner of agricultural land with an area of xxx, cadastral number xxx, and agricultural land with an area of xxx, cadastral number xxx, located in the outskirts of xxx. Under the donation contract No. 4145 dated March 11, 2011, Valerii Bejenaru (his brother) and Ion Bejenaru (the son of his brother Leonid Bejenaru) became co-owners of agricultural land with an area of xxx, cadastral number xxx, and agricultural land with an area of xxx, cadastral number xxx, located in the outskirts of xxx.

The appellant, in this regard, considered that the Evaluation Commission ignored the legal institution provided by law – the right of individuals to renounce inheritance in favor of another person and the constitutional right to accept inheritance. He critically assessed the defendant's statement about the candidate's obligation to present documents and evidence regarding third parties, as well as the repair of the house over an extended period in the past, individuals who were not obligated to declare and justify their income and expenses. He deemed this contrary to the provisions of Article 93 of the Administrative Code, as the burden of proof

rests with the defendant in justifying its decision, based on the provisions of Article 225 of the Administrative Code.

Additionally, he specified that according to the provisions of Article 30 of the Administrative Code, public authorities cannot take measures that would affect final legal situations or acquired rights unless, in the conditions established by law, it is absolutely necessary for the public interest.

2. The undervalued value of the xxx model car, manufactured in 2004, and the xxx model car, manufactured in 2008. Failure to declare in accordance with the law and non-payment of the capital increase tax from the sale of the xxx model car, manufactured in 2004.

In response to this question, the appellant explained to the Evaluation Commission, a position maintained in court, that in 2011, he purchased the xxx model car, manufactured in 2004, at a price of 110,000 MDL, and in 2013, he sold this car for the price of 150,000 MDL, which is 40,000 MDL more than the purchase price. He provided the Evaluation Commission with the sales contracts for this vehicle. The sales contract price was established through direct negotiations between the parties. He explained to the Evaluation Commission that the difference in the purchase and sale price of the car was due to improvements and repairs to the car. At the same time, he informed the Evaluation Commission that confirmatory documents were not retained due to the expiration of an extended period.

The appellant disagrees with the Evaluation Commission's conclusion that he did not pay a capital increase tax of 40,000 MDL. He asserts that this is an assumption made by the Evaluation Commission, considering that he filed a tax declaration with the State Tax Inspectorate every time he recorded any income, including in 2013, and based on the decision of the tax authorities, he paid the assessed fiscal tax.

The appellant further stated that over the years, the State Tax Inspectorate did not intervene regarding any omissions or errors in the payment of income tax. Therefore, he considered that it is presumed that all due taxes have been paid.

Regarding the car model xxx, manufactured in 2008, he explained to the Evaluation Commission that in 2013, he purchased this car for the price of 240,000 MDL and sold it in 2016 for 290,000 MDL, which is 50,000 MDL more than the purchase price. He provided the Evaluation Commission with the sales contracts for this vehicle. The difference between the market value of the car model xxx, manufactured in 2008, and the declared value of the car in 2013 constituted the price subject to direct negotiations between the parties to the contract, as confirmed by the copies of the contracts submitted to the commission.

The appellant also informed the Evaluation Commission that in 2016, he filed a tax declaration with the State Tax Inspectorate and paid the respective fiscal tax as determined by the tax authority. He considered that in this regard, there were no intentional or serious violations committed by him in the acquisition and disposal of vehicles that could be deemed as a lack of ethical or financial integrity by the Evaluation Commission. He further presented copies of all sales contracts for the cars he has owned and currently owns, specifying the exact purchase and sale prices for each car. The prices are real, established through direct negotiations between the parties and based on the technical condition at the time of sale.

The appellant emphasized that the presented facts had been verified during inspections carried out within the competencies established by organic laws, conducted by the National Integrity Authority and the State Tax Inspectorate. He highlighted that these valid documents did not identify any violations of the current legislation. In this case, the appellant argued that the Commission had assumed competencies belonging to other specialized public authorities, such as the National Integrity Authority and the State Tax Inspectorate, and disregarded the conclusions of these authorities. He contended that the Evaluation Commission ignored the provisions of Article 139, paragraph (4) of the Administrative Code, which states that individual administrative acts are respected by the issuing public authority, other public authorities, their recipients, and third parties.

2. The non-declaration of donations and contributions made by the candidate and his wife to their son in 2017 and 2018 as required by law.

In response to this question, the appellant explained to the Evaluation Commission, a position maintained before the court, that the expenses incurred by his family for the family ceremony – his son's wedding, amounted to 10,150 MDL for reserving the wedding hall, 303,142 MDL in cash for restaurant services, and 4,000 EURO (equivalent to 83,006 MDL according to the exchange rate), in cash, to a studio for organizing the wedding ceremony. He did not declare these expenses in the 2018 assets and personal interests declaration as donations to his son because, according to him, these were his own expenses, an obligation of the parents for organizing the ceremony, and not donations to his son, as concluded by the Evaluation Commission.

