



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

Comisia independentă de evaluare a integrității candidaților la funcția de membru în organele de autoadministrare ale judecătorilor și procurorilor

Decision No. 8 of 30 January 2024 on the Resumed Evaluation of Ecaterina BUZU, Candidate for the Superior Council of Magistracy

The Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (“the Commission”) deliberated in private on 22 December 2023 and 30 January 2024. The members participating were:

1. Herman von HEBEL
2. Victoria HENLEY
3. Nadejda HRIPTIEVSCHI
4. Tatiana RĂDUCANU
5. Nona TSOTSORIA

The Commission delivers the following decision, which was adopted on that date:

I. The procedure

Ecaterina BUZU, judge at the Orhei Court (“the candidate”), was on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 6 April 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge for the initial five-year term on 30 January 2012 to serve in Orhei Court. On 19 December 2016, the candidate was appointed to serve as investigative judge in Orhei Court between 27 - 31 December 2016. On 27 December 2016, the candidate was appointed as investigative judge between 1 January 2017 and 31 December 2017 in Orhei Court. On 19 December 2017, the candidate was appointed to serve as investigative judge in Orhei Court between 1 January 2018 and 31 December 2020. The candidate was appointed as a judge until the retirement age on 22 March 2017. On 27 November 2018, the candidate was appointed as judge with specialization in examining cases involving minors.

The candidate was initially evaluated by the Commission (hereinafter “initial evaluation”) starting on 8 July 2022. The candidate submitted the voluntary ethics questionnaire on 11 July 2022. On 18 July 2022, the candidate submitted a completed Declaration of assets and personal interests for the past five years (hereinafter „five-year declaration”) as required by art. 9 para.(2) of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter “Law No. 26/2022”), which includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. During the initial evaluation, the Commission collected information from multiple sources.¹

¹ The sources from which information was obtained concerning evaluated candidates generally included the National

The candidate also responded to written questions and requests for information from the Commission.² On 2 December 2022, the candidate participated in a public hearing before the Commission. The candidate responded to post-hearing questions from the Commission. The Commission issued its decision failing the candidate on 4 January 2023. Following the candidate's request, the candidate was granted access to the evaluation materials on 13 January 2023, according to art. 12 para. (4) lit. c) of Law No. 26/2022 .

On 28 January 2023, the candidate appealed the Commission's decision to the Supreme Court of Justice (hereinafter "SCJ") pursuant to art. 14 para. (1) and (2) of Law No. 26/2022. On 1 August 2023, the SCJ special panel for examining the appeals against the decisions of the Commission (hereinafter "SCJ special panel") issued its decision accepting the candidate's appeal, annulling the decision of the Commission and ordering the re-evaluation of the candidate.

The Commission commenced the resumed evaluation of the candidate on 8 September 2023. The candidate responded to one round of written questions from the Commission, including one question, four sub-questions and four requests for further documentation. The Commission collected additional information from various sources as needed to address the issues being considered in the resumed evaluation.

The candidate received a statement of facts and serious doubts from the Commission on 9 November 2023. Following the candidate's request, the candidate was granted access on 20 November 2023 and 8 December 2023 to the resumed evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022. The candidate responded to the statement of facts and serious doubts on 17 and 28 November. The candidate requested a public hearing and requested that V.E. be heard to address issue No. 2 about which the Commission has indicated it has serious doubts. On 22 December 2023, the candidate appeared at a hearing before the Commission. V.E. was heard at the request of the candidate. The Commission determined to conduct the part of the hearings involving V.E. in a closed meeting and met with V.E. in a closed session. The candidate provided further documentation and explanation on the candidate's own initiative after the hearing.

II. The law relating to the evaluation and resumed evaluation

Law No. 180/2023 for the interpretation of certain provisions of Law No. 26/2022 on some measures related to the selection of candidates for the position of member of the self-

Integrity Authority, State Tax Service, General Inspectorate of Border Police, financial institutions, public institutions, open sources such as social media and investigative journalism reports and reports from members of civil society. Not all sources produced information concerning each candidate and not all of the information produced by sources about a candidate was pertinent to the Commission's assessment. All information received was carefully screened for accuracy and relevance.

² The Commission sent four rounds of questions to the candidate, including 18 questions, 39 sub-questions and 12 requests for further documentation.

administration bodies of judges and prosecutors and Law No. 65/2023 on external evaluation of judges and candidates for the position of judge at the Supreme Court of Justice of 7 July 2023 (hereinafter “Law No. 180/2023”), states that, for the purpose of art. 3 para. (2) and art. 4 para. (2) of Law No. 26/2022, the Commission is not a public authority under the Administrative Code. The SCJ special panel concluded that Law No. 180/2023 consolidated the understanding that the Evaluation Commission is a public authority specific in its way, i.e. is not a legal entity of public law. The SCJ special panel further stated that, pursuant to art. 72 para. (6) of Law No. 100/2017 regarding the normative acts, an interpretative normative act shall not have retroactive effects, except for cases when the interpretation of sanctioning provisions would create a more favorable situation. The SCJ special panel ordered a resumed evaluation, which took place after the entry into force of Law No. 180/2023; thus, Law No. 180/2023 applies to the resumed evaluation.

Guided by the aim of upholding the fundamental principles of the rule of law (art.1 para. (3) of Constitution), sovereignty and state power (art. 2 of Constitution), the Commission’s decisions are adopted in accordance with the law, pursue the legitimate aims listed in Law No. 26/2022, and the outcome is necessary for a democratic society to achieve the aim or aims concerned.³ The Commission’s evaluation of candidates’ integrity consists of verifying their ethical integrity and financial integrity (art. 8 para. (1) of Law No. 26/2022) in order to increase the integrity of future members of the Superior Council of Magistracy, the 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 prosecutors and in the justice system overall (preamble to Law No. 26/2022). Increasing the confidence of society in the judicial system and the proper functioning of these institutions concern matters of great public interest.⁴ The Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe (hereinafter “Venice Commission and the DGI”) observed that the integrity evaluation is not being applied to judges or prosecutors with respect to their roles as such judges or prosecutors and is thus not engaging the independence of their role. However, it is a crucial part of the Moldovan structure of governing the justice system that judges and prosecutors serve from time to time on the self-administration bodies and noted that these are more than administrative positions; they are crucial roles in ensuring the good governance of these bodies in the justice system. Accordingly, the Venice Commission and the DGI further observed 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 their integrity. In a society that respects the fundamental values of democracy, citizens’ trust in the action of the Superior Councils depends very much, or essentially, on the personal integrity, competence, and credibility of its membership.⁵ Venice Commission Opinion No. 1069/2022

³ *Mutatis mutandis, Xhoxhaj v. Albania*, no. 15227/19, para. 378, 31 May 2021; *Nikëhasani v. Albania*, no. 58997/18, para. 93, 13 December 2022.

⁴ *Baka v. Hungary* [GC], no. 20261/12, para. 171, 23 June 2016; *Morice v. France* [GC], no. 29369/10, para. 125, ECHR 2015.

⁵ Joint opinion No. 1069/2021 of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts, 13

specifically noted that the creation of ad hoc bodies to assess the integrity of judges and prosecutors is based on the assumption that the justice system has extremely serious deficiencies and that there are systemic doubts about the integrity of magistrates.⁶

Regarding the justification for vetting procedures, both in the Albanian and Ukrainian contexts, the Venice Commission repeatedly commented that the extraordinary measures to vet judges and prosecutors were “not only justified” but were “necessary for Albania to protect itself from the scourge of corruption which, if not addressed, could completely destroy its judicial system”.⁷ In those contexts, the Venice Commission also took into account existing major problems with corruption and incompetence in the judiciary, political influence on judges’ appointments in the previous period, and the almost complete lack of public confidence in either the honesty or the competence of the judiciary.⁸ In a 2019 opinion on a draft law in Moldova that included vetting of SCJ judges, the Venice Commission and the DGI took note of the assessment made by the authorities, in particular, two resolutions of the European Parliament⁹ that “*in the last years the justice system has shown an unprecedented lack of independence and submission to oligarchic interests*” and that “*national and international institutions have declared the Republic of Moldova a captured state*”.¹⁰ The Venice Commission and the DGI also noted that it ultimately fell within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary creates sufficient basis for subjecting all judges and prosecutors, as well as members of the Superior Council of Magistracy and Superior Council of Prosecutors, to extraordinary integrity assessments.¹¹ As the European Court of Human Rights (hereinafter “ECtHR”) has held on many occasions, national authorities, in principle, are better placed than an international court to evaluate local needs and conditions.¹² A recent opinion of the Venice Commission in relation to Georgia reached similar conclusions about the need for an inclusive national consultative process to address possible reform measures including evaluating the integrity of members of that nation’s High Council of Judges in light of persistent allegations of

December 2021 (hereinafter “Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022”), para. 15 and 11.

⁶ Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, paras. 11-12.

⁷ Venice Commission Final Opinion No. 824/2015 on the revised draft constitutional amendments on the judiciary of Albania, 15 January 2016, para. 52.

⁸ Joint opinion No. 801/2015 of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) on the Law on the Judicial System and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine, 23 March 2015, paras. 72-74.

⁹ Resolution of 5 July 2018 on the political crisis in Moldova following the invalidation of the mayoral elections in Chişinău (2018/2783(RSP) and the Resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova (2017/2281(INI).

¹⁰ Interim Joint Opinion No. 966/2019 of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the reform of the Supreme Court of Justice and the Prosecutor’s Office, 14 October 2019, para. 46.

¹¹ Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 42.

¹² See, *inter alia*, *M.A. v. Denmark* [GC], no. 6697/18, para. 147, 9 July 2021; *THÖRN v. SWEDEN*, 24547/18, para. 48, 1 September 2022; see also Protocol No. 15, which entered into force on 1 August 2021.

lack of integrity in the High Council. The opinion expressly noted the temporary option of using mixed national/international advisory boards to facilitate that procedure.¹³

Art. 8 para. (2) of Law No. 26/2022 provides that a candidate is deemed to meet the criterion of ethical integrity if:

- a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors, or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer;
- b) there are no reasonable suspicions that the candidate has committed corruption acts, acts related to corruption, or corruptible acts, within the meaning of the Law on Integrity No. 82/2017;
- c) has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions, and/or limitations.

A number of versions of ethical codes applied to judges over the period of time covered by the evaluation. The codes were *Judge's Code of Professional Ethics*, adopted at the Conference of Judges on 4 February 2000, *Judge's Code of Ethics*, approved by the Superior Council of Magistracy decision No. 366/15 on 29 November 2007, *Judge's Code of Ethics and Professional Conduct*, approved by decision No. 8 of the General Assembly of Judges of 11 September 2015, amended by decision no. 12 of the General Assembly of Judges of 11 March 2016, as well as the *Commentary to the Code of Judges' Ethics and Professional Conduct*, approved by Superior Council of Magistracy's decision No. 230/12 of 8 May 2018. Since 2018, the *Guide for Judges' Integrity* approved by the Superior Council of Magistracy's decision No. 318/16 of 3 July 2018 is another relevant source to assess judicial integrity issues.

