

Case No. 3-28/23
2-23118676-01-3-15082023

DECISION

09 January 2024
municipality

Chisinau

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

consisting of:

Hearing Chairperson, Judge
Judges

Ion Malanciuc
Oxana Parfeni
Aliona Donos

with the participation of the court clerk

Ana Scutaru

having examined in public court session the administrative appeal lodged by Gheorghe Graur against the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, seeking that Decision No 45 of 04 July 2023 on the Candidacy of Gheorghe Graur, Candidate for the Superior Council of Prosecutors – be annulled, and that the candidate evaluation procedure be resumed,

established:

On 14 July 2023, Gheorghe Graur lodged an appeal against the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, seeking that Decision No 45 of 04 July 2023 on the candidacy of Gheorghe Graur, candidate for the Superior Council of Prosecutors, be annulled, and that the candidate evaluation procedure be resumed.

In the grounds of his appeal, the plaintiff argues that he disagrees with the decision of the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors made in respect of his candidature and requests that the appeal be allowed to proceed.

Referring to the Commission's conclusions in Chapter I of the Decision (erroneous approach regarding the candidate's career), the plaintiff stated that the defendant had erroneously indicated that he had worked as a deputy prosecutor in the Prosecutor's Office for Combating Organised Crime and Special Cases from 2 September 2019 to 26 June 2020, a finding with which he disagrees.

Thus, he submitted that he did not hold a senior position in any of the prosecutor's offices, both territorial and specialised. This appears to be a technical/typing error on the part of the Pre-Vetting Commission, but in his opinion it seems like a conscious approach by the commission members to give media prominence to the topic of his failure to pass the evaluation. Thus, during the period of the verification, as well as during the public hearings, which are available online, the Pre-Vetting Commission consistently mentioned, both in written correspondence and publicly, that he had been a deputy prosecutor in the Prosecutor's Office for Combating

Organised Crime and Special Cases, which shows a lack of focus in the analysis of his personality and career.

The plaintiff indicated that on 22 May 2023, he filed a request in accordance with the provisions of Article 12(4)(c) of Law No 26/2022, even though this provision stipulates that the candidate has the right to acquaint himself with the evaluation materials at least 3 days before the hearing, which implies that the candidate has the right to acquaint himself with all the evaluation materials (questions, explanatory notes, responses from public or private bodies, etc.). However, the Commission sent him only copies of documents relating to the commission's correspondence with him, credit history of relatives, ownership documents of one apartment, documents submitted by the candidate earlier and some copies of a criminal case file, and failure to provide him with all the material accumulated from the evaluation violates the rule of law.

The plaintiff therefore argued that the Commission failed to comply with the provisions of Article 12(4)(c) of Law No 26/2022 and that in any proceedings, whether civil or criminal, the parties must have access to the entire case file, regardless of the nature of the litigation. In this regard, the approach of the Pre-Vetting Commission is flawed as it compiled a multi-faceted picture from various sources and used general interpretations about his candidature while forming its decision, which shows lack of transparency in its functioning.

As to the Commission's findings of violations of prosecutorial ethics and professional conduct, the plaintiff argued that he had not violated the rules of professional ethics of prosecutors in his work. Thus, in 2018, he started his activity as a prosecutor and from 2018 to date, no disciplinary or other misconduct has been detected and no complaint against him has been registered by the Prosecutors' Inspection. Moreover, the approach of the Pre-Vetting Commission did not take into account the recommendations of the Venice Commission when the defendant explained that the period before assuming office should generally not be verified and questioned, which follows from Article 8(2) of Law No 26/2022. However, the Commission abstractly refers to his behaviour 4-6 years before he became a prosecutor, even though the legislator explicitly stated that the possibility of verification can only be extended to the financial integrity of the candidate.

Regarding the Commission's findings that the candidate had undeclared vehicles owned by others, the plaintiff, referring to the provisions of Article 191(1) of Law No 133/16, explained that he was not entitled to use them and that the Commission should have studied and understood the existing regulatory framework regarding the declaration of assets and personal interests.

The plaintiff further noted that he did not declare his right of use for the Range Rover Sport, which belongs to his parents, as he used the vehicle intermittently, no more than 2-3 times a month. For the same reason, he did not declare the ***** Drive model car, which belongs to his father-in-law, ***** , and is provided to him from time to time.

He stated that a car was purchased by his parents through a consumer loan and his parents' ***** car was acquired through an arrangement with an economic operator. Thus, he was not involved in the transactions of these vehicles but by his written comments, the Pre-Vetting Commission is trying to distort the answers.

As regards the allegations of the Pre-Vetting Commission that the candidate failed to produce a copy of the contract of sale and purchase of the Range Rover Sport model car and failed to state the price at which the car was purchased, the plaintiff explained that he did not retain the contract and that the defendant did not raise the issue of the price of the car in the round of questions as evidenced by the correspondence between the candidate and the Pre-Vetting Commission.

Regarding the findings of the Pre-Vetting Commission regarding the ownership of the apartment that belonged to the plaintiff's wife, ***** , the plaintiff clarified that the defendant does not make any distinction as to how long the plaintiff has been married, so that during the hearing he repeated that he has been married to ***** since August 2020 and the cohabitation started in April 2020.

Therefore, according to the plaintiff, the findings of the Pre-Vetting Commission based on the events occurring before the marriage of the plaintiff with *****

**** are illegal and hence the transactions of the wife during 2013-2018 are not relevant to the evaluation of the plaintiff. Nowhere at the public hearing did he indicate that his relationship with ****

****, his subsequent wife, began prior to the purchase of said vehicles, which is a completely false description with a biased inference.

The plaintiff pointed out that it is important to chronologically distinguish the events analysed by the Pre-Vetting Commission, such as: the apartment previously owned by ****, ****, the candidate's current wife, noting that they were not in a marital relationship at the date of taking ownership and at the date of sale of this apartment; the Range Rover Sport model car owned by the candidate's mother, purchased in 2019, before the candidate entered into a relationship with his wife, and for which a consumer loan was taken, which was also confirmed by the Commission; a BMW **** ** Drive model car owned by the candidate's parents-in-law, which was purchased in instalments from a legal entity in the car sales business.

Thus, the plaintiff argued that all three topics should have been dealt with separately, but the Pre-Vetting Commission treats them together to create an impression in the public that the candidate does not meet the standards of ethics and financial integrity, and periodically throws in isolated phrases that serve to create the impression that all these assets belong to the plaintiff, without any factual or legal support for these statements.

With regard to the justification of the financial means at his parents' disposal, the plaintiff clarified that all his mother's income had been declared and *** ****, who is also subject to a declaration of assets and personal interests, had detailed all the information on the loans she has and it was explained that all the financial means are legitimate.

As regards the income of his parents-in-law, the plaintiff pointed out that he had explained that they own certain businesses in the region commonly referred to as the "Transnistrian region" and that their legal nature was demonstrated by a copy of the document on the establishment of a legal entity. Nor could any documents of fiscal nature be provided, as they were issued by an uncontrolled territory of the Republic of Moldova and could therefore be considered as a legal fact.

The plaintiff noted that during the round of questions and at the public hearing, he explained exactly what his parents-in-law' business was and that the Pre-Vetting Commission's comment about why his relatives needed to get cars is an offensive one, since how could he explain why his mother and parents-in-law wanted to get cars.

The plaintiff also contended that the Pre-Vetting Commission was guided by certain totalitarian principles as it made him responsible for the actions of others and one of the reasons for his failure to pass was that he could not produce any evidence of certain transactions made by his wife before marriage.