Moreover, the current legislation does not require expenses incurred during the year to be declared in the annual declaration of assets and personal interests. Regarding the amounts donated by his wife to their son in 2017, amounting to 280,000 MDL, and in 2018, amounting to 196,157 MDL, he provided sincere and detailed explanations to the Evaluation Commission. According to notarized contracts, these donations were intended for the purchase of an apartment based on a mortgage contract. Indeed, both in response to the questions received and during public hearings, he honestly admitted that he did not declare these donations made by his wife in his asset and personal interest declarations for the years 2017 and 2018, unintentionally, due to an oversight. However, he also explained to the commission that his son had disclosed these amounts in his own asset and personal interest declarations as a public official.

Therefore, the appellant argued that this omission should not be considered as acting in bad faith but rather as an evident unintentional mistake. There was no intention to conceal these transactions, as they were notarized and included in his son's Declaration of Assets and Interests, presuming good faith.

3. Ethical violation for not declaring abstention – In response to this question, the appellant explained to the Evaluation Commission, maintaining the same position in both the second round of responses and during the public hearing. He informed the Commission that he and Dorin Popovici were former colleagues at the Buiucani District Court in Chişinău, where both worked until 2008. Regarding the case "Arama R" LLC vs. Filip Licov, in which Dorin Popovici represented "Arama R" LLC, the appellant stated that the case was heard by a panel of three judges, and he was not the rapporteur. He further clarified that at the Supreme Court of Justice, cases are examined in the absence of the parties based on

the documents in the case file and solely on legal issues. Furthermore, he considered that Dorin Popovici's participation in the mentioned case as a representative of one party, a legal entity, does not constitute a legal basis as provided by the Civil Procedure Code to declare abstention from the case. The Civil Procedure Code clearly outlines the grounds for abstention. Such a reason for incompatibility is not found in the Code, and his relationships with Dorin Popovici could not in any way influence the case's resolution.

Furthermore, the Evaluation Commission identified and relied solely on one case in which Dorin Popovici was a member of the judging panel, on cases where Dorin Popovici participated as a representative of a legal entity. However, it overlooked or was not interested in verifying that the appellant, as a member of the judging panel, participated in multiple cases where Dorin Popovici represented the same legal entity, and the court decisions were not in favor of the legal entity represented by Dorin Popovici (cases 2ra-2730/13; 2rh-44/14; 2rh- 2/16; 2ra-910/20; 2ra-1353/21).

Therefore, the appellant argued that the conclusion of the Evaluation Commission, suggesting that his participation in the aforementioned case favored the legal entity represented by Dorin Popovici, is not plausible and convincing.

Moreover, he explained to the Evaluation Commission that throughout his entire career as a judge, he did not handle any cases in court where one of the participants in the case was personally Dorin Popovici or members of his family. He believed that the members of the Evaluation Commission subjectively perceived a conflict of interest between him and Dorin Popovici in this case and considered these findings as violations of ethical integrity.

At the same time, the appellant objected to the conclusions of the Evaluation Commission that he had long-term friendly relations with lawyer Irina Tocan, and his participation in the judging panel on a case where she represented one party led to a favorable decision for her client. He explained to the Evaluation Commission, both in response to the questions received and during the public hearing, that crossing the state border of Romania ten years ago with Irina Tocan and her family, along with a few other people (including her brother, Rodion Tocan, with whom he was in a friendship, and they are currently related by affinity) does not confirm that he has been in a friendship with Irina Tocan since then.

He specified that being related by affinity to Rodion Tocan, he consistently declared abstentions from examining cases where Rodion Tocan represented one of the parties. Regarding Rodion Tocan's sister, Irina Tocan, he did not declare abstention because they are not in a friendship or other relationships as provided by the Code of Civil Procedure, for which he would be obligated to abstain from examining cases where she represents one of the parties.

Furthermore, he considered the Evaluation Commission's findings unfounded, stating that despite a long-term friendship with lawyer Irina Tocan, he participated in the examination of an appeal in a case where she represented one party. By the decision dated May 11, 2022, the judging panel (of which he was a member) accepted the appeal of lawyer Irina Tocan's client and sent the case for retrial.

He explained to the Evaluation Commission that the examination of case no. 2ra-1717/21 on May 11, 2022, where one party was represented by lawyer Irina



Tocan, took place in an expanded panel of 5 judges, where he was not the rapporteur. The fact that Irina Tocan participated in that case as a lawyer/representative of one party did not provide any legal basis under the Civil Procedure Code for him to declare abstention from the examination of the case.