Also, the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity as The Bangalore Draft Code of Judicial Conduct 2001 and as revised at the Round Table Meeting of Chief Justices on 25 - 26 November 2002 and endorsed by United Nations Social and Economic Council, resolution 2006/ 23 ("Bangalore Principles of Judicial Conduct") provide relevant guidance.

Opinion No. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. N° 3") provides further guidance.

Art. 8 para. (4) of Law No. 26/2022 provides that a candidate shall be deemed to meet the criterion of *financial integrity* if:

¹³ Venice Commission Follow-up Opinion No. CDL-AD(2023)033 to Previous Opinions Concerning the Organic Law on Common Courts, Georgia, 9 October 2023, paras. 10, 11, 24.

- a) the candidate's assets have been declared in the manner established by law;
- b) the Evaluation Commission finds that his/her wealth acquired in the last 15 years corresponds to the declared revenues.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of the assets of persons close to candidates, as defined in Law No. 133/2016 on the declaration of assets and personal interests, as well as of the persons referred to in art. 33 para. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

Art. 8 para. (5) of Law No. 26/2022 provides that in order to assess the applicant's financial integrity, the Commission is required to verify the following:

- a) compliance by the candidate with the tax regime in the part related to the payment of taxes when using the means and income derived from the property held, as well as taxable income and the payment of import duty and export duty;
- b) compliance by the candidate with the regime of declaring assets and personal interests;
- c) the method of acquiring the property owned or possessed by the candidate or persons referred to in art. 2 para. (2) as well as the expenses associated with the maintenance of such assets;
- d) the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2);
- e) existence or not of loan, credit, leasing, insurance, or other contracts capable of providing financial benefits, in which the candidate, the person defined in art. 2 para. (2) thereof, or the legal entity in which they are beneficial owners, is a contracting party;
- f) whether or not donations exist, in which the candidate or the person established in art. 2 para. (2) has the status of donor or recipient of donation;
- g) other relevant aspects to clarify the origin and justification of the candidate's wealth.

In assessing and deciding upon the criteria related to financial and ethical integrity, the Commission shall not depend on the findings of other bodies competent in the field concerned (art. 8 para. (6) of Law No. 26/2022). The Commission is required to assess the information gathered about candidates using its own judgment, formed as a result of multi-faceted, comprehensive and objective review of the information. None of the submitted materials has a predetermined probative value without being assessed by the Commission (art. 10 para. (9) of Law No. 26/2022).

The Evaluation Commission has functional independence and decision-making autonomy from any individual or legal entity, irrespective of their legal form, as well as from political factions and development partners that participated in appointing its members (art. 4 para. (1) of Law No. 26/2022).

A candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the requirements of art. 8 of Law No. 26/2022 which have not been mitigated by the evaluated person (art. 13 para. (5) of Law No. 26/2022). In this regard, a distinction should be made between the “*vetting of serving members*” and the “*pre-vetting of candidates*” to a position on these bodies. Integrity checks targeted at the candidates for the position of Superior Council of Magistracy, Superior Council of Prosecutors and their specialized bodies (as per Law No. 26/2022) represent a filtering process and not a judicial vetting process. As such they 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.¹⁴ This important distinction between vetting and pre-vetting processes was highlighted in another recent Venice Commission Report on vetting in Kosovo, which stated that “[i]n a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources”. Also, “[i]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability”.¹⁵ In the case of Law No. 26/2022, art. 13 para. (6) makes clear that the results of the assessment by the Commission, set forth in the evaluation decision, constitute legal grounds for not admitting the respective candidate to the elections or competition. The law provides no other legal consequences of the evaluation decision; the negative decision of the Evaluation Commission does not affect in any way the judge or prosecutor's career, but only prevents him or her from running for office as a member of the Council.¹⁶

According to well-established ECtHR case law, there is no right to a favorable outcome¹⁷ and there is, in principle, no right under the Convention to hold a public post related to the administration of justice.¹⁸ As a matter of principle, States have a legitimate interest in regulating public service positions.¹⁹ In adopting Law No. 26/2022, the Moldovan Parliament required candidates for membership on the Superior Council of Magistracy and the Superior Council of

¹⁴ Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 14 and para. 43.

¹⁵ Venice Commission, CDL-AD (2022)011-e, Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), para. 10 and para. 9.

¹⁶ Section 115 of the Constitutional Court Decision Concerning Exceptions of Unconstitutionality of some provisions of Law No. 26 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 42/2023, 6 April 2023; see also Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 15 and 39.

¹⁷ See, *Kudła v. Poland* [GC], no. 30210/96, para. 157, ECHR 2000-XI, *Hilal v. the United Kingdom*, no. 45276/99, para. 78, ECHR 2001-II, *Andronicou and Constantinou v. Cyprus*, 9 October 1997, para. 201, *Reports of Judgments and Decisions* 1997-VI.

¹⁸ See, *Grzęda v. Poland* [GC], no. 43572/18, para. 270, 15 March 2022, *Denisov v. Ukraine* [GC], no. 76639/11, para. 46, 25 September 2018 and *Dzhidzheva-Trendafilova v. Bulgaria* (dec.), no. 12628/09, para. 38, 9 October 2012.

¹⁹ See, *Naidin v. Romania*, no. 38162/07, §49, 21 October 2014, and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, para. 52, ECtHR 2004-VIII.

Prosecutors to undergo the extraordinary assessment by the Commission as a part of the election/ appointment process.

In the vetting context, once the evaluating body has identified integrity issues, the burden of proof shifts to the candidate. This approach has been found permissible by the ECtHR, even in the vetting of sitting judges who may lose their positions or otherwise be sanctioned as a consequence of the evaluation. In *Xhoxhaj v. Albania*,²⁰ the ECtHR stated that “it is not per se arbitrary, for the purposes of the ‘civil’ limb of Article 6 para. 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC [Independent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file”. Interpreting doubts to the detriment of the person who has not provided the required information has been a standard in national integrity-related legislation in the Republic of Moldova.²¹ Art. 13 para. (5) of Law No. 26/2022 expressly requires the Commission to adhere to this approach since the law states that “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 laid down in art. 8, which the evaluated person has not mitigated”.

Venice Commission Opinion No. 1069/2022 observed that “(i)n a normally functioning regime, the integrity of magistrates to be elected by their peers should, by nature, result from the qualities, personal conditions, integrity and professional competence that allowed for the appointment as judges or prosecutors. Once the status of magistrate has been acquired, the qualities of integrity and competence must be presumed until proven otherwise, which can only result from disciplinary or functional performance assessment through appropriate legal procedures” (emphasis added). The Strategy of Ensuring the Independence and Integrity of the Judiciary for 2022 - 2025, approved by the Law No. 211/2021, acknowledged the public perception of lack of integrity of the actors of the judiciary (Objective 1.1) and stated that ensuring the integrity of actors in the judiciary has been declared as a national objective through various international commitments and national documents (Objective 1.2). The Strategy further stated that, “(i)n the current conditions of the Republic of Moldova, in order to achieve this objective, it is necessary to ensure an effective verification of judges and prosecutors in terms of integrity, interests, but also professionalism, which will be carried out through an extraordinary (external) evaluation mechanism, similar to the practices of other states in Europe that started this exercise following the approval of the mechanism by the international competent forums” (same Objective 1.2).

In this context, for example, one cannot conclude from the fact that a candidate never received a disciplinary sanction or has not received a decision of the National Integrity Authority regarding his/her wealth or annual assets declarations that the candidate has complied with the integrity criteria. Disciplinary enforcement in the justice system has been weak in the Republic of Moldova. The Group of States against Corruption (GRECO) noted “the view that the SCM did

²⁰ *Xhoxhaj v. Albania*, no. 15227/19, para. 352, 31 May 2021.

²¹ See, for example, art. 33 para. (9) and (10) of Law No. 132/2016 on the National Integrity Authority.

not react to reported misconduct of judges in a sufficiently determined manner. Numerous cases are reported in the media and are allegedly not acted upon by the SCM. Decisions are reportedly not well explained, available sanctions are not used to their full extent and the GET [GRECO Evaluation Team] was given examples of judges being allowed to resign at their own request instead of being dismissed, in order to be entitled to legal allowances and social benefits. This sends out unfortunate messages that misconduct and lack of diligence are tolerated with no effective deterrents”.²² A joint report of four Moldovan CSOs mirrors these findings and documents cases where disciplinary liability of judges failed.²³ As of March 2023 – seven years later – GRECO found some of its recommendations on the disciplinary liability of judges to be still only “partly implemented”.²⁴ The Organization for Economic Co-operation and Development (OECD) concluded as well that “some grounds for disciplinary liability were found to be vague [...]. Overall application of disciplinary and dismissal procedures is not perceived as impartial by non-governmental stakeholders and routine application of proportionate and dissuasive sanctions is lacking”.²⁵ Regarding “criminal investigations of judges” the International Commission of Jurists observed in 2019 that “some criminal investigations of judges, including for corruption, have been undertaken since 2013, but still with few final results”.²⁶ Concerns about the lack of accountability arise as early as when judges start their career: In 2016, GRECO was “deeply concerned by indications that candidates presenting integrity risks are appointed as judges”.²⁷

The Informative Note accompanying the draft Law No. 26/2022 stated that, “The current legal framework that regulates the procedure for verifying candidates for membership positions in the Superior Council of Magistracy and the Superior Council of Prosecutors and in their specialized bodies is insufficient, because currently the persons who are candidates for the respective positions are not subject to verification from the point of view of integrity. [...] The identified problems may be resolved by instituting an integrity filter”. The core pillars of the integrity filter created by Law No. 26/2022 (exhaustive financial and ethical integrity criteria, the right of the candidate to bring evidence and dismiss the serious doubts of the Commission, the Commission’s functional independence) were aimed to ensure that the presumption of integrity may be overturned based on evidence.

It has thus become a key element of the functional independence of the Commission that it “shall not depend on the findings of other bodies competent in the field concerned” (art. 8 para. (6) of Law No. 26/2022). This approach requires the Commission to make its own evaluation, based on the documents and information collected from the candidates and third parties (including public

²² GRECO’s Fourth Evaluation Report, Republic of Moldova, 1 July 2016, para. 135.

²³ Transparency International, and others, State Capture: the Case of the Republic of Moldova, 2017, p. 21.

²⁴ GRECO’s Fourth Evaluation Report, Second Interim Compliance Report, Republic of Moldova, 24 March 2023, para. 43, 49, 60.

²⁵ OECD, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, Moldova, 2022, p. 51

²⁶ International Commission of Jurists, The Undelivered Promise of an Independent Judiciary in Moldova, 2019, p. 35.