According to the plaintiff, the Commission should have proved whether the assets belonged to the candidate, as this is one of its tasks, but this was not done. A candidate can inherit genes and physical traits from relatives but cannot inherit their responsibility for their actions and wishes.

The plaintiff reiterated that he had provided all the details regarding the apartment which was owned by his wife by right of ownership, although these transactions were made before their marriage became official.

He noted that the Commission should have carefully and equally examined all the evidence and arguments presented by the candidate, paid particular attention to the adversarial principle, and taken into account opposing arguments. Also, the members of the Pre-Vetting Commission should have been guided by the law and case law in their decision-making process and should have clearly and rationally justified their decisions, which was not done. The Pre-Vetting Commission did not describe how the candidate had violated the law in filing the declaration of assets and personal interests or any other financial irregularities.

The plaintiff contended that while considering the financial integrity, the Pre-Vetting Commission was more interested in the relatives of the subject of evaluation, mainly the

candidate's wife and her parents, at a time when the candidate was not even married, without indicating which important provisions of the applicable laws had been violated by the candidate.

The plaintiff pointed out that another circumstance considered by the Commission at the public hearing was drunk driving and disorderly conduct committed before the candidate became a prosecutor. And this is in the context of the defendant's indication in the decision that "the offence occurred when the candidate was a law student and had not yet been trained and appointed as a prosecutor", so the candidate was not subject to the rules of professional ethics. However, the Commission concluded that "driving while intoxicated is a serious breach of the ethical standards applicable to judges and prosecutors".

In this regard, the plaintiff noted that the Pre-Vetting Commission found that the provisions of the 2011 Prosecutor's Code of Ethics were applicable to the candidate when he was a student, which presumably means that he should have known that he would become a prosecutor in six years, and in general, the candidate should have known that, morally, he could no longer become a prosecutor, and comply with the Prosecutor's Code of Ethics in force at that time.

According to the plaintiff, in considering this point of law, the Pre-Vetting Commission has gone beyond the legitimate scope of evaluation, as the law clearly describes the extent to which professional ethics can be examined.

In addition, the plaintiff stated that both in written correspondence and at the public hearing, a member of the Pre-Vetting Commission (Tatiana Răducanu) repeatedly asserted that the not-too-serious hooliganism for which the candidate was sanctioned contravenitionally is a misdemeanour. At the public hearing, the candidate responded that these actions were contraventions, to which a member of the Pre-Vetting Commission said that "[...] it's the same thing [...]", which, in his opinion, is a bias against the candidate to give the public the impression that this candidate is not qualified. Moreover, if no distinction is made between procedural actions – offences and criminal offences are described in different codes – the difference is significant.

In the same vein, he clarified that when applying for the position of prosecutor, the opinions of a number of institutions are sought regarding the candidate for the position of prosecutor, all violations of the undersigned relate to issues punishable by contravention sanctions, and the Commission accepted this fact. Therefore, the Commission cannot conclude that the prosecutor violated any rules of ethical conduct of a contravening nature during the period when the candidate was not even a prosecutor. Compliance with the rules of conduct of a prosecutor starts from the moment of assuming office, and the Pre-Vetting Commission prescribes certain rules of conduct for a person who was not a prosecutor at that time.

The plaintiff argued that the Commission had erred on the issue of the candidate's past and that judging a prosecutor on the basis of his past actions could open the door to discrimination and unfounded judgements, but during his time as a prosecutor he had not displayed any vicious behaviour or conduct that could give the impression that he lacked integrity or ethical uprightness.

He added that a person should be evaluated based on professional merit and current capabilities, but not on assumptions or judgements based on past actions that are not relevant to the position of prosecutor.

The plaintiff contended that the decision of the Pre-Vetting Commission in his case was vitiated as one of its members violated the secrecy of the meeting.

On this point, the plaintiff pointed out that the Chairman of the Pre-Vetting Commission, Herman van Hobel, had voiced his opinion on television long before the decision on the case was issued. Thus, during the TV show "Punct de reflecție" on 28 May 2023 on the TV channel "Vocea Basarabiei", in his narration, the Chairman of the Pre-Vetting Commission noted: "[...] if I get caught drunk driving in the Netherlands, with very little evidence, that's it, you can't be a judge, you can't set an example, you can't sentence other people if you can't follow the rules yourself, and that goes for prosecutors too [...]". Thus, given that with other candidates, both judges and prosecutors, the topic of drink driving was not broached with the wording that you

can no longer be a prosecutor or a judge, this could be an argument under the ECtHR's jurisprudence on breach of the secrecy of the meeting, especially by the chairman of the Commission, and this message conveyed by the chairman of the Commission outside the evaluation process seriously affects the credibility of a collective decision such as the Pre-Vetting Commission.

He pointed out that the European Court of Human Rights considers the deliberate violation of the judicial process as a serious violation of the fundamental rights and freedoms of the individual, and that the principle of deliberation refers to the right of the parties to be properly heard, to have time and opportunity to present their arguments and evidence, and to express their views during the trial.

In this case, the plaintiff argued that a member of the Pre-Vetting Commission made value judgements before the decision was issued, and the parties' subsequent arguments about an alleged general statement about the DUI phenomenon cannot be accepted because the statement was made 3 days after the candidate's public hearing. Thus, the plaintiff contended that the Chairman of the Pre-Vetting Commission already had a preconceived opinion about the candidate before the evaluation decision was issued.

Finally, the plaintiff submitted that the infringement of the right to be elected to a public office is a serious violation of the fundamental rights and freedoms of the individual. This right is recognised and protected by various international and regional human rights instruments. Firstly, the right to be elected is guaranteed by the Universal Declaration of Human Rights (Article 21), which states that "everyone has the right to take part in the government of his country, directly or through freely chosen representatives". This reflects the importance of participation in such a process and the right to elect and be elected in a democratic society.

As a matter of law, Gheorghe Graur based his claims on the provisions of Article 14(1) and (2) and Article 8(b) of Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors.

The plaintiff requested that the action be allowed, that the decision of the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors No 45 of 04 July 2023 on the candidacy of Gheorghe Graur, candidate for the Superior Council of Prosecutors, be annulled and that the Commission's evaluation of the candidate be resumed.

On 24 July 2023, the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors filed a defence statement requiring that the appeal filed by Gheorghe Graur be rejected.

The defendant claimed in the reasoning of the defence statement that the Decision No 45 of 04 July 2023 was lawful and well-founded, and that the plaintiff's allegations were unfounded and unsupported by evidence.

She noted that in this case the Commission diligently fulfilled all its obligations under the Law No 26 of 10 March 2022, in particular, having found certain ambiguities, it had given the plaintiff the opportunity to clarify them by providing additional data and information (within the meaning of Article 10(7) of Law No 26 of 10 March 2022), allowing sufficient time (as implicitly confirmed by the plaintiff by providing additional data and information).

In addition, she noted that the burden of proof shifts to the candidate during the evaluation process. At the initial stage (see steps 1 and 2 above), the Commission is required to collect data and information using its legal powers (Article 6 of Law No 26 of 10 March 2022) and in compliance with its legal obligations (Article 7 of Law No 26 of 10 March 2022).

However, to clarify uncertainties as and when they arise, the Commission gave the candidate the opportunity to submit additional data and information (Article 10(7) of Law No 26 of 10 March 2022). The submission of additional data and information is a right, not an obligation, of the candidate (Article 12(4) of Law No 26 of 10 March 2022), but failure to exercise this right (open or tacit refusal or submission of incomplete or inconclusive data) may lead the Commission to conclude that there is serious doubt as to whether the candidate meets

the criteria of integrity (Article 13(5) of Law No 26 of 10 March 2022). It is therefore in the candidate's interest to take on the burden of proof, and this legislative transfer not only does not violate but also effectively protects the candidate's rights.