In this regard, the appellant considered that his relationship with Irina Tocan could not in any way influence the decision on the case. He stated that the expanded panel of 5 judges examining the case identified some procedural law violations, a superficial examination of the case brought to trial, and consequently, the decision of the appellate court could not be maintained. Both appeals, not only that of lawyer Irina Tocan, were admitted, and the case was sent for retrial.

The fact that the decision of the Supreme Court of Justice in the case was legal is confirmed by the subsequent ruling adopted by the appellate court after the case was sent for retrial. Furthermore, both in the responses provided and during the public hearing, he explained to the Evaluation Commission that throughout his entire career as a judge, he had not presided over any cases in which Irina Tocan personally or her family members were involved. Moreover, during his entire tenure as a judge, he maintained impartiality and independence, adhering strictly to the law. He did not allow any interference in his activities, and over more than 28 years of judicial service, he had not faced any disciplinary sanctions.

Therefore, the appellant concluded that the Evaluation Commission, in a subjective manner, considered that there was a conflict of interest between him, Dorin Popovici, and Irina Tocan, contrary to the provisions of Article 50, 52 paragraph (1) of the Civil Procedure Code.

Furthermore, relying on the provisions of the Law on certain measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors No. 26 of March 10, 2022, and the Administrative Code, the claimant asserted that the Evaluation Commission issued an unreasoned decision concerning him, and challenging it in court becomes illusory. He also pointed out that the Evaluation Commission treated identical factual situations differently compared to other candidates who were evaluated by the commission and ultimately passed the evaluation, even though similar situations were addressed for those candidates. In these circumstances, the appellant mentioned that the Evaluation Commission did not correctly exercise its discretionary right and, in similar cases, made different decisions, being subjective in his case without explaining how it arrived at different conclusions. According to the provisions of Article 137 paragraph (3), (4) of the Administrative Code, essentially identical factual situations should be treated identically. A disparate treatment of two essentially identical factual situations is only allowed if there is an objective reason. If a public authority has exercised its discretionary right in a certain way in one case, then in similar cases, it is obliged to exercise its discretionary right in the same way.

In another aspect, he pointed out the provisions of Article 139 of the Administrative Code, which states that an individual administrative act becomes valid for the person to whom it is addressed or who is affected by it at the moment when it is communicated to that person, except when the administrative act itself establishes a later date for its enforceability. An individual administrative act becomes effective with the content communicated. An individual administrative act remains valid until it is withdrawn, revoked, or canceled in another way, or until it expires or is consumed in another way. Individual administrative acts are respected by the issuing public authority, other public authorities, their recipients, and third parties.

Regarding this aspect, the appellant specified that by the finding act No. 36/19 of March 12, 2020 (an administrative act in force, irrevocable), the National Integrity Authority, a constitutional body with the mission of exercising control over assets and personal interests, initiated a control regarding a possible violation of the legal regime for declaring income and property for the year 2015, which also extended to his wife, Viorica Bejenaru, and his son, Eugen Bejenaru. According to the said finding act, no discrepancies were identified between the data in the income and property declarations and the information received from financial institutions in the Republic of Moldova and the State Tax Service of the Republic of Moldova. Through this finding act, the National Integrity Authority terminated the control over assets and personal interests initiated concerning him, stating that no substantial difference was found in the wealth acquired for the year 2015.

Similarly, through the minutes No. 430/22 of October 7, 2022 (an administrative act in force, irrevocable) regarding the verification of asset and personal interest declarations issued by the National Integrity Authority, the absence of an apparent substantial difference between the income earned, expenses incurred, and wealth acquired for the year 2021 was noted, as well as the absence of apparent non-declaration of conflicts of interest, incompatibilities, restrictions, and limitations.

Therefore, he considered that through the legal and irrevocable administrative acts issued concerning him by the National Integrity Authority, a constitutional body with the mission of exercising control over wealth and personal interests, no discrepancies were identified, and there was no apparent substantial difference between the income earned, expenses incurred, and wealth acquired. Additionally, there was no apparent non-declaration of conflicts of interest, incompatibilities, restrictions, and limitations.

The appellant, invoking the provisions of Article 60 of the Administrative Code, drew the attention of the Court's panel to the fact that the deadlines in the administrative procedure were violated during the examination and issuance of the decision regarding him. This occurred because the evaluation procedure concerning him was initiated on June 21, 2022, and the decision of the Evaluation Commission was adopted on December 9, 2022, being received via email on January 4, 2023. The appellant noted that he was not informed about the extension of the general deadline for examination and adoption of the decision by the public authority - the Evaluation Commission. Therefore, the administrative act - the decision of the Evaluation

Commission regarding him - was issued beyond the general deadline stipulated by Article 60 of the Administrative Code.

