



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. 1 of 19 January 2024 on the candidacy of Stanislav SORBALO, Candidate to the Superior Council of Magistracy and the Disciplinary Board of Judges

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 12 and 19 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:

The facts

Stanislav SORBALO, former judge at Bălți district court, Central office (“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 positions of member of the Superior Council of Magistracy and Disciplinary Board of Judges.

The candidate was appointed as an investigative judge for five years on 17 June 2004 to serve in Bălți district court. The candidate was dismissed from the position of investigating judge at the Bălți district court by presidential decree No. 2290 of 31 July 2009. The judge was reinstated as a judge at the Bălți district court, Central office by Superior Council of Magistrate’s decision No. 178/16 of 7 July 2020. The presidential decree on the candidate’s dismissal was annulled by decree No. 1774 of 22 September 2020.

The candidate was initially evaluated by the Commission (hereinafter “initial evaluation”) starting on 8 July 2022. The candidate submitted the voluntary ethics questionnaire on 1 July 2022. On 15 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 Following the candidate's request, on 25 November 2022, the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022. On 30 November 2022, the candidate participated in a public hearing before the Commission. The Commission issued its decision failing the candidate on 18 January 2023.

On 8 February 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. On 20 October 2023, the candidate submitted a letter to the Superior Council of Magistracy, in which he requested his resignation from the position of judge at the Bălți district court. By its decision of 24 October 2023, the Superior Council of Magistracy accepted the candidate's letter of resignation and terminated his employment as judge, effective 24 October 2023.

On 26 October 2023, the Commission addressed the Superior Council of Magistracy for clarification about the implications of the candidate's resignation for the resumed evaluation process and whether the Commission should cease the evaluation of the candidate due to his resignation. On 17 November 2023, the Superior Council of Magistracy responded to this request for clarification and observed that "this matter should be addressed within the framework of Law No. 947/1996 on the SCM and of Law No. 26/2022".

On 27 November 2023, the Commission sent the candidate a letter by which the Commission invited him to express his opinion on the question as to whether, notwithstanding the termination of his employment as judge as of 24 October 2023, the candidate continued to consider himself as a candidate for the position of member of the Superior Council of Magistracy and subject to resumed evaluation by the Commission.

On 30 November 2023, the candidate responded that he insisted on being re-evaluated, to defend his honor and professional reputation. The candidate argued that he did not withdraw from the evaluation process and that he intended to continue to run as a non-judge candidate for the Superior Council of Magistracy and for the Disciplinary Board.

Integrity Authority, State Fiscal 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 4 rounds of questions to the candidate, including 21 questions, 63 sub-questions and 12 requests for further documentation.

The law

Art. 2 para. (1) of Law No. 26/2022 provides that the provisions of this Law shall apply to candidates for the position of member of:

- a) Superior Council of Magistracy;
- b) ..[...]
- c) [...]
- d) Disciplinary Board of Judges.

Art. 15 para. (3) lit. b) of Law No. 26/2022 provides that Parliament shall within 15 days from the date of entry into force of this Law, start a public competition to appoint 6 persons as members of the Superior Council of Magistracy, who enjoy high professional reputation and personal integrity, with experience in law or another relevant field, who do not work in the legislative, executive or judicial authorities and are not politically affiliated.

Art. 15 para. (3) lit. c) of Law No. 26/2022 provides that Parliament [...] forward the information on candidates who have passed the eligibility to the Evaluation Commission.

Art. 15 para. (9) of Law No. 26/2022 provides that on the day following the expiry of the application deadline for the position of members of the Superior Council of Magistracy, [...] and specialized bodies of judges [...], the Superior Council of Magistracy [...] shall publish on their official websites the full lists of candidates to those positions.

Art. 15 para. (10) of Law No. 26/2022 provides that within 7 days of the expiry of the application deadline for the position of member of the Superior Council of Magistracy, [...] and specialized bodies of judges [...], the Superior Council of Magistracy [...] shall submit the lists of candidates for the positions, [...].

Art. 122 para. (1) of the Constitution provides that the Superior Council of Magistracy consists of 12 members: six judges elected by the General Assembly of Judges, representing all levels of courts, and six persons that are of high professional integrity and personal integrity, with experience in the field of law or in another relevant field, who do not work within the legislative, executive or judicial authorities and are not politically affiliated.