With regard to the integrity assessment process and the Decision, they do not affect the professional status of the candidate and the scope of the Commission's mandate is expressly established by law (Article 3(1) of Law No 26 of 10 March 2022), namely: The independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors shall assess the integrity of candidates for membership in the bodies referred to in Article 2(1) (including the Superior Council of Prosecutors).

It was also held that his objections were unfounded in the absence of evidence showing that the decision was unlawful, and he further criticises the applicable law, but all these criticisms of the applicable law are irrelevant to the consideration of the legality of the contested decision.

This is because, in the context of the criteria laid down in Constitutional Court Decision No 5 of 14 February 2023, criticism of the law does not constitute (i) either serious procedural errors (admitted by the Pre-Vetting Commission) affecting the fairness of the evaluation procedure, (ii) or circumstances that could lead to the plaintiff's passing the evaluation, and the objections relating to the quality of the law should be resolved by another remedy, such as a review of the constitutionality of such a law by the Constitutional Court.

In this regard, attention was drawn to the fact that the Constitutional Court had already analysed the content of Law No 26 of 10 March 2022 on several occasions, recognising its constitutionality (with the exception of certain expressions in Article 14(2), (3) and (8)(b)) and clarifying the content of the institutions regulated by this law (see Decision No 42 of 6 April 2023). However, the plaintiff insists on objections which are not subject to judicial review but have already been considered by the Constitutional Court.

It was also noted that the plaintiff had not explained how the circumstances alleged in his claim constituted (i) a serious procedural error affecting the fairness of the evaluation procedure and, at the same time, (ii) a circumstance that could have led to the candidate passing the evaluation. All of these circumstances demonstrate the plaintiff's bad faith in filing the claim.

At the court hearing, plaintiff Gheorghe Graur supported the appeal and moved that it be allowed on the factual and legal grounds set out in the application of appeal.

At the hearing, the representatives of the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, counsels Roger Gladei and Valeriu Cernei, supported the arguments set out in the defence statement and requested that the appeal filed by Gheorghe Graur be dismissed, stating that the decision of the Pre-Vetting Commission was lawful and did not violate the plaintiff's rights and interests, and that the plaintiff's objections were unfounded.

Having heard the arguments of the parties to the proceeding supporting the formulated allegations and objections, taking into account the provided evidence and the applicable legislation, the Special Panel, established at the Supreme Court of Justice to examine the appeals against the decisions of the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors established the following.

As per Decision No 45 of 04 July 2023 on the candidacy of Gheorghe Graur, candidate for the Superior Council of Prosecutors, on the basis of Article 8 paras (1), (2)(a) and (2)(c), (4)(a) and (4)(b), (5)(b), 5(c) and 5(f) and Article 13(5) of Law No 26/2022, the Commission decided that the candidate does not meet the integrity criteria as serious doubts have been found as to the candidate's compliance with the ethical and financial integrity criteria and thus fails the evaluation.

On 14 July 2023, Gheorghe Graur lodged an appeal against the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, seeking that Decision No 45 of 04 July 2023 on

the candidacy of Gheorghe Graur, candidate for the Superior Council of Prosecutors – be annulled, and that the candidate evaluation procedure be resumed.

According to Article 14(1) of the Law on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors No 26 of 10 March 2022, the decision of the Pre-Vetting Commission may be appealed by the evaluated candidate within 5 days from the date of receiving the reasoned decision, without following the preliminary procedure.

In this context, the Special Panel notes that the decision of the Independent Pre-Vetting Commission for assessing the integrity of the candidates for the position of member in the self-governing bodies of judges and prosecutors No 45 of 04 July 2023 was received by Gheorghe Graur, on 12 July 2023, which is confirmed by an abstract from the e-mail, attached to case materials.

According to Article 14(1) of the Law on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors No 26 of 10 March 2022, an appeal is supposed to be filed within 5 days from the date of candidate receiving the reasoned decision, which was 14 July 2023 in this case.

Respectively, the Special Panel concludes that the appeal filed by Gheorghe Graur is admissible because the plaintiff complied with the legal provisions, by filing the appeal to the Supreme Court of Justice on 14 July 2023, within the time frame laid down in the law.

With respect to the applicable legal framework, the Special Panel holds that according to Article 1 of the Law No 26 of 10 March 2022 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, this Law regulates the legal relations under the procedure of evaluating the integrity of candidates for members of the Superior Council of Magistracy, Superior Council of Prosecutors, as well as of candidates for members in the specialized bodies of the aforementioned councils, as a mandatory stage in the process of selecting candidates and electing or appointing them to the respective positions.

In line with Article 4 of the Law No 26 of 10 March 2022 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, the Pre-Vetting Commission shall have functional and decisional independence of any individual or legal entity, irrespective of the type of ownership and legal form of organization, including parliamentary factions and development partners, which have participated in the appointment of its members.

In its activity, the Pre-Vetting Commission shall follow the Constitution of the Republic of Moldova, this law, and other regulatory acts governing the fields related to its activity. The Pre-Vetting Commission acts on the basis of its own Rules of Procedure, that it approved.

Article 14(6) of the Law No 26 of 10 March 2022 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors states that an appeal against the decision of the Pre-Vetting Commission shall be heard and determined in accordance with the procedure laid down in the Administrative Code, subject to the exceptions laid down in this Law, and shall not have a suspensive effect on the Pre-Vetting Commission decisions, elections or competition in which the candidate concerned participates.

As per Article 1(1) of the Administrative Code, administrative legislation is the main legal framework that ensures the regulation of administrative relations during administrative activity and the judicial oversight over it.

In accordance with Article 2(2) of the Administrative Code, certain aspects related to administrative activity in specific fields of work may be regulated by legal provisions that derogate from the provisions of this Code, only if such regulation is absolutely necessary and does not contradict the principles set out in this Code.

Thus, the Special Panel of the Supreme Court of Justice highlights that in the preamble to Law No 26/2022, the legislator provided that it has adopted the mentioned law in order to increase the integrity of future members of the Superior Council of Magistracy, Superior Council

of Prosecutors and their specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and overall in the justice system.

Therefore, the evaluation of candidates for the positions of member of the bodies listed in Article 2(1) of the Law No 26 of 10 March 2022 is, by its nature, a specific field of activity within the meaning of Article 2(2) of the Administrative Code. But, considering that the Administrative Code establishes uniform administrative and administrative litigation proceedings, still Article 2(2) of the Administrative Code provides that certain aspects may be governed by special legal provisions.

According to Article 10(1) of the Law No 100 of 22 December 2017 on Regulatory Acts, an organic law is the regulatory act that represents a development of constitutional norms and may intervene in the fields provided for expressly in the Constitution.

Article 7(3) of the aforementioned Law provides that if two regulatory acts with the same binding effect have a conflict of provisions, then the provisions of the regulatory act that was approved, adopted or issued last shall be applicable, except for the situations stipulated under Article 5(3) and (4).

So, both Law No 26 of 10 March 2022 and the Administrative Code are organic laws, but the former is a special law. In this respect, Law No 26 of 10 March 2022 takes precedence, but this does not exclude the application of the Administrative Code, since the special law does not contain norms regulating a particular aspect, and it is not possible to completely exclude the Administrative Code from its scope of application due to the central role and organic connection of the Administrative Code with the fields/subfields of administrative law.