Basing his argument on the mentioned aspects and guided by the provisions of Article 141 of the Administrative Code, the appellant considered that the decision 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, issued on December 9, 2022, regarding his candidacy is null and void. This is due to serious procedural violations, as the Evaluation Commission did not exercise its discretionary right, did not consider all relevant facts, did not respect the legal limits of discretionary right, and did not exercise its discretionary right according to the purpose granted by law.

In terms of law, Iurie Bejenaru based his claims on the provisions of Article 119, 166-168, 174, 177 of the Civil Procedure Code, Article 20, 93, 171-172, 177, 189, 206, paragraph (1), letter a), 211-212 of the Administrative Code, Article 216, 219, 220 of the Civil Code, Article 13-14 of the Law no. 26 of March 10, 2022.

The appellant requested the admission of the action, the annulment of the decision of the Independent Commission no. 4 of December 9, 2022, regarding Iurie Bejenaru's candidacy; and the resumption of the evaluation procedure by the Evaluation Commission.

On October 4, 2023, Iurie Bejenaru filed a request to specify the claims, seeking the finding of the nullity of the decision of the Independent Commission no. 4 of December 9, 2022, regarding Iurie Bejenaru's candidacy, and the finding of the appellant's right to a favorable evaluation decision from the Independent (page 25, vol. III).

In the reasoning of the request, he indicated that he supports the factual and legal grounds mentioned in the initial appeal. Additionally, he mentioned that on March 31, 2023, Iurie Bejenaru resigned honorably from the position of judge, and the need to continue the administrative litigation process in court is due to the necessity of effective protection of individual rights. The legitimate interest lies in the fact that Iurie Bejenaru wants to annul the decision of the Independent Commission no. 4 of December 9, 2022.

The appellant indicated that the basis for such an action lies in providing effective protection against illegal individual administrative acts of public authorities, and the consummated action in obligation is a form of protection in administrative litigation resulting from the legal logic of practical cases and the need for effective defense.

In terms of law, the request to specify the requirements of the action is based on Article 39 paragraph (1)-(2), 189 paragraph (1), 206 paragraph (1) letter d), and paragraph (2) of the Administrative Code.

On January 16, 2023, the Independent Commission submitted a reference, requesting the rejection of the appeal request submitted by Iurie Bejenaru.

In support of the reference, the respondent argued that Decision No. 4 of December 9, 2022, issued by the Evaluation Commission, is legal and well-founded, while the appellant's allegations are unfounded and lack evidentiary support.

The respondent mentioned that the Evaluation Commission diligently and in good faith fulfilled all obligations stipulated by Law No. 26 of March 10, 2022. When certain ambiguities were identified, the commission provided the appellant with the opportunity to clarify them by presenting additional data and information, setting a sufficient deadline.

It was explained that the burden of proof shifts to the candidate during the evaluation process. In the initial phase, the commission is obligated to gather data and information, utilizing its legal competencies (Article 6 of Law No. 26/2022) and adhering to legal obligations (Article 7 of Law No. 26/2022). However, with the emergence of ambiguities and to clarify them, the commission offers the candidate the opportunity to present additional data and information (Article 10 paragraph (7) of Law No. 26/2022).

The presentation of additional data and information is a right, not an obligation, of the candidate (Article 12 paragraph (4) of Law No. 26/2022). However, the non-exercise of this right (by refusal, explicitly or tacitly, or by presenting incomplete or inconclusive data) risks leading the Commission to the conclusion that there are serious doubts about the candidate's compliance with integrity requirements (Article 13 paragraph (5) of Law No. 26/2022).

The respondent considered that it is in the candidate's interest to assume the burden of proof, and this legislative transfer not only does not violate but effectively protects the candidate's rights. The rationale for transferring the burden of proof to the candidate has been developed at the international level.

At the same time, the respondent noted that the integrity evaluation process, as well as the decision, do not affect the professional status of the candidate, given that the mandate of the Commission is explicitly defined by law in Article 3 paragraph (1) of Law No. 26/2022. This article stipulates that the Independent Commission conducts the integrity assessment of candidates for the position of member in the bodies provided for in Article 2 paragraph (1) (including the Superior Council of Magistracy - editor's note).

Accordingly, the Commission does not substitute for or take over the functions of any public body in the Republic of Moldova (including law enforcement agencies). In this case, the Commission strictly adhered to the scope of its mandate, explicitly stating in the decision that the candidate does not meet the integrity criteria because serious doubts were found regarding the candidate's compliance with ethical and financial integrity criteria, and thus, did not pass the evaluation.