²⁷ GRECO’s Fourth Evaluation Report, Republic of Moldova, 1 July 2016, para. 101.

and private persons – art. 10 paras. (2) and (3) of Law No. 26/2022) and not merely rely on the previous facts, including disciplinary proceedings or the absence thereof. The Venice Commission did not raise a concern about this approach in connection with Law No. 26/2022.²⁸ For comparison, a similar provision is included in item 1.5.3 in the Methodology (2021) of the Ukrainian Ethics Council, referred to by the Venice Commission as an example regulating the evaluation of candidates.²⁹ The Constitutional Court has also referred to this approach, as follows: The Court notes that the provision containing the contested text established that upon evaluation of the ethical and financial integrity of candidates for membership of the Superior Council of Magistracy, the Evaluation Commission “shall not depend on the findings of other bodies with competences in the field concerned”.³⁰ The legislator allowed the Commission to make its own conclusions while assessing the integrity criteria and rendering decisions and that has been upheld by the Constitutional Court.

In assessing and deciding upon the criteria related to financial and ethical integrity in accordance with the provisions of Law No. 26/2022 (in particular, art. 10 para. (9)), the Commission is guided and bound by the principles of non-discrimination and equal treatment, which implies that the Commission will treat equally persons in analogous or relatively similar situations.³¹ It also means that the Commission will treat differently persons whose situations are significantly different.³² According to art. 19 of Law No. 121/2012 on ensuring equality, a person that submits a complaint to court must present facts that allow the presumption of a discrimination act, after which the burden to prove that the alleged facts do not constitute discrimination shifts to the defendant, except for facts that are subject to criminal responsibility. In discrimination cases, the ECtHR has established that, once the applicant has shown a difference in treatment, it is for the Government to show that it was justified.³³ The ECtHR has clarified that the elements which characterize different situations, and determine their comparability, must be assessed in light of the subject-matter, objective of the impugned provision and the context in which the alleged discrimination is occurring. The assessment of the question of whether or not two persons or groups are in a comparable situation for the purposes of an analysis of differential treatment and discrimination is both specific and contextual; it can only be based on objective and verifiable

²⁸ See Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022 and Joint Opinion of the Venice Commission and DGI on the Draft law on the external assessment of judges and prosecutors, 14 March 2023, para. 49-50.

²⁹ See Venice Commission Opinion No. 1109/2022 on the draft law on amending some legislative acts of Ukraine regarding improving procedure for selecting candidate judges for the Constitutional Court of Ukraine on a competitive basis, 19 December 2022, para. 54.

³⁰ See Section 128 of the Constitutional Court Decision Concerning Exceptions of Unconstitutionality of some provisions of Law No. 26 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 42/2023, 6 April 2023. See also the Constitutional Court Judgment No. 9 of 7 April 2022 on the constitutional control of Law No. 26/2022.

³¹ *Biao v. Denmark* [GC], no. 38590/10, para. 89, 24 May 2016; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, para. 61, ECHR 2010; *Burden v. the United Kingdom* [GC], no. 13378/05, para. 60, ECHR 2008

³² *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, para. 81, ECHR 2013 (extracts), *Thlimmenos v. Greece* [GC], no. 34369/97, para. 44, ECHR 2000-IV.

³³ *Timishev v. Russia*, nos. 55762/00 and 55974/00, para. 57, 13 December 2005.

elements, and the comparable situations must be considered in their totality, avoiding singling out marginal aspects which would lead to an artificial analysis.³⁴

One crucial component in the evaluation process is asset declarations. The main objectives of asset declarations include monitoring wealth variations of individual politicians and civil servants, in order to dissuade them from misconduct and protect them from false accusations, and to help clarify the full scope of illicit enrichment or other illegal activity by providing additional evidence.³⁵ To determine a candidate's integrity, Law No. 26/2022 requires the Commission to verify what a candidate has disclosed in terms of the acquisition of assets, sources of income, the existence of loans and other agreements that can generate financial benefits, donations and other aspects of the candidate's wealth (art. 8 para.(5)). Loans, for example, have been recognized as a means to cover up a declarant's incoming cash flow from undeclared sources.³⁶ The Commission is also required to scrutinize assets held in the name of a candidate's close persons (Law No. 26/2022 art. 2 para. (2)). This is because, "(i)t should be recognized that corrupt officials often hide their assets under the names of their relatives, their spouses and other individuals. Therefore, it should be possible to monitor the wealth not only of a public official, but that of close relatives and household members".³⁷ Law No. 26/2022 also requires the Commission to scrutinize what a candidate did not disclose in assets declarations: "the Evaluation Commission shall verify compliance by the candidate with the legal regime of declaring assets and personal interests" (art. 8 para. (5) lit. b)). Undeclared income or expenditures are relevant for financial integrity, insofar items have not been declared truthfully, and for ethical integrity, including but not limited to insofar they relate to prohibited secondary incomes, tax evasion, or violation of anti-money-laundering provisions.

When the Commission resumes the evaluation of a candidate after the SCJ has accepted the candidate's appeal and ordered the Commission to re-evaluate the candidate, art. 14 para. (10) of Law No. 26/2022 provides that the provisions regarding the evaluation procedure are applied accordingly.

Art. 19 of the Rules of Procedure of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administrative bodies of judges and prosecutors of 2 May 2022, pursuant to Law No. 26/2022, as amended 6 September 2023 (hereinafter "Rules of Procedure") sets forth the procedures for the resumed evaluation of candidates. The rules permit the candidate to present new evidence regarding the issues that were addressed by the SCJ and referred to the Commission for re-evaluation and only if the candidate

³⁴ *Fábián v. Hungary* [GC], no. 78117/13, para. 121, 5 September 2017; *Advisory opinion on the difference in treatment between landowner associations "having a recognized existence on the date of the creation of an approved municipal hunters' association" and those set up after that date*, 13 July 2022, para. 69.

³⁵ OECD (2011), *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, p. 12.

³⁶ Eastern Partnership-Council of Europe Facility Project on "Good Governance and Fight against Corruption", *Practitioner manual on processing and analyzing income and asset declarations of public officials*, Tilman Hoppe with input from Valts Kalniņš, January 2014, section 7.5.1.3.

³⁷ OECD (2011), *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, p 14.

was in the impossibility to present previously at the evaluation stage and before the SCJ and the candidate provides sufficient justification to the Commission. The Commission may send questions and requests for documents and information to the candidate to the extent necessary to clarify the issues derived from the SCJ decision. Unless the Commission has issued a decision passing the candidate, it will present a statement of facts and serious doubts to the candidate and a request for the candidate to indicate whether the candidate wishes to participate in a public hearing. Access to the materials collected during the resumed evaluation will be given to the candidate. The Commission may also determine, in accordance with a SCJ decision, either at the request of a candidate or *proprio motu*, to hear a person in a public session to address an issue about which the Commission has indicated it has serious doubts. If at any point during the resumed evaluation the serious doubts about a candidate's ethical or financial integrity have been removed, the Commission shall issue a decision passing the candidate. During the resumed evaluation, the Commission shall not be obliged to examine circumstances other than those that led to upholding the candidate's appeal to the SCJ.

Once the resumed evaluation procedure is completed, the Commission shall issue a reasoned decision on passing or failing the resumed evaluation (art. 13 para. (1) of Law No. 26/2022).

III. Resumed Evaluation of the candidate

Pursuant to art. 10 para. (1) of Law No. 26/2022 that was in force until 26 December 2022, the Commission was to gather and verify information collected about a candidate no later than 30 days from the receipt of the five-year declaration submitted by the candidate. Art. 10 para. (8) of Law No. 26/2022 provided that this time limit could be extended by another 15 days if the information to be analyzed was complex or due to delayed submission of the requested information. On 9 August 2022, the Commission determined that the criteria set forth in art. 10 para. (8) of Law No. 26/2022 were satisfied with respect to the candidate's evaluation and extended the time for gathering and verifying information by 15 days. As the candidate had submitted a completed five-year declaration to the Commission on 18 July 2022, the 45-day period for the Commission's collection of information ended on 1 September 2022. Thus, after 1 September 2022, the Commission had no legal mandate to request additional data and information from public and private entities, in order to clarify any uncertainties found during the evaluation, while the candidate's ability to collect additional information and submit it to the Commission continued. An amendment to Law No. 26/2022 in force since 27 December 2022 deleted art. 10 paras. (1) and (8) and consequently, the time restrictions on the Commission's collection of information have been removed.

Issue 1. Source of cash deposits to two bank accounts

a. The facts

In its initial evaluation decision, the Commission established that during the period 2012 - 2015, the candidate had four accounts at Moldovan banks opened in her name:

- Bank account No. 1 – a checking account opened in 2010 and closed in 2016. This was an account in EUR, which the candidate used to make payments abroad.
- Bank account No. 2 – an account opened in 2010 and closed in 2017. This bank account had total cash deposits of approximately 111,000 MDL in 2011 and 2012.
- Bank account No. 3 – a credit account opened in 2010. This bank account had total charges of approximately 79,000 MDL in 2011 and 2012.
- Bank account No. 4 – a checking account opened in 2012. The candidate received a loan of 700,000 MDL in 2021 in this bank account.

During 2012 – 2015 the candidate declared one bank account in section “IV. Financial Assets” of her annual declarations of income and property (similar to the declarations on assets and personal interests in force since 2016, hereinafter “annual declarations”). The candidate indicated the name of the bank but did not indicate an account number; therefore, it was not possible to identify which account was declared, only that the candidate had attempted to declare one of four bank accounts.

In response to written questions from the Commission during the initial evaluation, the candidate stated that she had declared the income in the bank accounts and the name of the bank but did not specify the number of accounts she had or the account numbers.

At the hearing during the initial evaluation, the candidate confirmed that she had all of the bank accounts listed by the Commission and confirmed that between 2012 and 2015, she declared only one account in her annual declarations without specifying the account number. She identified bank account No. 1, the EUR account, as the account that she declared in her annual declarations. She also stated that she was not aware of one of the other bank accounts and that another account had been declared in section „VI. Loans”, in her annual declarations. A loan was declared in the Loans section in the candidate’s annual declarations for 2012 - 2015 that corresponds to a loan of 120,000 MDL contracted in 2012 but was not associated with any of the accounts that the candidate was asked about.

The candidate stated in response to written questions during the initial evaluation that bank account No. 2 was a flexible credit account, with a limit of 30,000 MDL, which was used when necessary, and was replenished with funds from her salary. The candidate stated that bank account No. 3, a credit account, was attached to bank account No. 2. The candidate also stated that she did not know why the transaction amounts on the two accounts do not correspond. The candidate provided a bank statement for bank account No. 3. The candidate informed the Commission that

she had requested a copy of the credit contract from the bank, but the bank no longer has the contract.