The Special Panel hence cannot hold the argument raised by the representatives of the Commission on the non-application of Books I and II of the Administrative Code to the examination of cases pending before the Supreme Court of Justice.

The Special Panel notes that in applying the provisions of the Administrative Code, the provisions of Special Law No 26 of 10 March 2022 may not be distorted and that the provisions of the Administrative Code are to be applied insofar as they do not contradict Special Law No 26 of 10 March 2022.

Regarding the legal consequences of the Pre-Vetting Commission's decision, the Special Panel holds that the existence of an act finding the lack of integrity of a judge or prosecutor is incompatible with further holding that position.

At the same time, according to Article 13(6) of the Law No 26/2022, the decision on failing the evaluation represents legal ground for not accepting the candidate into election or competition. No other legal consequences are currently stipulated but the ones expressly mentioned in the law.

Also, the Opinion No 1069/2021 of the Venice Commission and the Directorate General concluded that the revised draft law makes it clear that the results of the integrity assessment will have no effect on the candidate's career.

Thus, the Special Panel may not accept the idea that a potential fail decision would be equivalent to a finding that the person has no integrity. Should it be so, a person would have to be dismissed immediately or subject to another severe disciplinary sanction, which is not provided for by the current regulations, as it was mentioned above.

With respect to the Commission's margin of appreciation (discretionary right), the Special Panel holds that in Opinion No 1069/2021 of 13 December 2021, under section 11, the Venice Commission and the Directorate General noted that the personal integrity of the members that constitute the Superior Councils (of judges and prosecutors) is an essential element to the nature of such bodies; it ensures the confidence of citizens in justice institutions – trust in magistrates and in their integrity. In a society that respects the fundamental values of democracy, the trust of citizens 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 expressed their opinion previously, in other contexts, that critical situations in the field of justice, such as extremely high levels of corruption may justify equally radical solutions, such as an examination of the sitting judges.

Ultimately, it is up to the Moldovan authorities to decide if the prevailing situation in the Moldovan judiciary creates a sufficient foundation to subject all judges and prosecutors, as well as SCM and SCP members, to extraordinary integrity assessments. Besides the preamble to the Law No 26/2022, mentioned above, the Special Panel established at the Supreme Court of Justice, deems necessary to mention that according to Objective 1.2 of the Strategic Direction “Strengthen the integrity and accountability in the justice sector” of the Law approving the 2022-2025 Strategy on ensuring the independence and integrity of the justice sector and the Action Plan for its implementation No 211 of 6 December 2021, specifically:

“Identification of efficient leverages directed at strengthening the independence of judges and prosecutors is to be linked with an increase in their accountability and integrity. Responsibility and integrity are some of the main elements of ensuring citizens' trust in the justice system and the guarantee of conducting fair proceedings. Building and promoting a culture of judicial integrity is an important element in preventing corruption, which is one of the main threats for the society and for the functioning of the rule of law. Currently, based on surveys conducted, corruption and lack of integrity in the judiciary are perceived by the general public as being at a high level. In the Fourth Evaluation Round Report on the Republic of Moldova, GRECO is also deeply concerned by indications that candidates presenting integrity risks are appointed as judges.

The International Commission of Jurists in the 2018 Evaluation Mission Report stressed that it is important that corruption in the judiciary is addressed robustly and as a priority, in full respect of the rule of law and human rights. The ICJ is concerned that the focus of many criminal investigations seems to be directed more at stifling dissent or preventing dissident voices in the judiciary rather than at really eradicating the phenomenon of corruption.

It is essential for justice stakeholders, individually and collectively, to observe and honour their offices as a public mandate and to exert efforts in order to improve and uphold public trust in the system.”

Furthermore, in its recent Opinion No 24 (2021) on the evolution of the Councils for the Judiciary and their role for independent and impartial judicial systems, CCJE reminds (§ 34) that the selection process of Council members, including possible campaigns by candidates, should be transparent and ensure that the candidates’ qualifications, especially their impartiality and integrity are ascertained. In the opinion of the Venice Commission and of the Directorate General, a distinction should be made between the vetting of serving members and the “prevetting” of candidates to a position on these bodies. As a matter of principle, the security of the fixed term of the mandates of members of (constitutional) bodies serves the purpose of ensuring their independence from external pressure. Measures which would jeopardise the continuity in membership and interfere with the security of tenure of the members of this authority (vetting) would raise a suspicion that the intention behind those measures was to influence its decisions and should therefore be seen as a measure of last resort. Integrity checks targeted at the candidates to the position of SCM, SCP and their specialized bodies represent a filtering process and not a judicial vetting process, and as such may be considered, if implemented properly, as striking a balance between the benefits of the measure, in terms of contributing to the confidence of judiciary, and its possible negative effects.

Also, the Special Panel deems relevant that in paragraph 50 of the Opinion of 14 March 2023, the Venice Commission and DGI are aware that draft Article 12 mirrors Article 8 of Law No 26/2022 which regulates the pre-vetting procedure in respect of the candidates for the positions in the Superior Council of Magistracy and Superior Council of Prosecutors. However, what could be allowed for the purposes of screening the candidates, should not necessarily be allowed for the extraordinary vetting of the sitting judges and prosecutors, since in this second case more is at stake for them and for the stability of the legal order in general. While the criteria for the pre-vetting may be relatively loose and based on the holistic assessment of the candidates’ integrity, antecedents, connections etc., the dismissal of a lawfully appointed judge or prosecutor needs to be justified with reference to more specific misbehaviour which should be more clearly defined in the law.

In the same train of thought, according to the *amicus curiae* opinion of the Venice Commission, the concept of integrity assessment involves the implementation of a process of accountability mechanisms to ensure the highest professional standards of conduct and financial integrity in public office. In a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources (see CDL- AD (2022)011, § 9-10).

In their Opinion, Venice Commission and the Directorate General noted that the Pre-Vetting Commission issues a negative report when it has “serious doubts” about the commission by the judge or the prosecutor concerned of certain offences. The standard implies that the findings of the Pre-Vetting Commission do not establish the fault of the persons concerned, or do not directly entail any liability, which would most likely require a different (higher) standard of proof. To a certain extent, this construction reduces the potential for a conflict between the findings of the Pre-Vetting Commission and of other administrative or judicial bodies, which is addressed above.

The Constitutional Court also found in paragraph 120 of the Inadmissibility Decision No 42 of 6 April 2023 that by means of the phrase “seriously”, the legislator limited the discretionary margin of the Pre-Vetting Commission when assessing the ethical integrity of the candidates. This criterion allows the Commission to decide on failure of the candidate only if it finds violations of ethics and professional conduct that are of a high severity. This means that the candidate can discuss the seriousness of violations found by the Commission before the Special Panel of the Supreme Court of Justice, which could ultimately appreciate the “serious” nature of the found deviation, depending on the specific circumstances of the case. This rationale is applicable, *mutatis mutandis*, in case of the words “wrongful”, and “inexplicable” in Article 8(2)(a) of the Law.

In paragraph 123 of the Inadmissibility Decision No 42 of 6 April 2023, the Constitutional Court stated that in order for the Council to perform its constitutional duties of appointing, transferring, seconding, promoting and disciplining judges (see Article 123 of the Constitution), the legislator has established that members of this constitutional body shall be people (judges and non-judges) of a high professional reputation and personal integrity checked by the Pre-Vetting Commission for the last 15 years. Consequently, the Constitutional Court deemed reasonable the legislator’s decision to establish an extensive period of checking the candidates’ financial integrity.