The extension of the Commission's mandate is also explicitly established by

law, namely the verification of the ethical and financial integrity of candidates (Article 8 paragraph (1) of Law No. 26/2022), in relation to the criteria of ethical and financial integrity (Article 8 paragraph (2) and (4) of Law No. 26/2022).

The law itself (Article 13 paragraph (5) of Law No. 26/2022) determines when a candidate fails the integrity test, namely, a candidate is deemed not to meet the integrity criteria if serious doubts about the candidate's compliance with the requirements specified in Article 8 are found and not mitigated by the evaluated person.

The law itself (Article 13 paragraph (5) of Law No. 26/2022) determines when a candidate fails the integrity test, namely, a candidate is deemed not to meet the integrity criteria if serious doubts about the candidate's compliance with the requirements specified in Article 8 are found and not resolved by the evaluated person.

Thus, the law imposes a rigorous test with two elements: the Commission's finding of serious doubts about the candidate's compliance with ethical and financial integrity criteria and the candidate's opportunity to dispel these doubts.

In this case, the Commission fully applied this legal construct, providing the appellant with the opportunity to dispel any doubts through additional data and information. In each of its communications with the claimant (dated August 1, 2022, September 14, 2022, and September 27, 2022), the Commission referred to the legal basis and offered the appellant the opportunity to submit additional documents.

The legal effect of the Commission's decisions is expressly and exhaustively established by law (Article 13 paragraph (6) of Law No. 26/2022) as follows: The decision regarding not passing the evaluation constitutes the legal basis for the candidate's inadmissibility in elections or competitions.

Respectively, no other legal effect claimed by a candidate who has not passed the integrity test has legal support. In this case, nothing prevents the appellant from continuing his professional career and exercising the duties of a judge.

The respondent argued that the evaluation of the appellant's integrity, in accordance with the provisions of Law No. 26/2022 and culminating in the decision, did not violate his legal rights and interests and did not affect his professional status. The respondent further pointed out to the court that Law No. 26/2022 expressly and explicitly establishes the margin of discretion for the Commission in making its findings, as follows: in assessing the criteria set out in paragraphs (2) (5) and making decisions regarding them, the Evaluation Commission is not dependent on the findings of other bodies with competence in the respective field - Article 8 paragraph (6); The Evaluation Commission assesses the materials accumulated according to its intimate conviction, formed after a multi-faceted, comprehensive, and objective examination of the information. None of the materials presented has pre-established probative force without the evaluation by the Evaluation Commission - Article 10

paragraph (9).

Therefore, the solution offered by the Commission, through the decision to acknowledge or not the passing of the evaluation, represents an assessment, according to its intimate conviction, of whether or not there are serious doubts about the candidate's compliance with financial and ethical integrity criteria.

In other words, the Commission does not determine the compliance or non-compliance of the candidate with integrity criteria, but only the existence or absence of serious doubts regarding compliance. Moreover, the conclusion of the Evaluation Commission, expressed through the decision, regarding the existence of serious doubts about the appellant's compliance with ethical and financial integrity criteria, is a matter of appropriateness of the decision. Under Article 225 paragraph (1) of the Administrative Code, the court is not competent to rule on the appropriateness of an administrative act.

Therefore, the court is obligated to exercise legal control over the decision, but it is not entitled to exercise control over the appropriateness of the decision. In particular, the court would be justified in admitting the appellant's action and ordering a re-evaluation only in a situation where it finds the existence of circumstances that could lead to the candidate's passing the evaluation, a situation that is lacking in this case.

With regard to the objections raised by the appellant, the respondent argued that they are unfounded, lacking evidential support. Moreover, the appellant violated the burden of proof obligation as stipulated in Article 118 of the Civil Procedure Code and Article 195 of the Administrative Code.

Additionally, the respondent noted that the documents presented by the appellant regarding findings of other authorities are irrelevant, especially since they pertain only to a specific period and not the entire period examined by the Commission (Article 8 of Law no. 26/2022).

At the same time, concerning the alleged violation of the evaluation timeframe, the respondent pointed out that Law no. 26/2022 does not establish a specific deadline for issuing the decision of passing/not passing the evaluation concerning a candidate. Precisely for this reason, during the public hearing, the Chairman of the Commission informed the appellant that a reasoned decision would be presented later, and to the extent possible, the Commission would strive to issue it within a month from the date of today's hearing.

Furthermore, the respondent considered the appellant summons request, seeking the annulment of the decision of the Independent Commission no. 4 of December 9, 2022, regarding the candidacy of Iurie Bejenaru, as inadmissible. In the sense of Article 14 paragraph (8) of Law no. 26/2022, the special panel within the Supreme Court of Justice, when examining the request to challenge the decision of the Evaluation Commission, can adopt one of the following decisions: a) reject the challenge request; b) admit the challenge request if it finds the existence of circumstances that could have led to passing the evaluation by the candidate and order the resumption of the candidate's evaluation procedure by the Evaluation Commission.