At the hearing during the initial evaluation, the candidate provided additional information about bank account No. 2, including that it was associated with a credit card and that the condition for use of the card was if withdrawals were made, the funds had to be replenished within two months in order to avoid interest charges on the amount withdrawn. According to the candidate, when she received her salary, she replenished the credit card account (bank account No. 2) to avoid paying interest. The candidate also stated that the information the Commission had received regarding cash deposits on that account was incorrect, that it was impossible to make deposits to that account and that she had not deposited money on this account as it was related to a credit card. Regarding the cash deposits to bank account No. 2, the candidate did not provide sources of funds for the deposits other than her salary. The candidate did not explain what funds she used to pay living expenses or how she was able to deposit most of her salary into an account and not use it.

After the hearing during the initial evaluation, the Commission asked the candidate to verify bank extracts relating to bank account Nos. 2 and 3. The candidate confirmed that the information the Commission received from the bank was correct; during 2011 - 2012 she charged 79,124.35 MDL against her flexible card (account No. 3) and during 2011 – 2012 she deposited 111,956.32 MDL in cash to replenish the card (account No. 2).

The Commission concluded that the amounts deposited in 2011 and 2012 were close to 90% of the candidate's total salary in those years (total salary for 2011 was 72,056 MDL; total salary for 2012 was 60,082 MDL), yet the candidate indicated no other sources of income for the deposits. The candidate argued that the difference between the total charges of 79,124.35 MDL and deposits of 111,956.32 MDL in the amount of 32,831.97 MDL, represented penalties and interest.

The candidate appealed the Commission's evaluation decision of 4 January 2023 failing the candidate to the SCJ. On 1 August 2023, the SCJ special panel issued its decision accepting the candidate's appeal, annulling the decision of the Commission and ordering the re-evaluation of the candidate.

During the resumed evaluation, the Commission received information from the bank where the candidate's accounts were maintained. According to a letter received from the bank, account No. 2 was an account for individuals for operations involving credit card payments, and bank account No. 3 was a revolving credit account for withdrawals by credit card. The bank indicated that both accounts had been opened based on contracts in the name of the candidate and at her request. The bank also indicated that the purpose of each bank account was distinct. The bank also stated that there were no overdraft charges on either of these bank accounts. The bank further noted that the credit contract related to account No. 3 had been destroyed in 2021.

In her answers to the statement of facts and serious doubts and at the hearing during the resumed evaluation, the candidate reiterated that account Nos. 2 and 3 were connected and that amounts circulated from one account to the other, coinciding with certain transactions. She noted that these two accounts were related to a loan of 30,000 MDL and a prerequisite for using the funds was that they had to be regularly replenished. The candidate argued that the amounts deposited to each account should not be duplicated by the Commission, but rather treated as parallel operations. At the hearing during the resumed evaluation, the candidate said that she had applied to the bank with the request to enter into a credit agreement and not for the purpose of opening a bank account, and that subsequently she had not been informed about the existence of the two bank accounts. The candidate noted that deposits to the accounts were made from her salary and that they were reflected on both accounts simultaneously. She stated that the funds were used for family needs. The candidate noted that, at the beginning of each month, after receiving her salary, she would give an amount to her children for daily expenses to last until her next salary payment. For other expenses, she withdrew money from her bank account. She further stated that each month, immediately after receiving her salary, she would pay off the debt. According to the candidate, she had had to manage her finances sensibly as she could not afford any extra expenses.

In the statement of facts and serious doubts the Commission indicated that the total deposits to accounts Nos. 2 and 3 amounted to 87,252 MDL, and the interest paid by the candidate was 7436.76 MDL, which in total constitutes 94,688.76 MDL or 71.65% of the candidate's total salary for years 2011 – 2012 (132,138 MDL). In her response to the statement of facts and serious doubts the candidate indicated that “in 2011 I deposited [...] the amount of 15,990 MDL, and in 2012, the amount of 44,040.20 MDL, in total, for the years 2011 - 2012, I repaid the bank a total amount of 60,030.20 MDL from the loan.” At the hearing during the resumed evaluation the candidate confirmed that 60,030.20 MDL was the correct total amount that she had deposited to her accounts. The candidate also claimed that the Commission erroneously concluded that 27,210 MDL had been deposited to account No. 3 from an unknown bank account belonging to the candidate. In support, the candidate presented a bank letter of 14 March 2023, which states that the transaction involving 27,210 MDL was a technical operation performed by the bank. The Commission is not including 27,210 MDL in the calculations of deposits and considers 60,030.20 MDL as the total amount of deposits made by the candidate to the accounts Nos. 2 and 3 during 2011 - 2012. The 60,030.20 MDL in repayment to the bank and the 5,392.27 MDL that the candidate paid for the loan of 120,000 MDL during September-December 2012 totals 65,422.47 MDL or 49.51% of her salary during these years.

The candidate's total salary for 2011 was 72,056 MDL and her total salary for 2012 was 60,082 MDL. Accordingly, her monthly salary for 2011 amounted to 6,004 MDL and for 2012 - 5,000 MDL. At the hearing during the resumed evaluation the candidate challenged the income figure of 72,056 MDL indicated by the Commission for 2011. Instead, the candidate claimed that, according to her income declaration for 2011, she had received 90,104 MDL. The candidate further noted that in 2011 she had received scholarship funds in the amount of 1,200 USD, which the Commission did not take into account. The candidate claimed that out of this amount

approximately 250 - 300 USD remained after spending on accommodations abroad. Documents submitted by the candidate during the initial evaluation and after the hearing during the resumed evaluation show that the candidate took part in several conferences. 1,200 USD was obtained as a grant for participation in the conference to be held in The Hague in June 2012. According to the grant application and instructions for applying: "These funds can be used for travel, lodging or other relevant expenses associated with attending the conference. The grant will be provided as a lump sum". The bank payment order shows that the candidate received 1,200 USD via Western Union transfer on 8 May 2012.

According to the information available to the Commission, the candidate's family's Consumption Expenditure for Population (CEP)³⁸ level for 2011 was 59,464 MDL, and for 2012 - 55,990 MDL. At the hearing during the resumed evaluation the candidate challenged the Commission's use of the CEP calculated by the National Bureau of Statistics. She stated that her children wore clothes made by her and her mother which significantly reduced the cost of clothing. According to the candidate, her mother also provided agricultural products from her greenhouse in order to further reduce the candidate's family's expenses. The candidate did not mention these details in her previous communication with the Commission.

According to the information available to the Commission, during 2011 - 2012 the candidate made 92 deposits totaling 60,030 MDL to accounts Nos. 2 and 3, as detailed in the Annex No.1: *Deposits made by the candidate during 2011 - 2012*. Out of 92 deposits 76 were made during the first half of the month and 16 - in the second half of the month. The deposits ranged from 0,25 MDL to 28,132.49 MDL. Generally, the candidate deposited 1,500 MDL to 2,000 MDL per month. The data shows that several deposits were made on the same day, varying between two and six per day. For example, on 6 April 2011, the candidate made five deposits totaling 2,600 MDL and on 10 January 2012, she made six deposits totaling 2,000 MDL. A total of 16 deposits, mentioned above, were made in 2011 - 2012, in May 2011, April and September 2012. It is also noted that on 17 September 2012, in addition to 28,132.49 MDL mentioned above, the candidate deposited three other amounts totaling 507,71 MDL.

Information from the bank establishes that the candidate paid a single penalty for a delay in the amount of 13.40 MDL during the period 2011 - 2012 on account No. 3 and interest on the revolving credit account in the amount of 7,436.76 MDL during 2011 - 2012 (3,259.05 MDL for 2011 and 4,177.71 MDL for 2012). During the initial evaluation the candidate argued that 32,831.97 MDL had been paid for penalties and interest during 2011 - 2012. At the hearing during the resumed evaluation the candidate stated that at that time she did not segregate the amounts that were deposited into her account and that she thought that the replenished amounts were for interest which was the reason for her confusion. The candidate argued that she tried to pay off the loan within a month to avoid paying penalties for delayed payments to the bank, which would

³⁸ CEP calculated for 3 persons (the candidate and her two adult daughters) living in an urban area, which according to the data presented by the National Bureau of Statistics in 2011 was 1,651 MDL/person per month and in 2012- 1,555 MDL /person per month.

have further reduced her family's funds.

During the resumed evaluation the bank also furnished documents about the loan of 120,000 MDL that the candidate contracted in September 2012. At the hearing during the resumed evaluation, the candidate confirmed information submitted by the bank that the purpose of that loan was the renovation and repair of a residential property located in the district of Orhei, and the funds could not be used for any other purpose. The verification act for the use of the credit contract, provided by the bank, demonstrates that the credit was used to purchase construction materials and that work was done on the walls of the house and the cellar. According to the loan contract, the monthly payment on the loan was 2,029 MDL. The bank data shows that between September - December 2012 the candidate repaid 5,392.27 MDL on the loan. At the hearing during the resumed evaluation the candidate stated that she had requested a loan of 100,000 MDL, but because she had had to repay another loan of 30,000 MDL, the bank agreed to give her a loan of 120,000 MDL. The candidate also stated that she had to make a first payment of 10,000 MDL on the loan, which she had covered with her credit card.

In her answers to the statement of facts and serious doubts and at the hearing during the resumed evaluation, the candidate claimed that the completion of the declaration on assets and personal interests was regulated only after the adoption of Order No. 15 of 27 February 2018 of the President of the National Integrity Authority (hereinafter "NIA"). In support of her statement the candidate submitted the first page of the regulations attached as an annex to Order No. 15., which contains general provisions regarding the subjects of the declaration, signing the declaration etc. The candidate also noted that at the relevant time it was common for judges to make mistakes filling out the declaration forms. As a former employee of the secretariat of the Superior Council of Magistracy responsible for collecting annual declarations of judges, she was certain that there was no clarity in this field. At the hearing during the resumed evaluation, the candidate was asked what she did not understand about declaring bank accounts, and how she had declared one bank account in her declarations for 2012 - 2015 if she did not understand declaring bank accounts. The candidate responded that she needed a EUR account to travel and participate in projects abroad. The candidate noted that she would replenish this account to demonstrate to the respective authorities that she had sufficient funds to cover her travel expenses abroad. The candidate also stated that she had used a 30,000 MDL loan to replenish her EUR account. According to the candidate, the EUR account was different from her other accounts in that it was not linked to a credit account. The candidate stated that she had never intended to avoid declaring any bank account, the bank account numbers for which she had never known.

b. The law

Art. 8 para. (4) lit. b) and para. (5) lit. c), d) and e) of Law No. 26/2022 provides that the Commission is required to verify that a candidate's wealth acquired in the past 15 years corresponds to the declared revenues, to verify the method of acquiring assets owned or possessed by the candidate or persons referred to in art. 2 para. (2), to verify the sources of income of the

candidate and, where appropriate, of the persons referred to in art. 2 para. (2) and to verify the existence of loans, credits or other agreements, where the candidate or the persons referred to in art. 2 para. (2) is a contracting party.