As well, in the Inadmissibility Decision No 42 of 6 April 2023, paragraph 123, the Constitutional Court stated, with respect to the phrase “serious doubts” from Article 13(5) of Law No 26, that the criticized wording establishes a standard of proof applicable to the assessment procedure. Thus, when the Pre-Vetting Commission has to decide on the integrity of a candidate, it has to find if there are any serious doubts regarding the candidate meeting the ethical and financial integrity criteria, as laid down in Article 8 of the Law.

The Constitutional Court held that the definition of standards of proof requires unavoidably the use of flexible texts. In this case, the standard of proof established by the legislator aims at guiding the Pre-Vetting Commission in appraising the assessment results.

The law also obliges the Pre-Vetting Commission to issue a reasoned decision, which is supposed to cover all relevant facts, reasons and conclusion of the Commission on pass or fail. Moreover, the law allows the candidate to discuss the existence of serious doubts regarding him/her meeting the ethical and financial integrity criteria before the Special Panel of the Supreme Court of Justice.

Thus, the Special Panel of the Supreme Court of Justice holds that, even though the Commission’s margin of appreciation regarding the “serious doubts” is not unlimited (conclusions must rely on objective data), it is still quite broad. The potential risks in relation to benefits, in case if a candidate is not admitted even though he/she has integrity, but was not able to eliminate certain doubts about himself/herself, are much lower than in the situation where a

candidate without integrity is admitted because any doubt should be interpreted in favour of the individual. This status is determined by both the high overall interest towards the pre-selection into the SCP, and the potential low interference with the rights of subjects of the assessment, as opposite to the consequences of the vetting.

Regarding this case, the Special Panel finds that by Decision No 45 of 04 July 2023 on the candidacy of Gheorghe Graur, candidate for the Superior Council of Prosecutors, on the basis of Article 8 paras (1), (2)(a) and (2)(c), (4)(a) and (4)(b), (5)(b), 5(c) and 5(f) and Article 13(5) of Law No 26/2022, the Pre-Vetting Commission decided that the candidate does not meet the integrity criteria as serious doubts have been found as to the candidate's compliance with the ethical and financial integrity criteria and thus fails the evaluation, citing failure to comply with the legal regime for declaration of assets and personal interests; inability to prove the origin of the financial means for the purchase of goods by parents and parents-in-law; financial benefits that the candidate's wife received in connection with the donation/purchase of an apartment in 2013; drunk driving and disorderly conduct.

According to Article 8 paras. (1), (2)(a) and (2)(c), (4)(a) and (4)(b), (5)(b), 5 (c), 5 (d) and 5(f) of the Law on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors No 26 of 10 March 2022, for the purposes of this Law, the evaluation of the integrity of the candidates consists of assessing their ethical and financial integrity.

The candidate shall be deemed to meet the criterion of ethical integrity if:

a) a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

b) he/she did not violate the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

A candidate is deemed to meet the criterion of financial integrity if the candidate's wealth was declared as required by law.

A candidate is deemed to meet the financial integrity criterion if the Pre-Vetting Commission finds that the wealth acquired by the candidate over the past 15 years are consistent with the declared income.

To assess the candidate's financial integrity, the Pre-Vetting Commission verifies the candidate's compliance with the legal regime for the declaration of assets and personal interests.

In order to assess the financial integrity of a candidate, the Pre-Vetting Commission shall verify the acquisition of assets owned or held by the candidate or the persons referred to in Article 2(2), as well as the costs associated with the maintenance of those assets.

In order to assess the financial integrity of a candidate, the Pre-Vetting Commission shall check whether or not there are donations for which the candidate or the person referred to in Article 2(2) has beneficiary or donor status.

On the non-compliance with the legal regime for the declaration of assets and personal interests for 2019-2023, the Pre-Vetting Commission noted that according to the information provided by the National Integrity Authority, the candidate submitted declarations of income and property/assets and personal interests for 2019, 2020, 2021 but failed to include in the declarations the right of use by him and his wife of vehicles that are owned by others. In response to the written questions of the Pre-Vetting Commission on the failure to declare the right to use vehicles, the candidate stated that his use of his mother's and father-in-law's vehicles does not constitute a right of use in the legal sense but is only a family arrangement, i.e. he uses them only when he needs them.

In this regard, the Pre-Vetting Commission noted that the name of the candidate, Gheorghe Graur, appears in four insurance policies for the Range Rover Sport model car belonging to his mother covering the period 2019-2023, and that the candidate's wife was fined for driving the

Range Rover Sport model car.

Also, in written correspondence with the Pre-Vetting Commission, the plaintiff indicated that his wife intermittently uses the BMW **** * car when necessary but rarely, however, during the hearing, the plaintiff admitted that all the traffic violations took place in Chisinau, while his father-in-law lives in Transnistria, and that his wife uses the car to travel from home to work and vice versa.

According to Article 3(1)(a) of Law No 133 of 17 June 2016 on the Declaration of Assets and Personal Interests, the subjects of the declaration of assets and personal interests are the persons holding public offices referred to in the annex to Law No 199 of 16 July 2010 on the Status of Persons Holding Public Offices.

According to the annex to Law No 199 of 16 July 2010 on the Status of Persons Holding Public Offices, prosecutors at all levels are persons holding public office.

In accordance with Article 4(1)(b) of the Law on the Declaration of Assets and Personal Interests No 133 of 17 June 2016, the persons referred to in Article 3(1) shall declare movable and immovable property, including construction in progress, which is owned by the subject of declaration, including as a beneficial owner, his/her family members and his/her cohabitant on the right of usufruct, use, habitation, superficies, or which is in their possession on the basis of assignment, commission, trust management, transfer of possession and use agreements.

Thus, having applied the relevant legal provisions to the situation in the present case, the Pre-Vetting Commission concluded that the candidate was required to indicate the right to use Range Rover Sport model car and BMW **** * model vehicle in his declaration of assets and personal interests for the years 2019-2021, but contrary to this obligation, the candidate evaded it, though he admitted during the hearing that the BMW **** * model vehicle was used by him and his wife and that he would consider the need to declare the right to use the vehicle in his next annual declaration.

The Special Panel dismisses as unfounded the plaintiff Gheorghe Graur's contention that the Pre-Vetting Commission exceeded its powers, on the ground that the candidate's assets were declared in the manner prescribed by law, as evidenced by the issuance by the National Integrity Authority of Protocol No 377/28 on the verification of declarations of assets and personal interests dated 30 September 2022, although Article 8(6) of the Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors expressly provides that the Pre-Vetting Commission shall not depend on the opinions of other bodies competent in the field in assessing and deciding on the criteria set out in paras. (2)-(5).

Pursuant to Article 2(2) of the Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors, the wealth of persons close to the candidates, as defined in Law No 133 of 17 June 2016 on the Declaration of Assets and Personal Interests, as well as the persons referred to in Article 33(4) and (5) of Law No 132 of 17 June 2016 on the National Integrity Authority, shall also be verified in the context of the evaluation of candidates referred to in para. (1).

According to Article 2 of Law No 133 of 17 June 2016 on the Declaration of Assets and Personal Interests, close person means spouse, child, cohabitant of the subject of declaration, dependent person of the subject of declaration, also person related by blood or adoption to the subject of declaration (parent, brother/sister, grandparent, grandchild, nephew/niece, uncle/aunt) and 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).

According to Article 33(4) and (5) of Law No 132 of 17 June 2016 on the National Integrity Authority, the control of assets and personal interests shall cover family members, parents/parents-in-law, and adult children of the person subject to control. If the person subject to control cohabitates with another person, then the control shall cover the assets of that person, too.

The Pre-Vetting Commission said the doubts arose due to the fact that in 2019, the candidate's mother **** * purchased a Range Rover model car and his father-in-law

purchased a BMW **** **.