In the court hearing, the appellant did not appear, but on January 23, 2023, he submitted a request, asking for the case to be heard in his absence, with the presence of his lawyers (see document 74, volume I).

The appellant's representatives, lawyers Marian Bucătaru and Rodion Tocan, explained during the court hearing that they fully support the reasons stated in the lawsuit and requested the determination of the nullity of the decision of the Independent Commission, no. 4 of December 9, 2022, regarding the candidacy of Iurie Bejenaru. They also requested the acknowledgment of the appellant's right to a favorable evaluation decision from the Independent Commission. Iurie Bejenaru seeks effective protection of his rights as a candidate for evaluation.

They pointed out that the decision of the Independent Commission no. 4 of December 9, 2022, regarding the candidacy of Iurie Bejenaru, is null, as it was issued with serious procedural violations. The Commission did not exercise its discretionary right, did not consider all relevant facts, did not respect the legal limits of discretionary right, and did not exercise its discretionary right in accordance with the purpose granted by law. They also claimed that the Commission concealed from the public opinion and the court relevant evidence that is favorable to the candidate and demonstrates his ethical and financial integrity.

The representatives of the Independent Commission, lawyers Roger Gladei and Valeriu Cernei, supported the arguments invoked in the reference, requesting the rejection of the action as unfounded. They argued that the appellant's claims, namely the determination of the nullity of the Commission's decision and the acknowledgment of the appellant's right to a favorable evaluation decision, do not fall within the provisions of the applicable law and are outside the applicable legal framework, specifically citing Article 14, paragraph (8) of Law 26/2022.

Additionally, they mentioned that Iurie Bejenaru's appeal is to be rejected because he resigned from the position of judge, and therefore, he can no longer be a candidate for positions in the Superior Council of Magistracy that would be evaluated by the Evaluation Commission. They argued that the appellant failed to prove the existence of grounds for admitting the action, as no serious procedural errors were acknowledged by the Evaluation Commission that could affect the fairness of the evaluation procedure. They asserted that there were no circumstances that could lead to candidate's passing the evaluation.

At the same time, the respondent considers that the claim should be rejected because the appellant requests the application of an inapplicable law, namely the Administrative Code, to the detriment of the applicable special law, namely Law no. 26/2022.

After hearing the arguments of the parties in support of their claims and the objections raised, taking into account the evidence presented and the relevant legislation, the special panel of judges 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 in the self-administration bodies of judges and prosecutors, establishes the following.

Through Decision No. 4 of December 9, 2022, regarding the candidacy of Iurie

Bejenaru for the position of a member of the Superior Council of Magistracy, the Evaluation Commission, based on Article 8, paragraph (1), paragraph (2) lit. a) and c), paragraph (4) lit. a) and b), and paragraph (5) lit. a), b), c), d), f), and g), as well as Article 13, paragraph (5) of Law No. 26/2022, decided that the candidate does not meet the integrity criteria. Serious doubts were found regarding the candidate's compliance with ethical and financial integrity criteria, and as a result, the candidate did not pass the evaluation.

According to Article 14, para. (1) of the Law No. 26 of March 10, 2022, the decision of the Evaluation Commission may be appealed by the evaluated candidate within 5 days from the date of receiving the motivated decision, without adhering to the preliminary procedure.

As per Article 14, paragraph (6) of Law No. 26 of March 10, 2022, the application to appeal the decision of the Evaluation Commission is adjudicated according to the procedure provided in the Administrative Code, with exceptions established by this law. It does not have a suspensive effect on the decisions of the Evaluation Commission, elections, or competitions in which the candidate participates.

In this context, it is noted that the decision of the Independent Commission, no. 4 from December 9, 2022, was received by Iurie Bejenaru on January 4, 2023, a fact confirmed by the extract from the attached email to the case materials.

Taking into account the provisions of Article 14 (1) of the Law no. 26 from March 10, 2022, the summons application was supposed to be submitted within 5 days from the date of receipt by the candidate of the reasoned decision, in this case, by January 9, 2023.

Therefore, the special panel concludes that the appeal filed by Iurie Bejenaru was submitted on time, on January 9, 2023, to the Supreme Court of Justice.

According to Article 1 of Law No. 26 of March 10, 2022, this law regulates the legal relationships related to the integrity assessment procedure of candidates for the position of member of the Superior Council of Magistracy, the Superior Council of Prosecutors, as well as candidates for the position of member in their specialized bodies, as a mandatory stage in the process of selecting and appointing them to their respective positions.