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets and personal interests as per art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 and that his/her wealth acquired in the past 15 years corresponds to declared revenues, pursuant to art. 8 para. 4 lit. b) of Law No. 26/2022.

Art. 6 para. (1) of Law No. 1264/2002 (in effect until 1 August 2016) on declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force at the time) provided that the declaration on income and property is a personal and irrevocable act, which is made in writing, on the declarant's own responsibility, and which may be rectified only under the conditions of art. 10 para. (2).

According to art. 4 para. (1) lit. d) Law No. 1264/2002 (in force until 1 August 2016) on declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force at the time), the subject of the declaration was obliged to declare financial assets, i.e. bank accounts, investment funds, equivalent forms of saving and investing, investments, bonds, cheques, bills of exchange, certificates of exchange, other documents incorporating property rights of the declarant or their family members, direct investments in national currency or foreign currency made by them or by their family members, as well as other financial assets.

Instruction in the mode of completing the declaration of income and property approved by Ordinance of the President of National Integrity Commission No. 5 of 8 February 2013 states that the subject of the declaration was obliged to declare as financial assets under “Column IV. Financial Assets” of the declaration all bank accounts, investment funds, equivalent forms of saving and investing, investments, bonds, cheques, bills of exchange, certificates of exchange, other documents incorporating property rights of the declarant or their family members, direct investments in national currency or foreign currency made by them or by their family members, as well as other financial assets.

c. Reasoning

In its decision of 1 August 2023, the SCJ special panel concluded that the Commission’s decision failing the candidate because of serious doubts concerning the sources of funds for various bank accounts and failure to properly disclose the accounts was unfounded from the perspective of proportionality, misinterpretation of undefined legal notions and fair treatment and therefore, the candidate had the right to a favourable decision. The SCJ special panel noted that bank account No. 2 was a flexible credit account with a limit of 30,000 MDL, which the candidate used when necessary and replenished with her salary. According to the SCJ special panel, the Commission

should have considered that bank account No. 3 was attached to credit bank account No. 2 and that they operated in parallel. The SCJ special panel also noted that 79,124.36 MDL deposited into account No.3 related to turnovers, rather than to card top-up operations. Referring to the bank statement, the SCJ special panel noted that it was incorrect to suggest that the candidate had deposited 79,022.73 MDL in cash into this account. The SCJ special panel noted that, when making “a hasty conclusion” that the amounts deposited in 2011 and 2012 were close to 90% of the candidate’s total salary for those years and that she did not have any other source of income for cash deposits, the Commission ignored the fact that the candidate had received a 120,000 MDL loan. The SCJ special panel indicated that the difference of 32,831.97 MDL between the total withdrawals of 79,124.35 MDL and the cash deposits of 111,956.32 MDL, was the amount of penalties and interests paid by the candidate during the years of 2011 - 2012.

In relation to the non-declaration of the bank accounts, the SCJ special panel noted that the accounts were opened based on loan contracts and that the candidate was not aware that the new accounts had been opened. It also stated that the accounts were used for deposits and repayment of credits and disagreed that the failure to declare them had been an omission, as the candidate had declared the credit contracts and the income obtained from work, and transactions had been made through those accounts. The SCJ special panel noted that “in the case of another judge candidate, who had passed the evaluation, as regards the failure to declare bank accounts, the Evaluation Commission had concluded that: ‘it did not find any advantage for the candidate not to declare the two bank accounts [...]’”.

In the context of a multi-faceted, comprehensive and objective review, the Commission undertook a resumed evaluation of the candidate, based on information available at the initial evaluation and any information obtained during the resumed evaluation. During the resumed evaluation the Commission received additional information and identified additional evidence which the Commission found of particular significance for the resumed evaluation decision. As explained above at the outset of section III. *Resumed evaluation of the candidate*, the candidate was able to collect information and submit it to the Commission in order to remove doubts during the initial evaluation, while the Commission’s authority to request additional information after 1 September 2022 was restricted by the legal provisions then in effect.

In light of the SCJ special panel decision and the information assessed during the resumed evaluation, the Commission is not including the issue of non-declaration of bank accounts Nos. 2 and 3 during period of 2012 - 2015 in its determination on the candidate’s passing or failing the evaluation in the resumed evaluation. At the same time, the Commission cannot agree with the SCJ special panel determination that the candidate’s non-declaration of bank accounts was not a departure from ethical standards and that she did not violate the principle of integrity under the criteria established by Law No. 26/2022 for the reasons mentioned below.

When assessing the financial integrity of the candidate, the Commission is required to verify sources of income and the manner in which the candidate, family members and close persons of

the candidate acquired assets and whether the candidate has complied with the legal regime for declaring assets and personal interests.

During the initial and resumed evaluations, the source of funds for two bank accounts maintained by the candidate (Nos. 2 and 3) was the Commission's primary concern. During the resumed evaluation the information received from the bank confirmed that these were two separate, but interconnected bank accounts. Some amounts of money circulated from one account to the other, coinciding with certain transactions. The accounts were opened at the request of the candidate and in her name. In her written responses to the statement of facts and serious doubts and at the hearing during the resumed evaluation, the candidate stated that she deposited 60,030.20 MDL in total into these accounts. After verification, the Commission concluded that 60,030.20 MDL was deposited into the candidate's bank accounts during 2011 and 2012. At the hearing during the resumed evaluation the candidate stated that she withdrew amounts from her card for family needs and then replenished it from her salary. The Commission also noted that the only penalty imposed on the candidate amounted to 13.40 MDL and 7,436.76 MDL was paid as interest during 2010 - 2012 contrary to her claim that a total amount of 32,831.97 MDL had been paid for penalties and interest.

At the hearing during the resumed evaluation, the candidate described her family's spending routine. She stated that, at the beginning of each month, after receiving her salary, she would give an amount to her children for their daily expenses for the month and then immediately replenish account No. 2. to avoid penalties. Seventy-six of 92 total deposits to account Nos. 2 and 3 (see Annex No.1) were made during the first half of the month, which largely supports the candidate's claim that account Nos. 2 and 3 were replenished after receiving the salary every month. The candidate made multiple deposits each time, however, ranging from two to six, some in very small increments. The data shows that, typically the candidate made four to six deposits on the same day. The data also indicates that the total amount of deposits each month ranged from 1,000 MDL to 2,600 MDL. The only exception is the deposits made on 17 September 2012. On that day the candidate deposited 28,640.20 MDL that was almost six times greater than the candidate's monthly salary for the year of 2012.

The Commission enquired whether the source of cash deposited into the accounts Nos. 2 and 3 was the loan in the amount of 120,000 MDL taken by the candidate in 2012. At the hearing during the resumed evaluation, the candidate confirmed that the loan was intended for renovation of the residential property in Orhei district. It is noted that in the Loans section of the candidate's 2012 - 2015 annual declarations to NIA, the candidate declared a loan of 120,000 MDL taken in 2012 for the renovation of a house in Orhei, which was to be repaid by 2022. The loan of 120,000 MDL could not be used to replenish the candidate's credit bank accounts because, according to the information submitted by the bank, the loan was intended and used for the renovation of the house in the district of Orhei. Furthermore, it is noted that the transactions registered in the 120,000

MDL credit account indicate that the only activity in the account involved repayment of the loan and no transfers to other accounts or cash withdrawals were recorded. Thus, the loan indicated in the Loans section of the candidate's annual declarations was not and could not be used to replenish bank accounts Nos. 2 and 3.

According to the 120,000 MDL loan contract, the monthly payment on the loan was 2,029 MDL. The bank data shows that between September - December 2012 the candidate paid 5,392.27 MDL to repay the loan. Not only could the 120,000 MDL loan not be used to replenish the bank accounts, the candidate's payments on the loan during September - December 2012 further reduced the amount of income from salary that the candidate had available to replenish the bank accounts. Over 2011 and 2012, the repayments on the loan of 5,392.27 MDL and the 60,030.20 MDL payments to the credit account(s) totaled 65,422.47 MDL, almost 50% of the candidate's salary during those years. The candidate argued that her annual salary in 2011 was 90,104 MDL instead of 72,056 MDL. According to the State Tax Service, the candidate's gross salary in 2011 was 90,104 MDL. It is noted that the Commission consistently uses net amounts for salary and other income in its calculations. Taking into account CEP³⁹ levels for 2011 (59,464 MDL) and for 2012 (55,990 MDL), the Commission's doubts about the source of funds used to make the deposits and to pay the candidate's living expenses were further heightened.

At the hearing during the resumed evaluation, the candidate argued that the Commission did not consider 1,200 USD that she had received through a scholarship in 2011. She also claimed that, of this amount, approximately 250 - 300 USD remained after spending on accommodations and that she had used the surplus to replenish her bank accounts (Nos. 2 and 3). According to the grant application, 1,200 USD was intended for travel to and participation in a conference in The Hague. It is noted that at the hearing during the resumed evaluation the candidate for the first time mentioned that she used her EUR account to replenish accounts Nos. 2 and 3.

According to the information available to the Commission, in 2011 the candidate deposited 4,932 MDL (est. 302 EUR) into her EUR account and spent 4,887 MDL (est. 299 EUR) in Turkey and had a balance of 7.35 MDL (est. 0.45 EUR) at the end of the year. In 2012 the candidate deposited 9,188 MDL (est. 590.48 EUR) into the account and spent 9,075 MDL (est. 583.22 EUR) and the remaining balance at the end of the year was 7.39 MDL (est. 0.47 EUR). Thus, no funds were available on her EUR account in 2011 - 2012 to replenish bank accounts Nos. 2 and 3. To the contrary, at the hearing during the resumed evaluation the candidate stated that she used her other accounts to replenish the EUR account. It is further noted that, during the initial and resumed evaluations the candidate argued that her salary was the only source of funds used to replenish her bank accounts. The documents submitted by the candidate after the hearing during the resumed evaluation demonstrate that she participated in several conferences. However, analysis of the candidate's EUR bank account does not support her claim that part of the funds received

³⁹ CEP calculated for 3 persons (the candidate and her two adult daughters) living in an urban area, which according to the data presented by the National Bureau of Statistics in 2011 was 1,651 MDL/person per month and in 2012-1,555 MDL /person per month.

for accommodation costs were used to replenish accounts Nos. 2 and 3. Thus, the documents submitted by the candidate after the hearing during the resumed evaluation do not affect the Commission's finding that the candidate's EUR account could not have been used as a source for replenishing her accounts Nos. 2 and 3.