Regarding the vehicle bought by **** **, the Pre-Vetting Commission noted that, according to information provided by the State Tax Service, the candidate's mother's income for the period from 2007 to mid-2019 totalled 1,043,878 MDL. When asked about the source of the financial means his mother used to buy the car, the candidate answered, during the round of questions, that his mother took a consumer loan of 200,000 MDL for this purpose.

Subsequently, during the hearing, the candidate mentioned that his father had worked abroad between 2001 and 2014, and part of the money for the purchase of the car could have been taken from his income.

Also, the Pre-Vetting Commission noted that during the hearing, the candidate, for the first time, disputed the value of such cars, indicating that they should not be higher than 12,000 EUR, and later stated that his mother had purchased the car at a much lower price, namely for 5,000 EUR, because there were some technical defects that needed to be repaired and the maintenance of this car is expensive, without providing a copy of the sale and purchase contract and records confirming the repairs made to the car in support of his position.

The Pre-Vetting Commission had reservations about the plaintiff's contention that the candidate's father worked abroad between 2001 and 2014, as the alleged events were not supported or corroborated by information or supporting documents about the father's income, or by any statement from a person with direct knowledge of the events, such as the candidate's mother or the father himself.

The Pre-Vetting Commission therefore concluded that it is difficult to believe that, even if **** ** had taken out a consumer loan to buy the car, it could have fully covered the cost of the vehicle, as the material gathered shows that the cost of the car was roughly equivalent to the combined salary of the candidate's mother for the four years from 2007 to mid-2019, and no other supporting evidence was provided by the candidate.

With regard to the vehicle purchased by the candidate's father-in-law, the Pre-Vetting Commission noted that during the round of questions, the candidate had stated that the BMW **** ** model car belonged to a company and was purchased by his father-in-law on instalments.

At the public hearing, the plaintiff disputed the value of the car as presented by the Pre-Vetting Commission and stated that the real value was about 4,000 EUR lower but did not submit any documents to prove this.

The Pre-Vetting Commission, therefore, doubted the contention of the plaintiff that the cost of the BMW **** ** model car was paid by his father-in-law in instalments from 2019 to 2022, as no explanation was given as to the source of financial means used by his father-in-law to purchase, even in instalments the said car. According to the information provided by the State Tax Service, the candidate's father-in-law had no income between 2007 and 2011, except for 10 MDL on his 2010 declaration, between 2012 and 2017 he had a gross income of 535,414 MDL (approximate 26,770 EUR), and since 2018 he has no income.

Regarding the donation of an apartment to the candidate's wife in 2013 and its subsequent sale in 2018, the Pre-Vetting Commission noted that in 2013, the candidate's wife received from a company by way of donation an apartment of 153.8 sq.m., located in Chisinau, the cadastral value of which was 847,326 MDL, but the real price established in the contract was 1,401,074 MDL.

In response to the Commission's questions, the candidate indicated that his wife does not remember how she became the owner of the apartment, and at the public hearing he stated for the first time that the apartment in question was not donated to his wife but was given to her under a sale and purchase agreement, and that it was his parents-in-law's initiative to invest in the apartment, without being able to convincingly explain why this transaction was in the form of a donation agreement. Finally, he noted that the transaction in question was concluded in the form of a donation agreement at the request of the notary.

The Pre-Vetting Commission had reservations about the plaintiff's contention that his wife signed the donation agreement at the request of the notary. According to Article 195 of the Civil

Code, a civil legal act is an expression by individuals and legal entities of their will aimed at establishing, changing or terminating civil rights and obligations, but not at instructing third parties to perform or not to perform a certain action, which raised doubts about the correctness of the legalisation of this transaction, but which were not mitigated by the candidate either at the hearing or in court.

Subsequently, the Pre-Vetting Commission noted that according to the information provided by the State Tax Service, the income of the candidate's parents-in-law till 2013 was only 2,395 MDL.

When asked about the source of the financial means with which his parents-in-law had purchased the apartment at the price of 1,401,074 MDL, the candidate explained that his parents-in-law had been engaged in economic activity since 1998 in Transnistria, owning a grocery shop, which at that time had been their only source of livelihood, and that at present they rent out this commercial premises and derive income from raising cattle, selling dairy products and walnut kernels. The Pre-Vetting Commission therefore found the candidate's explanation as to the source of financial means his parents-in-law used to purchase the property implausible, as it was not supported or corroborated by any information or supporting documents on the income of his parents-in-law or any statement by a person with direct knowledge of the events.

The plaintiff was also asked to explain why his parents-in-law agreed to sell the apartment in 2018 at a price of only 847,325 MDL, which is 553,749 MDL less than the purchase price in 2013, and to pay their son's debts of around 45,000-50,000 EUR at that time, but the plaintiff was unable to provide a convincing explanation for these circumstances.

At the same time, the Pre-Vetting Commission pointed out that on the one hand, the candidate stated at the public hearing that his wife did not contribute financially to the purchase of the apartment in 2013 and did not receive any money from the sale of the property in 2018, and on the other hand, he stated that his wife suffered financial loss in connection with the apartment as she could not sell it at the market price, thereby concluding that the candidate had provided contradictory statements, thus contributing to the doubt.

Thus, it should be noted that the Pre-Vetting Commission diligently fulfilled all its obligations under the Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors, namely, it endeavoured to obtain relevant information from natural and legal persons of public or private law, including financial institutions, the documents necessary for the evaluation.

However, when certain ambiguities were found, the Pre-Vetting Commission gave the plaintiff an opportunity to clarify them by submitting additional data and information (within the meaning of Article 10(7) of Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors), allowing sufficient time for the submission of additional records, information and explanations to mitigate doubts raised about certain circumstances that could only be provided directly by the candidate.

However, in the present case, it is found that the plaintiff did not exercise this right to the fullest extent by being passive in submitting and providing the requested evidence and information, which prevented the Pre-Vetting Commission from verifying the circumstances about which it had doubts and dispelling the doubts raised after examining the additional evidence submitted.

The Special Panel, reiterating that the plaintiff Gheorghe Graur had failed to mitigate the doubts raised by the Pre-Vetting Commission during the judicial enquiry, draws attention in particular to the fact that he had driven luxury vehicles such as Range Rover, BMW, Audi without declaring ownership of them.

Thus, the plaintiff's contentions, according to which he and his wife periodically, two or three times a month, used the Range Rover car belonging to his mother, although it was he who concluded the insurance contracts; periodically used the BMW car belonging to his wife's father,

who lives in Transnistria; periodically took cars from the car park managed by his wife's brother for travelling, in many respects clearly contradict the existing objective reality. Of particular concern is the explanation that he sometimes took expensive cars from his wife's brother's car park for personal use. According to the plaintiff, both the Pre-Vetting Commission and the court should have accepted that the wife's brother, being an entrepreneur, that is, a person who usually knows how to count every penny if he wants to succeed in this field, provided them without insurance, that is, with the risk of partial or total damage without the possibility of compensation in the event of an accident, cars that were parked for sale and belonged not to the brother but to his clients, for traveling on family business, and not the cheapest ones to reduce losses in the event of an accident, but very expensive ones. Obviously, the situation described has nothing to do with reality, and the most obvious plausible explanation may be that Mr and Mrs Graur periodically had several luxury cars in their actual possession without declaring them, whatever the reasons for non-declaration.