In the same vein, the special panel highlights that, according to Article 14 (8) of the Law No. 26 of March 10, 2022, currently in force, when examining the request to appeal the decision of the evaluation commission, the special panel within the Supreme Court of Justice may adopt one of the following decisions:

- a) rejection of the appeal;
- b) admission of the appeal and ordering the re-evaluation of candidates who have not passed the assessment if it is found that, during the evaluation procedure, the evaluation commission has committed some serious procedural errors that affect the fairness of the evaluation process, and there are circumstances that could have led to the candidate's passing



the evaluation.

Therefore, taking into account the aforementioned legal norms and the powers granted to the special panel within the Supreme Court of Justice by the legislator in Article 14 (8) of the Law No. 26 of March 10, 2022, the special panel concludes that, when examining the request to appeal the decision of the evaluation commission, it may issue one of the following solutions: rejection of the appeal or admission of the appeal, ordering the re-evaluation of candidates who have not passed the evaluation.

In this context, the special panel notes that according to Article 3 (2) of the Law on the Superior Council of Magistracy, No. 947 of July 19, 1996, the Superior Council of Magistracy includes judges and individuals with a high professional reputation and personal integrity, with experience in the field of law or in another relevant field specified in Article 31 (11) lit. c), who do not work within the legislative, executive, or judicial branches and are not politically affiliated. At least 4 of them must have experience in the field of law.

According to Article 3 (4) of the aforementioned law, six members of the Superior Council of Magistracy from among judges are elected by secret ballot by the General Assembly of Judges, as follows: four from the lower courts, one from the courts of appeal, and one from the Supreme Court of Justice.

According to Article 3<sup>1</sup> (1) of the Law on the Superior Council of Magistracy, No. 947 of July 19, 1996, the candidate elected as a member of the Superior Council of Magistracy from among judges must meet the following conditions: a) have a minimum of 2 years of effective work experience as a judge; b) not have been subject to disciplinary sanctions, or the disciplinary action period has expired; c) have passed the evaluation conducted by the Independent Commission.

Therefore, the right to participate in the competition for the selection of a candidate for the position of member of the Superior Council of Magistracy from among judges is conditioned by the cumulative fulfillment of certain conditions exhaustively established by the Law on the Superior Council of Magistracy, No. 947 of July 19, 1996.

In this case, the special panel notes that the appellant Iurie Bejenaru submitted the application file to participate in the competition for the selection of a candidate for the position of member of the Superior Council of Magistracy from among judges within the Supreme Court of Justice.

By decision no. 28/2 of February 14, 2023, the Superior Council of Magistracy accepted the resignation request of Judge Iurie Bejenaru from the Supreme Court of Justice and released him from the position of judge at the Supreme Court of Justice, based on Article 25 (1) lit. a) and Article 26 of the Law on the Status of Judges, dated March 31, 2023.

Therefore, the special panel of the Supreme Court of Justice concludes that as of March 31, 2023, Iurie Bejenaru no longer meets one of the essential conditions for participating in the competition for the selection of a candidate for the position of member of the Superior Council of Magistracy from among judges within the Supreme Court of Justice. This is because he no longer holds the position of judge at the Supreme Court of Justice.

In this context, the relevant fact is that regarding the alleged violation of Article 39 of the Constitution, the Constitutional Court, in decision no. 42 of April 6, 2023, stated that paragraph (2) of this article guarantees any citizen, according to the law, access to a public office. However, the use of the phrase "according to the law" in this article implies that the legislator can establish conditions for accessing a public office. This competence of the legislator must be recognized, considering that the integrity of public administrators plays an essential role. Especially in the case of public offices on which the well-being of the nation depends, individuals aspiring to these positions must demonstrate that they meet high standards of integrity. For this reason, the Constitution allows the legislator to establish conditions for access to a public office to ensure that the recruitment and candidate verification procedures aim to identify individuals best suited to achieve this goal (Constitutional Court decision no. 6 of April 10, 2018, § 70).

In these circumstances, the special panel of the Supreme Court of Justice mentions that considering the powers granted to the special panel by the legislator in Article 14 (8) of Law No. 26 of March 10, 2022, and the appellant's not holding the position of judge at the Supreme Court of Justice at the time of examining this case, makes it impossible to accept the appeal and order the re-evaluation of the candidate, in case it is found that the evaluation commission committed serious procedural errors affecting the fairness of the evaluation process, and that there are circumstances that could have led to the candidate's passing the evaluation. Therefore, any acceptance of the appeal will not produce the legal effects provided by the law.