With respect to the candidate's failure to declare bank accounts Nos. 2 and 3 in her annual declarations, the candidate claimed that she had mentioned the account related to the credit card in the loans' section of the annual declaration. It is noted that the candidate in her annual declarations for 2012 - 2015 declared the loan of 120,000 MDL, which, as noted above, was exclusively related to the renovation of a house in Orhei district and was not related to bank account Nos. 2 and 3. According to the candidate, the completion of declaration forms was not regulated until 27 February 2018, when the Order of the President of the National Integrity Authority No. 15 was issued and, at the relevant time, it was a problem for all judges. Contrary to the candidate's argument, the Commission notes that the President of the National Integrity Commission issued Ordinance No. 5 of 8 February 2013 approving the instructions on the mode of completing the declaration of income and property and declaration on personal interests, including the modality of declaring bank accounts. Order No. 15 referred by the candidate, was issued following the entry into force of Law No. 133/2016 on the declaration of assets and personal interests superseding the previous Law No. 1264/2002 on- declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force at the time) and aimed at regulating completion of electronic declaration forms.

In its decision, the SCJ special panel concluded that the Commission failed to treat the candidate equally with other candidates. As stated above, in assessing and deciding upon the criteria related to financial and ethical integrity in accordance with the provisions of the Law No. 26/2022, the Commission is guided and bound by the principles of non-discrimination and equal treatment, which implies that the Commission will treat equally persons in analogous or relatively similar situations and will treat differently persons whose situations are significantly different.

Although the SCJ special panel did not include a clear description of similar facts between the candidate's case and the other decision it referred to, the Commission provides the following explanation concerning its treatment of non-declaration of bank accounts to demonstrate the rational basis and consistency in the Commission's treatment of candidates:

There were 13 candidates in the initial evaluations with issues about the failure to declare bank accounts. Five of the candidates failed the evaluation; eight candidates passed. In numerous decisions, the Commission stated how it approached instances when candidates had not fully disclosed bank accounts in accordance with the law: the Commission reviewed information about the bank accounts that had not been declared in terms of the period of non-disclosure, level of activity, the type of account and the presence of any suspicious or unexplained transactions and whether the sources of the deposits to the accounts were documented. There was an objective,

rational basis for distinguishing between the candidates who failed the evaluation and those who passed the evaluation.

In each decision involving candidates who failed the evaluation with an issue related to non-disclosure of bank accounts, serious doubt was raised about the source of the funds deposited to the account that the candidate did not explain or mitigate. In most instances, the amounts of money involved in transactions related to the accounts were substantial.

In contrast, the declaration errors relating to bank accounts of candidates who passed the evaluation typically did not involve substantial amounts of money, the levels of activity in the account were not substantial, the funds were not from undocumented sources, and thus, there was no suspicious activity in the accounts. Typically, these were salary accounts or loan accounts that did not involve other transactions. In most instances, although the bank accounts had not been declared, the income and loans in the accounts had been declared in other sections of the annual declaration. Thus, it could be determined that the candidates had no reason or intention to hide the account(s). Moreover, the candidates who passed typically gave full and immediate cooperation in response to the Commission's inquiries and were forthright and candid in their responses, rather than contradictory or evasive. On that basis, these errors were treated as technical and not rising to a level that warranted failing the candidates.

As noted above, in light of the SCJ special panel decision, the Commission is not including the issue of non-declaration of bank accounts Nos. 2 and 3 in the candidate's annual declarations for 2012 - 2015 in its determination on the candidate's passing or failing the evaluation in the resumed evaluation.

In conclusion, the Commission has serious doubts about the candidate's financial integrity in connection with the source of funds for bank accounts Nos. 2 and 3 maintained by the candidate. The Commission notes that, during the hearing at the resumed evaluation the candidate referred to her EUR account for the first time as a source of funds of her deposits on the accounts of Nos. 2 and 3. Analysis of her EUR account and the loan of 120,000 MDL shows that they could not be used to replenish her two bank accounts. It is also noted that, throughout the initial and resumed evaluations, the candidate repeatedly stated that she replenished her bank accounts exclusively from her salary. Although the timing of the deposits somewhat supported the candidate's claim that she replenished the account after receiving her salary each month, the pattern of multiple small deposits in a single day did not nor did the 28,640.20 MDL deposit in 2012. The deposits and payments on the loan of 120,000 MDL totaling 65,422.47 MDL represented almost 50% of the candidate's salary for 2011 - 2012. No other sources of funds were identified that could be used to replenish the bank accounts Nos. 2 and 3. These factors heightened the Commission's doubts about the source of funds used to make the deposits and to pay the candidate's living expenses. Despite providing the candidate with repeated opportunities, the Commission's serious doubts have not been mitigated by her at any stage during the initial and resumed evaluations. In light of the above circumstances on resumed evaluation of the candidate, the Commission has

serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criterion of financial integrity as per art. 8 para. (4) lit. b) and para. (5) lit. c) and d) of Law No. 26/2022 with respect to the sources of the cash deposits made to her bank accounts which have not been mitigated by the candidate.

Issue 2: Use of apartment rent free during 2004 - 2018

From 2004 to 2018 the candidate and her children lived in a 47.7 sq.m. apartment in Chisinau municipality. The apartment was owned by V.E., who had inherited the house at the age of six after the death of his mother. V.E.'s guardian offered to allow the candidate and her daughters to live in this apartment until he turned 18, on the condition that the candidate look after the apartment and pay the utilities. The use of the apartment was based on an oral understanding with the guardian. During the initial evaluation, the candidate presented a statement from the guardian which confirmed that the candidate was allowed to live in the apartment on the condition of paying the utilities and that the guardian had not asked for rent or any other payments.

In November 2018, one of the candidate's daughters and the daughter's husband purchased the apartment from V.E., who was then 20 years old, for 252,191 MDL (est. 12,711 EUR). According to information from "LARA" real estate company (hereinafter "'LARA" company"), the value of an apartment of 47.7 sq.m. located in the Botanica sector in the old block of apartments, in 2018 was estimated at 509,245 MDL (est. 25,667 EUR). The couple sold the apartment in November 2020 for the price of 680,522 MDL (est. 33,500 EUR).

The candidate stated during the initial evaluation that she was not related to and had no family relationship with V.E. or his guardian, who was his grandmother. She explained that she found out about the apartment because her father knew the grandfather of V.E. The candidate stated that they were just acquaintances. At that time, the candidate was looking for an apartment in Chisinau municipality because her children were in school there. The candidate advised the Commission that V.E.'s mother, a twenty-year old woman, had died in the apartment, which was a tragedy for the family. Because of this situation, V.E.'s guardian was willing to allow the candidate to use the apartment, on the condition that she pay the utilities and look after the apartment. V.E.'s guardians had their own apartment in Chisinau municipality. The guardians did not want to sell the apartment without V.E.'s agreement, so they waited until he turned 18 years old. The candidate stated that if the guardians had required payment of rent, she would have negotiated with them, but as there was no such requirement, she didn't pay any rent for the apartment for 14 years.

The candidate also confirmed at the hearing during the initial evaluation that one of her daughters and her daughter's husband had purchased the apartment in 2018 and the candidate confirmed the details of the transaction. She explained that when V.E. turned 18 years old, the guardian told her that V.E. did not want to live in the apartment and they wanted to sell it. The guardian asked the candidate if she wanted to buy it. The candidate did not have the funds but one of her daughters

and her husband bought it. The candidate initially stated that she was not involved in the purchase transaction and had only told her daughter and her husband that every transaction has to be official and the amount that was negotiated has to be reflected truthfully in the contract. The candidate stated that the purchase price was negotiated between the guardian and her grandson and the candidate's daughter and her husband. Upon further questioning, the candidate conceded that she was present with her daughter and her husband at the negotiations when the agreement was finalized ("I did not assist her, I was present. I witnessed; I was present"). There were no real estate agents involved in the transaction. The candidate told the Commission that the apartment sold at a higher price in 2020 than it was purchased for in 2018 because of repairs that had been made by the candidate's daughter and her husband. When the apartment was offered for sale in 2020, the apartment was evaluated by real estate agents who determined its value, which eventually was reflected in the contract.

After the hearing during the initial evaluation, the candidate provided additional information about the apartment. She reiterated that it was the guardian who proposed that the candidate live in the apartment that belonged to V.E., on the only condition of paying for communal services and taking care of the apartment, because the guardian knew that she did not have financial resources and had two minor children. The condition of taking care of the apartment was problematic because of the condition of the roof (she did cosmetic repairs with the help of her brothers). Regarding her daughter's purchase of the apartment, the candidate furnished photographs of the apartment to show the condition of the apartment and the reason it was offered for sale for less than the amount it was sold for after repair. The photographs, with time stamps from 2016, showed that the apartment was in a deplorable state; the ceilings and other portions of the interior were damaged. No photographs or other information were submitted during the initial evaluation showing the condition of the apartment when it was sold in 2020.

On 28 January 2023, the candidate appealed the Commission's decision to the SCJ. On 1 August 2023, the SCJ special panel issued its decision accepting the candidate's appeal, annulling the decision of the Commission and ordering the re-evaluation of the candidate. During the examination of the candidate's appeal before the SCJ the court heard V.E.'s guardian as a witness, who confirmed that the candidate was allowed to live in the apartment on the condition of paying the utilities and that the guardian had not asked for rent or any other payments.

In response to the statement of facts and serious doubts document from the Commission during the resumed evaluation, in relation to use of apartment rent free 2004 - 2018, the candidate stated that they do not correspond to reality. The candidate noted that no claims had been made against her or her family by V.E.'s family and therefore, it was impossible to find that she had violated his rights. In response to written questions from the Commission during the resumed evaluation and at the hearing about how she had fulfilled her obligation to maintain the apartment while living there during 2004 – 2018, the candidate noted that the apartment was in a dreadful condition in 2004. She stated that the year after she moved into the apartment, one of the rooms flooded. Following this incident, she did cosmetic repairs to the flooded area and to the floor. Thereafter,

problems with the roof reoccurred annually. The candidate noted that she had informed the guardian about the persistent problems with the roof. The candidate also stated that she periodically carried out cosmetic repairs either with the help of her siblings or by herself with her children. The candidate could not estimate the amounts she had invested in the apartment and she did not provide any supportive documents. At the hearing during the resumed evaluation the candidate contended that the maintenance obligations had been properly fulfilled by her and her daughters, who had begun living independently in the apartment in 2012 after the candidate had been appointed as a judge.

The candidate was also asked whether when she became a judge, in 2012, she had considered paying at least a small fee of her own initiative to V.E. The candidate stated that, she had approached the guardian at that time and informed her about being appointed as a judge. According to the candidate, the guardian allowed them to stay because the guardian was familiar with the candidate's daughters and was sure that they would take good care of the apartment. The candidate also stated that the guardian had not asked for any financial or material contribution. The candidate stated that she had had informed the guardian that her decision to stay or move out of the apartment would depend on any changed conditions. At the hearing during the resumed evaluation, the candidate conceded that "it would have been welcome now for myself to have paid and not have any issues".

Between 2016 - 2018, the candidate's younger daughter lived in the apartment. The candidate was asked about the photos with time stamps from August 2016 which show that the apartment had been in a deplorable condition, and how it had been possible to live in these conditions. She noted that at that time her daughter had started some superficial renovations of the apartment with the involvement of the candidate's siblings, who are in the construction business, and for a few months no one had lived there. According to the candidate, these photos were sent to the guardian in order to obtain her permission for repair works. The candidate confirmed that the apartment had been in a deplorable condition and that there had been only one room fit for living.