As to the plaintiff's contention that the Pre-Vetting Commission was supposed to verify his financial integrity only from the time he took office as a prosecutor and entered into a marital relationship, the Special Panel finds it unfounded because the authority granted by the legislature to the Pre-Vetting Commission to verify the financial status of candidates being evaluated is not limited in time, i.e., to verify their financial solvency only during the period from their induction as prosecutor/judge until the commencement of the commission's work, but it is given a broader right to verify the wealth of the candidate and his/her relatives for the last 15 years. The Commission has thus exercised its powers in accordance with the provisions of Article 8(4)(b) of Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors.

Thus, by verifying the condition of the candidate's relatives, the Pre-Vetting Commission has fulfilled its mandate under the law in force. Article 2(2) of the Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors expressly provides that in the context of the evaluation of the candidates referred to in para. (1), the wealth of persons close to the candidates, as defined in Law No 133/2016 on the Declaration of Assets and Personal Interests, as well as the persons referred to in Articles 33(4) and (5) of Law No 132/2016 on the National Integrity Authority, shall also be verified.

Hence, by submitting his personal file and continuing to pursue his intention to take part in the competition for election to the position of member of the Superior Council of Prosecutors, including by appearing before the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, the plaintiff voluntarily accepted the consequences of any unfavourable decision of the Pre-Vetting Commission.

As regards the violations of the traffic rules, driving under the influence of alcohol and hooliganism repeated in the appealed decision, the Special Panel notes the following.

According to Law No 26/2022 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors, when evaluating the integrity of a candidate for the position of member of the Superior Council of Prosecutors, the Pre-Vetting Commission examines the prosecutor's behaviour to determine whether he/she meets the criteria of ethical and financial integrity and whether he/she can be recommended to the General Assembly of Prosecutors for election to the position for which he/she is seeking election. In this case, the candidate's behaviour is assessed in relation both to legal provisions on this matter, and to principles that are relevant for this field.

Article 8 paras. (1), (2)(a) and (3) and Article 13(5) of Law No 26/2022 are relevant in this respect, as they stipulate that for the purposes of this law, checking the candidates' integrity shall consist of checking their ethical integrity and financial integrity. The candidate shall be deemed to meet the criterion of ethical integrity if: a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be

inexplicable from the point of view of a legal professional and an impartial observer. As such, a candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the requirements set out in Article 8, which have not been mitigated by the evaluated person. In the absence of approved rules of ethics and conduct for the field in which the candidate works or has worked, it is necessary to check whether the candidate's past behaviour raises reasonable suspicion as to his/her compliance with the standards of ethics and conduct established for judges and prosecutors.

In addition, according to Article 5(2) of the Evaluation Rules of the independent Pre-Vetting Commission for assessing the integrity of the candidates for the position of member in the self-governing bodies of judges and prosecutors pursuant to Law No 26/2022, adopted at the meeting of the Pre-Vetting Commission of 2 May 2022, with further amendments, in assessing compliance with the ethical integrity criterion, the Commission may take into consideration the gravity or severity, the surrounding context, and the wilfulness, of any ethical integrity incident, and as to minor incidents, whether there has been a sufficient passage of time without further reoccurrences. While determining the gravity, the Commission will take into account all circumstances, including but not limited to: a. whether the incident was a singular event; b. causing no or insignificant damage to private or public interests (including public trust) – such as the occasion of an ordinary traffic violation; c. or not being perceived by an objective observer as an attitude of disrespect for the social order arising from disregard for rules and regulations.

In this case, the Commission indicated that in discussing traffic violations with the plaintiff, the plaintiff mentioned that he could have taken advantage of his position as a prosecutor and thus avoided paying fines for those violations. When asked what he meant by "taking advantage of his position", the plaintiff stated that he could have entered into a discussion with the police inspector, explaining that both he and the police inspector work in the same system of law and thus would have persuaded him not to impose the fine.

Given that the plaintiff had allowed the possibility of avoiding liability for a contravention, including the imposition of a fine, by using the prerogatives of his office, the Pre-Vetting Commission argued that such an approach would be a gross violation of his ethical obligations, since a paragraph of the Code of Ethics of Prosecutors, approved by Decision of the General Assembly of Prosecutors No 4 of 27 May 2016, exhaustively provides that a prosecutor shall not use the prerogatives of his office to influence the decisions of other institutions or persons, whether working in the public or private sphere.

A prosecutor, as a public official, must therefore meet the highest expectations, since decent, honest behaviour in the family and in society is, in fact, the guiding moral principle for members of society and, accordingly, must resist all temptations to engage in illegal activities for personal gain, and his deviations from the rules of conduct may be perceived by an objective observer as a disrespectful attitude towards public order, as evidenced in the present case.

Thus, the Pre-Vetting Commission noted that on 18 August 2012, at 05.30 a.m., the candidate was pulled over by police inspectors for driving while heavily intoxicated, accused of committing an offence under Article 264/1 of the Criminal Code and, on the advice of his lawyer, pleaded guilty, and on 1 November he was found guilty of a contravention and fined 2,000 MDL.

The Pre-Vetting Commission rejected the candidate's contention at the hearing that he was not pulled over while driving but in a car parked in a petrol station parking lot when he started the engine to turn on the heating in the car, as the plaintiff had unequivocally accepted what was alleged on the record, as he had not challenged its correctness and had pleaded guilty as per the circumstances stated by the police inspectors. But according to the medical records, there was a high level of alcohol in his blood and breath, indicating an advanced state of alcohol intoxication.

Moreover, the candidate was penalised for the offence of hooliganism with mild degree of aggravation. However, he confirmed that he was only involved in the case of hooliganism that took place in 2014, and as for the other act, he stated that it was not committed by him, but when asked to explain why his personal code appeared in the case file, he could not explain it, and these inadequacies on the part of the candidate caused the Pre-Vetting Commission to doubt his

ethical integrity.

Also, the Pre-Vetting Commission had reservations about the candidate's honesty when filling in the questionnaire on the candidate's ethical integrity, as he evaded answering questions 1 and 4 and did not indicate that he was a party to a criminal or contravention case and that he had been punished for drunk driving, thus ignoring the provisions of para. 6.1.2 of the Code of Ethics of Prosecutors approved by Decision No 4 of 27 May 2016 of the General Assembly of Prosecutors, according to which a prosecutor must act with honesty and integrity.

As a result, the Special Panel concludes that the candidate's incongruities and inconsistent explanations regarding the issues under evaluation undermined the candidate's credibility before the Commission with respect to his explanations about his inability to demonstrate the origin of the financial means for the purchase of goods by his parents and parents-in-law, the financial benefits that the candidate's wife received in connection with the donation/purchase of an apartment in 2013, drunk driving and hooliganism, and these circumstances were sufficient for the Pre-Vetting Commission to conclude that there was serious doubt as to the candidate's compliance with the requirements of Article 8 of Law No 26 of 10 March 2022.

As to the plaintiff's allegations regarding the members of the Pre-Vetting Commission and its work, the Special Panel notes that they cannot serve as a basis for alleging serious procedural errors affecting the fairness of the plaintiff's evaluation procedure or circumstances that could have led to the plaintiff's passing the evaluation. In line with Article 4 of the Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors, the Pre-Vetting Commission shall have functional independence and decision-making autonomy from any individuals and legal entities, irrespective of their organisational and legal form, including political parties and development partners that participated in the appointment of its members. In its activity, the Pre-Vetting Commission shall follow the Constitution of the Republic of Moldova, this law, and other regulatory acts governing the fields related to its activity. The Commission acts on the basis of its own Rules of procedure, that it approved.