In the opinion of the Venice Commission, appealing the decision of the evaluation commission should not suspend the election or appointment of members of the Council, and it will not annul the fact that the competition has led to a result (see the Joint Opinion of the Venice Commission and the Directorate General for Human Rights and the Rule of Law (DGI) of the Council of Europe on certain measures related to the selection of candidates for administrative positions in the self-administration bodies of judges and prosecutors and the amendment of certain normative acts, CDL-AD(2021)046, § 38).

In point 142 of decision no. 42 dated April 6, 2023, the Constitutional Court indicated that it shares the opinion of the mentioned Commission and considers that the interest in completing the procedure for the election of judge members of the Council and the interest in the functionality of the body that guarantees the independence of the judicial authority outweigh the interests of the candidates who did not pass the evaluation.

Similarly, the Venice Commission and the Directorate General for Human Rights and the Rule of Law of the Council of Europe, in the aforementioned Joint Opinion, concluded that integrity checks targeting candidates for the positions in the Superior Council of Magistracy (CSM), Superior Council of Prosecutors (SCP), and their specialized bodies constitute a filtering process and not a judicial verification process. As such, if properly implemented, they can be considered to strike a balance between the benefits of the measure in terms of contributing to the trust in the judicial system and its potential negative effects.

According to Article 13 (6) of the Law No. 26 of March 10, 2022, the decision of not passing the evaluation constitutes a legal basis for not admitting the candidate to elections or competitions. Thus, **any other legal consequences, apart from those**

**expressly mentioned in the law**, are not stipulated at the moment by the applicable legislative framework.

The court panel notes that, according to Opinion No. 1069/2021 dated December 13, 2021, the Venice Commission and the Directorate General concluded that the revised draft law clearly indicates that the results of the integrity assessment will have no effect on the candidate's career.

Therefore, considering that the decision of the Independent Commission No. 4 dated December 9, 2022, has the legal effect of only not admitting the candidate to elections or competitions, and Iurie Bejenaru, as of March 31, 2023, does not meet one of the essential conditions for participating in the competition for the selection of a candidate for the position of member of the Superior Council of Magistracy from among judges within the Supreme Court of Justice, the special panel of the Supreme Court of Justice concludes that it is not appropriate to verify whether serious procedural errors were committed by the evaluation commission during the evaluation process, affecting the fairness of the evaluation procedure and the existence of circumstances that could have led to the candidate's passing the evaluation. The sole consequence of the decision of not passing is the non-admission to the competition in which the appellant participated, from the position of judge of the Supreme Court of Justice, position he currently does not hold.

The special panel of the Supreme Court of Justice indicates that a court decision represents an act of application and implementation of the law. Legal rules, both substantive and procedural, remain viable only to the extent that the court, through their correct application in resolving disputes, upholds the rule of law. Therefore, a court decision is a procedural act invested with executive power by law, containing an authoritative provision of state origin regarding the application of legal norms in the case of a specific legal relationship.

The implicit guarantees of Article 6 § 1 include the obligation to provide reasoning for judicial decisions (H. v. Belgium, para. 53). A reasoned decision allows the parties to demonstrate that their case has been genuinely heard. Although a domestic court has a certain margin of appreciation in choosing arguments and admitting evidence, it must justify its activities by stating the reasons for its decisions (Suominen v. Finland, para. 36; Carmel Saliba v. Malta, para. 79).

However, even though Article 6 § 1 obliges the courts to reason their decisions, this cannot be understood as requiring a detailed response to every argument (Van de Hurk v. the Netherlands, para. 61; García Ruiz v. Spain (GC), para. 26; Jahnke and Lenoble v. France (dec.); Perez v. France (GC), para. 81). In these circumstances, considering the powers granted to the special panel of the Supreme Court of Justice by the legislator in Article 14 (8) of the Law No. 26 of March 10, 2022, the special panel concludes that the appeal filed by Iurie Bejenaru **is to be rejected for other reasons**, without addressing whether serious procedural errors were committed by the evaluation commission during the evaluation process, affecting the fairness of the evaluation procedure and the existence of circumstances that could have led to the candidate's passing the evaluation, as a potential admission would not produce legal effects, given that the appellant no longer holds the position of judge at the Supreme Court of Justice.

In accordance with Article 14 para. (6), (8) lit. a), (9) of the Law No. 26 of

March 10, 2022, the special panel, set up within the Supreme Court of Justice, for the examination of appeals against decisions of the Independent Commission.

decides:

The appeal filed by Iurie Bejenaru against the Independent Commission regarding the annulment of Decision No. 4 dated December 9, 2022, concerning the candidacy of Iurie Bejenaru for the position of member in the Superior Council of Magistracy, and the order to resume the evaluation procedure of the candidate, is rejected.

The decision is final and cannot be appealed.

Chairman of the hearing,

judge

Ion Malanciuc

judges

Oxana Parfeni

Aliona Donos