The candidate disputed that she had participated in the negotiations for the purchase of the apartment. In her answers to the Commission's questions and at the hearing during the resumed evaluation the candidate stated that she had not participated in the negotiations when the apartment was purchased by her daughter and her husband in 2018 and that the Commission had made an erroneous conclusion in this regard. According to the candidate, during the initial evaluation, she had told the Commission only that she had been contacted by V.E.'s guardian who had informed her that they planned to sell the apartment, which was occupied at that time by one of the candidate's daughters. The candidate informed the guardian that she did not have funds for the apartment but promised to talk to her children to see if they had any interest in buying it. The candidate stated that the purchase of the apartment was discussed with her entire family, through a so-called "family parliament". Thereafter, the candidate reached out to the guardian and informed her of her daughter's intention to buy the apartment, but she did not discuss the details of any transaction or the price of the apartment, either with the guardian or V.E. The

candidate contested the Commission's conclusion in the initial decision that she had been part of the negotiations. According to the candidate, her role was limited to taking care of her grandchild in the hallway of the notary's office where her daughter and her daughter's husband had gone to sign the agreement for the purchase of the apartment. The candidate stated that she had not had any influence on the seller with respect to the price of the apartment. The candidate stated that the meeting at the notary office was the first time that she saw V.E. after quite a while and "at least the last year that I certainly haven't seen him, and I haven't talked to him". The candidate also argued that she could not be held responsible for negotiations that took place in her absence, and both parties (sellers and buyers) should be held accountable for their own actions.

The candidate also noted that, when she was approached for the first time about the apartment, V.E. was still under 18 years of age. The guardian had agreed that the candidate's family could continue to live in the apartment, which had been beneficial for the candidate as it would have been difficult to move to another apartment. When V.E. had reached the age of majority, he had decided not to move into the apartment, and he eventually decided to sell it. The candidate assumed that during that time, there might have been some "discussion now and then about selling that apartment, do you understand how, because the answer didn't come immediately that we want to buy it. I think it would have been problematic, even if she was thinking about selling it to somebody else, to sell it [the apartment] without asking us". To the Commission's question as to why the owners had waited for two years for the candidate's daughter's response, the candidate noted that she had told the guardian to sell it to other clients and that they would move out as soon as the apartment had been sold. However, no one showed an interest in buying the apartment at that time. She also said that her daughter had been considering buying it, and the guardian had allowed her to take time to consider her decision. The candidate said, "until the [that] moment, we didn't have an intention to buy it".

The candidate disputed the estimated market value of the apartment in 2018, as submitted by "LARA" company (509,245 MDL (est. 25,667 EUR); the candidate stated that perhaps it was general statistical information, but not a concrete one in relation to this specific apartment and therefore, it was irrelevant. The candidate noted that the 252,000 MDL price of the apartment had been negotiated, and it was the real price of the apartment. She also stated that there had not been any need to involve real estate agents when the apartment was purchased in 2018, and furthermore, fees would have been owed to them. The sellers should have engaged them if they had any questions or doubts about the sales price of the apartment. The candidate stated that the only request she had made of her daughter and son-in-law was that the contract be in compliance with the rules. In 2020, her daughter and her daughter's husband engaged real estate professionals because they had not had time to deal with the sale of the apartment.

The candidate stated that a substantial renovation was carried out on the apartment when it belonged to her daughter and her husband (2018 – 2020). The candidate also presented pictures of the apartment taken in 2020, when the apartment was sold. The photos, which have the watermark of the real estate company, show that the apartment was in good condition and that it

had been substantially renovated. The candidate did not provide documents regarding the repair costs. However, she submitted information attesting that her daughter and her daughter's husband had sufficient financial means to carry out substantial work.

In response to the Commission's question at the hearing as to whether she felt any responsibility towards V.E., who had lost a mother at a young age, the candidate referred to her own family situation. She stated that bringing up two children was more difficult than one child, and that his financial situation was different from hers. The candidate stated that she had to ensure the minimum standard level of living for her children. In the candidate's own words: "I could have some remorse if I had something extra, that I could give and I did not give to that child, to the disadvantage to the children for whom I had to ensure at least the minimum required level. I mean my own children". The candidate also noted that the guardian, who had lost her only child, developed a special attachment towards the candidate. According to the candidate "I felt maybe I was replacing her [the guardian's daughter]". The candidate disputed that her status as a judge specializing in examining cases involving minors had relevance for the assessment of her ethical integrity. The candidate argued that the Commission's conclusion that she had taken advantage of V.E. was erroneous and that she would never harm children.

At the request of the candidate the Commission interviewed V.E. at the hearing during the resumed evaluation. V.E. noted that he has a university degree in economic sciences. V.E. also mentioned that he has been working since the age of 15 and is currently self-employed as a content creator. V.E. noted that he did not start work at the age of 15 because of any need of his family, but that he started to work and became self-sufficient at his own initiative.

V.E. confirmed that the candidate and her daughters had lived in his apartment and that the conditions for staying in that apartment had been negotiated with his guardian. V.E. also stated that he had not had any objections to his guardian's arrangements for the apartment or any claims against the candidate. According to V.E., his guardian would never do anything to harm his interests. He further stated that the candidate had not personally negotiated any terms for the sale of the apartment in 2018 and he remembered the candidate's daughter and her daughter's husband having been involved in that process. V.E. also noted that he had seen the candidate with a baby outside of the notary's office when the sale was made. V.E. could not recall whether the candidate had ever visited his family or provided any support or gifts. In response to the candidate's question, he also confirmed that he had not always been at home on the days that the candidate may have visited his guardian.

V.E. did not know how the sale of the apartment had been handled in 2018. He participated in discussions at the family level but did not take part in official negotiations. V.E. further noted that he had not had any experience at that time with transactions in the real estate market and had never previously been engaged in selling or purchasing apartments. V.E. also stated that he did not have any knowledge of the duties of judges in their business and personal activities. V.E. recalled that the last time he had met the candidate was when her case had been heard by the SCJ

special panel. V.E. also confirmed that the candidate had asked him to provide his contact details to the Commission and that there had not been any further communication about the matter.

b. The law

Art. 8 para. (2) a) of Law No. 26/2022 provides that a candidate is deemed to meet the criterion of ethical integrity if, among other criteria, 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.

Art. 11 (4) of the Judge's Code of Ethics (2007) provides that the extrajudicial activities of the judge shall not cast doubts as to his/her impartiality, objectivity or integrity.

Art. 5 (1) of the Judge's Code of Ethics and Professional Conduct (2015) provides that the judge shall respect the highest standards of integrity and responsibility, in order to ensure the society's trust in the courts. Art. 5 (12) provides that the extrajudicial activities of the judge shall not give rise to any doubt as to his/her impartiality, objectivity or integrity.

According to the Commentary on the Code of Ethics and Professional Conduct of the Judge (2018) concerning art. 5, Integrity, judges must exhibit irreproachable behavior based on honesty and integrity like any other citizen. Judges, in their official stature, assume responsibilities that go beyond those of ordinary citizens, including those related to honesty in the exercise of their duties. Integrity is an attribute of justice and fairness. The honesty and morality of judges are component parts of integrity. Integrity in justice is more than a virtue, it is a prerequisite. Conduct that could reduce respect from reasonable community observers must be avoided. Thus, the behavior of the judge in public and in private life must always correspond to the law and the ethical criteria set out in the Code.

Bangalore Principles of Judicial Conduct, Principle 3 provides that integrity is essential to the proper discharge of the judicial office. Principle 3.1 states that a judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer. Principle 3.2 states that the behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done. Principle 4 provides that propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge. Principle 4.1 states that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. Principle 4.2 states that as a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

According to Commission's Evaluation Rules, art. 2 para. (2), in assessing a candidate's ethical

integrity, the Commission may take into account the gravity or severity, the surrounding context, and the willfulness, of any 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 its rules and regulations.

c. Reasoning

In its decision, the SCJ special panel stated that V.E.'s guardian had allowed the candidate to live in the apartment and that the candidate had played a more passive role in reaching the agreement. According to the SCJ special panel, the Commission extensively and unfavourably attributed to the candidate (1) an abuse of the rights of V.E. by using the apartment rent-free in the period 2004 - 2018 (2) the alienation of the real estate by V.E. to the candidate's daughter and the daughter's husband, a transaction that has no causal connection with the candidate's residence and (3) non-payment of the apartment rent in the period 2004 - 2018. The SCJ special panel also found that V.E.'s guardian had acted in good faith and exclusively in his interests. Thus, according to the agreement, the candidate would have ensured the integrity of the apartment, which was already in a bad condition (leaking roof, mold), and released the guardian from utilities payments; later, upon reaching the age of majority, V.E. could have independently decided the fate of the inherited real estate, as was done. The SCJ special panel concluded that the Commission reached an incorrect conclusion when finding that, by remaining in an unbalanced arrangement for fourteen years, especially after the candidate had become a judge, V.E. had been taken advantage of and that this conduct had been inconsistent with the high standards expected of judges. According to the SCJ special panel, the Commission's conclusion was contrary to V.E.'s guardian's statement, which showed that the guardian had taken measures to protect his property rights, which allowed him to decide the fate of this apartment once he reached the age of majority, and until then, V.E. lived with his guardian, in decent living conditions.

In light of the SCJ special panel decision and the information assessed during the resumed evaluation, the Commission is not including this issue in its determination on the candidate's passing or failing the evaluation in the resumed evaluation. At the same time, the Commission cannot agree with the SCJ special panel determination about the candidate's conduct not deviating from ethical standards and that she did not violate the principle of integrity under the criteria established by Law No. 26/2022 for the following reasons.

According to international standards, judges are obliged to refrain from acts likely to compromise their dignity in the profession and in society. The dignity and honor of the profession of magistrates depends on community standards, which vary according to place and time. The test

is whether reasonable, fair and informed members of the community would qualify a certain behavior as likely to diminish the community's respect for the magistrate or the judicial system in its whole.

In its evaluation decision the Commission found that when the candidate moved into the apartment in 2004, she had limited financial resources and was providing for her two children. For that reason, the arrangement of not paying rent, only utilities, was appealing to the candidate. Eight years into the arrangement, in 2012, the candidate was appointed a judge. The living arrangement continued for another six years after the candidate became a judge and two years beyond the time when V.E. became 18 years old, when the arrangement originally was to end. In the view of the Commission, the arrangement, while advantageous to the candidate, was disadvantageous to V.E. and thus raised ethical considerations that a judge should have considered. The Commission also underlined that V.E.'s guardian arguably bore responsibility for not acting to fully protect his financial interests.