As such, the Special Panel finds that the plaintiff did not provide any evidence during the evaluation procedure or before the court disproving the situation established by the Pre-Vetting Commission or any other circumstances that could have led to the candidate passing the evaluation. For when examining the appeal, the Special Panel does not have to re-evaluate the circumstances already evaluated by the Commission, but only to decide whether new circumstances have arisen which could have led to the candidate passing the evaluation, but which were not previously examined in the evaluation process.

Pursuant to Article 14(8) of Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors, when considering an appeal against the decision of the Vetting Commission, the Special Panel of the Supreme Court may adopt one of the following decisions:

a) reject the appeal;

b) accept the appeal and order the re-evaluation of candidates who failed the evaluation if it finds that within the evaluation procedure, the Pre-Vetting Commission made some serious procedural errors that affected the fairness of the evaluation procedure, and that there are circumstances that could have led to the candidate passing the evaluation.

Therefore, in view of the legal provisions set out above and of the fact that the object of this action is the decision of the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors No 45 of 4 July 2023 on the candidacy of Gheorghe Graur, the Special Panel notes that, in this case, it is to ascertain whether serious procedural errors were committed by the Pre-Vetting Commission in the evaluation procedure, that affected the fairness of the evaluation procedure, and whether there were circumstances that could have led to the candidate passing the evaluation. In examining this appeal, the Special Panel may not exceed the limits of its remit and the powers conferred on it by the Parliament when examining the appeal against the decision of the Pre-Vetting Commission, which are laid down in Article 14(8) of the Law on measures

related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors No 26 of 10 March 2022, on the basis of the Constitutional Court Decision No 5 of 14 February 2023 on the unconstitutionality of certain provisions of the Law No 26 of 10 March 2022 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors.

The Special Panel notes that, in paragraph 81 of the Constitutional Court Decision No 5 of 14 February 2023 on the unconstitutionality of certain provisions of the Law No 26 of 10 March 2022, the Constitutional Court held that the law must provide for remedies in cases where the candidate was not guaranteed their procedural rights in the evaluation procedure. Depending on any procedural shortcomings at the evaluation stage, on the nature of the procedural right affected and the particular circumstances of the case, the Court holds that the failure to safeguard a procedural right may be regarded as a central issue in the dispute.

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

Having considered whether the challenged provisions allowed the Special Panel of the Supreme Court of Justice to “examine sufficiently” the central issues of any potential disputes, the Constitutional Court accepted that the challenged provisions were capable of delivering the objective pursued by the legislator, i.e. to avoid situations of annulment of the decisions of the Commission because of the violation of insignificant procedural rules.

The Special Panel notes that according to Article 12(4) of Law No 26 of 10 March 2022, the candidate has the following rights:

- a) to attend the meetings of the Pre-Vetting Commission and give oral explanations;
- b) to be assisted by an attorney or a trainee attorney during the evaluation procedure;
- c) to consult the evaluation materials, at least 3 days before the hearing;
- d) to submit in writing additional data and information, which he/she deems necessary, in order to remove suspicions about his/her integrity, if he/she was in impossibility to present them previously;
- e) to appeal the decision of the Pre-Vetting Commission.

The concept of “civil rights and obligations” cannot be interpreted solely by reference to the respondent State’s domestic law; it is an “autonomous” concept deriving from the Convention. Article 6 § 1 applies irrespective of the parties’ status, the nature of the legislation governing the “dispute” (civil, commercial, administrative law etc.), and the nature of the authority with jurisdiction in the matter (ordinary court, administrative authority etc.) [Georgiadis v. Greece, § 34; Bochan v. Ukraine (no. 2) [GC], § 43; Naït-Liman v. Switzerland [GC], § 106;].

The applicability of Article 6 § 1 in civil matters firstly depends on the existence of a “dispute”. Secondly, the dispute must relate to a “right” which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. As a result, the result of the proceedings must be directly decisive for the “civil” right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (Regner v. the Czech Republic [GC], § 99; Károly Nagy v. Hungary [GC], § 60; Naït-Liman v.

Switzerland [GC], § 106).

Therefore, the Special Panel concludes that in the light of Article 6 § 1 of the ECHR, the Constitutional Court Decision No 5 of 14 February 2023 and Article 12(4) of Law No 26 of 10 March 2022, to determine whether the Pre-Vetting Commission committed serious procedural errors in the evaluation procedure that affected the fairness of the evaluation procedure, it must be ascertained whether the plaintiff Gheorghe Graur's procedural rights under the special law were observed.

Thus, it is established in the present case that Gheorghe Graur attended the meetings of the Pre-Vetting Commission and gave oral explanations, had the opportunity to submit in writing additional data and information that he considered necessary to remove suspicions about his integrity if he could not submit them earlier, and had the opportunity to appeal the decision of the Vetting Commission.

Moreover, the plaintiff Gheorghe Graur was informed of the right to acquaint himself with the administrative case file, and he exercised this right on 22 May 2023, in circumstances where the public hearing was held on 24 May 2023. Thus, the plaintiff's right to acquaint himself with the materials collected by the Pre-Commission was respected.

In this context, the Special Panel concludes that plaintiff Gheorghe Graur was granted and exercised her rights under Article 12(4) of Law No 26 of 10 March 2022 to the full extent.

As to the plaintiff's contention that the Pre-Vetting Commission failed to attach to the case file and provide him with all the documents received from public authorities or institutions for their perusal, namely the information note issued by the National Anti-Corruption Center, the Special Panel rejects it. On request of the court, the defendant's representatives produced the document and on viewing the document in the court hearing, it was found that it was not a primary source which contained information about the candidate being evaluated, including the persons referred to in Article 2(2) of Law No 26 of 10 March 2022 on certain measures for the selection of candidates for the position of a member of the self-administration bodies of judges and prosecutors, but was a brief analysis made by the institution based on the available information.

Thus, the Pre-Vetting Commission acted in accordance with the law by obtaining information from several sources to evaluate the financial and ethical integrity of the candidate. The Commission hid nothing, and where these sources were relevant and referenced in the decision, they were included in the case file to create certainty for the candidate, and in the event of judicial review in court, as to what was the basis for a finding of the Commission. Other unrelated documents, in this case the National Anti-Corruption Center's information note, should not have been attached to the case file.

The Special Panel also finds purely declaratory the plaintiff's contention that the Pre-Vetting Commission failed to relate the legal basis to the factual circumstances established and failed to justify its decision regarding the ethical integrity of the candidate. The decision of the evaluation committee contains both factual and legal substantiation for each argument put forward.

Considering the aforementioned, the Special Panel finds that in this litigation brought before the court there are no legal grounds for annulling the decision of the independent Pre-Vetting Commission for assessing the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors No 45 of 04 July 2023 regarding the candidacy of Gheorghe Graur. Namely, the administrative act subject to judicial review was issued in accordance with the law and no circumstances were found which could have led to the candidate passing the evaluation and the Pre-Vetting Commission did not commit any severe procedural errors that could affect the fairness of the evaluation, therefore the appeal lodged by Gheorghe Graur is found unreasoned and is to be rejected.

In line with Article 14(6), (8)(a), (9) of the Law on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors No 26 of 10 March 2022, the Special Panel established within the Supreme Court of Justice to examine the appeals against the decisions issued by the independent Pre-Vetting

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

d e c i d e s:

To annul appeal lodged by Gheorghe Graur against the independent Pre-Vetting Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, seeking that Decision No 45 of 04 July 2023 on the candidacy of Gheorghe Graur, candidate for the Superior Council of Prosecutors, and that the candidate evaluation procedure be resumed.

This decision is irrevocable.

Hearing Chairperson, Judge

Ion Malanciuc

Judges

Oxana Parfeni

Aliona Donos