During the resumed evaluation, the Commission heard from V.E. and was able to observe that his guardian had provided him a proper upbringing and education. Having said that, the Commission still finds it problematic that the candidate remained in an unbalanced arrangement for fourteen years, especially after she had become a judge, which raises the spectre of V.E. having been taken advantage of, conduct that is not consistent with the high standards expected of judges.

During the resumed evaluation, the Commission asked additional questions concerning the maintenance of the apartment during the time the candidate and her daughters resided there. The candidate provided explanations and also submitted photos illustrating the apartment's condition in 2020, when it was sold by the candidate's daughter and the candidate's daughter's husband. The photographs submitted by the candidate during the initial evaluation with the stamps from August 2016 show the apartment in a deplorable and uninhabitable state, with considerable damage. Even after receiving additional information from the candidate during the resumed evaluation, the Commission is still not convinced that the candidate properly fulfilled her obligation to take care of the apartment, which was to the detriment of V.E. when selling the apartment in 2018. This is unfortunate because, according to the candidate, some of her close relatives are in the construction business and apparently helped her with the roof repair.

When asked at the hearing during the initial evaluation whether the candidate had any concerns, ethically or otherwise about the fairness of the transaction, the candidate stated that she was not sure she understood the question, "me, if I had any remorse or what do you mean?" The candidate noted that V.E. was under the protection of the guardian. When asked at the hearing during the resumed evaluation whether she felt any responsibility towards V.E. who was raised without a mother from a very young age, she stated that her priority was to ensure well-being of her own children. According to the candidate, she could have felt some remorse if she had had something extra that she could have given to V.E. In view of the candidate's and V.E.'s statements during

the hearing, the Commission does not consider that the candidate made any contribution (material or otherwise) to V.E.'s welfare.

The Commission notes that, during the initial and resumed evaluations, the candidate presented two different versions of her involvement in the negotiations for selling the apartment. At the initial evaluation the candidate conceded that she was present with her daughter and her husband at the negotiations when the agreement was finalized. During the resumed evaluation, the candidate insisted that she had just waited in the hallway outside of the notary's office to take care of a child. At the same time, at the hearing during the resumed evaluation she constantly referred to "we"⁴⁰ in her answers to the Commission, which indicates her profound involvement in discussions deciding the purchase the apartment, presumably including its price. Questions remain about whether the candidate fulfilled her obligation to maintain the apartment, given the condition of the apartment when it was sold. The candidate also disputed that her status as a judge specializing in examining cases involving minors had any relevance for the assessment of her ethical integrity. She demonstrated this attitude both at the initial and at the resumed evaluation hearings, which the Commission found particularly troubling. The candidate's insensitivity about her status as a judge specializing in examining cases involving minors heightened the Commission's doubts about her ethical integrity.

As noted above, in light of the SCJ special panel decision, the Commission is not including this issue in its determination on the candidate's passing or failing the evaluation in the resumed evaluation.

IV. Decision

Upon the resumed evaluation of the candidate pursuant to art. 14 para. (8) lit. b) and para. (10) of Law No. 26/2022, based on art. 8 para. (4) lit. b) and para. (5) lit. c) and d) of Law No. 26/2022, the Commission decided that the candidate does not meet the financial integrity criteria as serious doubts have been found as to the candidate's compliance with the financial integrity criteria and thus fails the evaluation.

The aim of the evaluation of the ethical and financial integrity of candidates for leadership positions in the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies is to increase the integrity of future members of those bodies, as well as the society's trust in the activity of the self-administration bodies of judges and prosecutors and in

⁴⁰ E.g., the candidate assumed that during that time, there might have been some "discussion now and then about selling that apartment, because the answer didn't come immediately and we didn't say immediately that, yes, we want to buy it. I think it was problematic, even if they were thinking about selling it to somebody else, I think it was problematic for them to make that happen without asking us." The candidate also said, "at that time specifically, we didn't have an intention to buy it."

the justice system overall (art. 8 para. (1) preamble to Law No. 26/2022). When candidates fail the evaluation because there are serious doubts about financial and/or ethical integrity issues, it demonstrates that candidates for leadership positions in the justice system have been scrupulously held to high standards of integrity, increasing the public's confidence in those candidates who pass and are eligible for election as members of the self-administration bodies. Especially considering the critical role of members of the self-administration bodies in the selection, promotion and discipline of their colleagues and in their administration of benefits such as preferential housing programs, it is imperative that the members themselves have demonstrated the highest level of financial and ethical integrity so that they can be expected as leaders to promote high standards for themselves and others.

According to art. 13 para. (1) of Law No. 26/2022, there are only two outcomes for the evaluation of candidates for positions as members in the self-administration bodies: passing or failing the evaluation. No other measures are available to the Commission. According to the ECtHR, it is consistent with the vetting process to have a more limited scale of measures. (In Albania there were only two measures that could be imposed: dismissal from office or suspension with the obligation to attend a training program.)⁴¹ For perspective in terms of the proportionality of a fail decision based upon reasonable doubts about a candidate's financial integrity, the ECtHR has repeatedly upheld confiscation orders issued by domestic authorities based only on a preponderance of evidence suggesting that the respondents' lawful incomes could not have sufficed for them to acquire the property in question. Confiscation orders have been upheld not only with respect to persons directly accused of offenses, but also in connection with their family members and other close relatives who had been presumed to possess and manage the "ill-gotten" property informally on behalf of the suspected offenders or who otherwise lacked the necessary *bona fide* status.⁴² A failing decision in the context of the evaluation of candidates seeking to serve on self-administration bodies in the justice system is in no way comparable in magnitude to confiscation of property orders, which have been sustained by the ECtHR on the basis of similar standards of proof.

The SCJ special panel suggested that the Commission could pass some candidates with perhaps minor integrity issues and provide a detailed description of those issues in the Commission's decisions so that the issues could be considered by those voting on the candidates for positions as members in the self-administration bodies. Commission evaluation decisions are public only with the candidate's consent and thus, there could be no assurance that voters would have any information about the integrity issues identified by the Commission. During the initial evaluation of candidates, only 26 of the 45 candidates that failed the evaluation – slightly more than half – consented to their decisions being public.

⁴¹ *Sevdari v. Albania*, no. 40662/19, para. 87, 13 December 2022.

⁴² *Telbis and Viziteu v. Romania*, no. 47911/15, para. 68, 26 June 2018; *Gogitidze and Others v. Georgia*, no. 36862/05, para. 107, 12 May 2015; *Webb v. the United Kingdom* (dec.), no. 56054/00, 10 February 2004; *Morabito and Others v. Italy* (dec.), 58572/00, 7 June 2005; and *Saccoccia v. Austria*, no. 69917/01, paras. 87-91, 18 December 2008.

V. Appeal and publication of the decision

Pursuant to art. 14 para. (1) of Law No. 26/2022, the candidate is entitled to appeal this decision within 5 days of receiving the decision.

Pursuant to art. 13 para. (7) of Law No. 26/2022, this decision is sent by email to the candidate and to the institution responsible for organizing the election or competition, which in the present case is the Superior Council of Magistracy. If, within 48 hours of sending the decision, the candidate does not notify the Commission of his or her refusal to publish the decision, the decision shall be published on the website of the Superior Council of Magistracy in a depersonalized form, except for the surname and first name of the candidate that remain public. The Commission will also publish the decision on its website if the candidate does not object to publication.

This decision was adopted unanimously participating members of the Commission.

Done in English and Romanian.

Signature:



Herman von HEBEL
Chairman, Commission

Annex No 1. Deposits made by the candidate during 2011 - 2012.

No.	Date	Amount (MDL)	Totals per month
1	06.04.2011	1,589.61	
2	06.04.2011	600.00	
3	06.04.2011	32.83	
4	06.04.2011	137.89	
5	06.04.2011	239.67	2,600
6	19.05.2011	707.12	
7	19.05.2011	115.38	
8	19.05.2011	19.00	
9	19.05.2011	19.00	
10	19.05.2011	138.26	
11	19.05.2011	1.24	1,000
12	03.06.2011	1,811.69	
13	03.06.2011	16.36	
14	03.06.2011	95.95	
15	03.06.2011	76.00	2,000
16	07.07.2011	729.18	
17	07.07.2011	77.83	
18	07.07.2011	388.99	
19	07.07.2011	304.00	1,500
20	10.08.2011	197.06	
21	10.08.2011	766.10	
22	10.08.2011	124.00	
23	10.08.2011	15.50	
24	10.08.2011	11.40	
25	10.08.2011	385.94	1,500
26	02.09.2011	1,145.35	
27	02.09.2011	347.05	
28	02.09.2011	7.60	
29	05.09.2011	9.75	
30	05.09.2011	146.41	
31	05.09.2011	43.84	1,700
32	10.10.2011	1,450.91	
33	10.10.2011	71.33	
34	10.10.2011	377.76	
35	12.10.2011	3.02	
36	12.10.2011	86.98	1,990

37	10.11.2011	1,392.57	
38	10.11.2011	5.53	
39	10.11.2011	3.80	
40	10.11.2011	19.00	
41	10.11.2011	279.10	1,700
42	08.12.2011	81.98	
43	08.12.2011	1,372.89	
44	08.12.2011	100.81	
45	08.12.2011	417.72	
46	08.12.2011	26.60	2,000
47	10.01.2012	206.78	
48	10.01.2012	1,301.28	
49	10.01.2012	12.12	
50	10.01.2012	127.13	
51	10.01.2012	19.00	
52	10.01.2012	333.69	2,000
53	10.02.2012	432.63	
54	10.02.2012	1,153.74	
55	10.02.2012	120.09	
56	10.02.2012	293.54	2,000
57	13.03.2012	852.49	
58	13.03.2012	96.03	
59	13.03.2012	250.38	
60	13.03.2012	0.85	
61	13.03.2012	0.25	1,200
62	17.04.2012	6.88	
63	17.04.2012	1,205.80	
64	17.04.2012	193.23	
65	17.04.2012	283.66	
66	17.04.2012	8.44	
67	17.04.2012	1.99	1,700
68	08.05.2012	603.32	
69	08.05.2012	1,156.29	
70	08.05.2012	80.13	
71	08.05.2012	160.26	2,000
72	04.06.2012	1,058.46	
73	04.06.2012	499.22	
74	04.06.2012	42.50	
75	04.06.2012	266.82	
76	04.06.2012	133.00	2,000

77	04.07.2012	1,163.18	
78	04.07.2012	306.10	
79	04.07.2012	46.62	
80	04.07.2012	404.30	
81	04.07.2012	79.80	2,000
82	07.08.2012	114.80	
83	07.08.2012	333.49	
84	07.08.2012	93.33	
85	07.08.2012	429.88	
86	07.08.2012	28.50	1,000
87	07.09.2012	1,116.93	
88	07.09.2012	383.07	1,500
89	17.09.2012	28,132.49	
90	17.09.2012	266.48	
91	17.09.2012	239.36	
92	17.09.2012	1.87	28,640.20
	Total	60,030.20	