Art. 3 of Law No. 947/1996 on the Superior Council of Magistracy provides that the members of the Superior Council of Magistracy include judges and persons of high professional reputation and personal integrity, experienced in the field of law or other relevant field provided for in art. 3¹ para. (1¹) lit. c) of Law No. 947/1996, who do not work in the legislative, executive or judicial authorities and who are not politically affiliated. According to art. 3 para (3) and (4) of Law No. 947/1996, six members of the Superior Council of Magistracy who are not judges are appointed by a decision of Parliament based on a public contest and six members of the Superior Council of Magistracy from among the judges are elected by the General Assembly of Judges by secret ballot. The six members from among the judges are elected by secret ballot by the General Assembly of Judges as follows: four from the first instance courts, one from the appellate courts and one from the Supreme Court of Justice.

Art. 9 para. (1) and art. 10 para. (1) and (3) of Law No. 178/2014 on disciplinary responsibility of judges provides that the Disciplinary Board of Judges is composed of four judges, elected from among judges by secret ballot by the General Assembly of Judges, and three persons from civil society, appointed by the Minister of Justice following a public contest.

Reasoning

According to Law No. 947/1996 on the Superior Council of Magistracy, the members of the Superior Council of Magistracy belong to one of two categories of members: either judges or “persons of high professional reputation and personal integrity, experienced in the field of law or other relevant field provided by art. 3¹ para. (1¹) lit. c), who do not work in the legislative, executive or judicial authorities and who are not politically affiliated”.

On 6 April 2022, the Superior Council of Magistracy submitted a list of judicial candidates to the Commission for evaluation for the positions of member of the Superior Council of Magistracy and the Disciplinary Board of Judges. The candidate was one of the judges included in this list. All candidates on the list submitted by the Superior Council of Magistracy were judges serving in the Moldovan judicial system.

On 9 June 2022 and 5 May 2023, Parliament submitted lists of candidates, who, according to art. 15 para. (3) lit. b) of Law No. 26/2022, are candidates who enjoy high professional reputation and personal integrity, with experience in law or another relevant field, who do not work in the legislative, executive or judicial authorities and are not politically affiliated. As a judicial candidate proposed by the Superior Council of Magistracy, the candidate was not and could not have been included on these lists.

On 18 January 2023, the Commission issued its initial evaluation decision failing the candidate. Based on an appeal, lodged by the candidate against the Commission’s decision on 8 February 2023, the SCJ special panel accepted the candidate’s appeal, annulled the decision of the Commission and ordered the re-evaluation of the candidate on 1 August 2023.

The Commission commenced the resumed evaluation of the candidate on 8 September 2023. On 20 October 2023, the candidate requested his resignation from the position of judge at the Bălți district court. By decision of 24 October 2023, the Superior Council of Magistracy accepted the candidate’s letter of resignation and terminated his employment as judge, effective 24 October 2023.

In his letter to the Commission of 30 November 2023, the candidate argues that “I am currently not already a judge, passing the evaluation, I can continue to run as a non-judge both as a member of the Superior Council of Magistracy and of the Disciplinary Board”. Pursuant to art. 15 para. (3) of Law No. 26/2022, it is the responsibility of Parliament to start a public competition for non-judicial candidates for membership of the Superior Council of Magistracy and to forward the information on candidates considered eligible to the Commission. Law No. 26/2022 does not allow a judicial candidate, submitted by the Superior Council of Magistracy, to unilaterally change his/her status into a non-judicial candidate, thereby bypassing the responsibilities of Parliament to organize a public competition and decide upon the eligibility for inclusion in the

list of candidates to be submitted to the Commission. Law No. 26/2002 also does not provide the Commission with such authority.

In addition, in his letter of 30 November 2023 to the Commission, the candidate insisted on his resumed evaluation in order to have the opportunity to defend his honor and professional reputation. He argues that the Commission's decision of 18 January 2023 affected his professional reputation.

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.³ This was confirmed in a number of recent decisions by the SCJ, in which the SCJ special panel emphasized that a decision of the Commission on failing the evaluation only represents a legal ground for not accepting the candidate into election or competition for membership of the Superior Council of Magistracy. No other legal consequences are stipulated in Law No. 26/2022.⁴

In a recent decision on an appeal from a decision of the Commission wherein the candidate had resigned from his position as judge but sought the continuation of his appeal in order to ensure the effective protection of his rights, the SCJ special panel held that as a result of the candidate's resignation as judge (in that case – as SCJ judge), the candidate no longer met one of the essential conditions for participation in the contest for the selection of the candidate as judicial member of the Superior Council of Magistracy (in that case – among the SCJ judges) because he no longer held the position of judge. The SCJ special panel held that the applicant's failure to hold the position of judge, when the SCJ examined the candidate's appeal, made it impossible to permit the appeal because granting the appeal would not produce the legal effects provided for by law.⁵ Against this background, the Commission necessarily concludes that the resumed evaluation of the candidate will not be able to produce any legal effect, as the candidate is no longer a judge and can no longer be elected as a judicial member of the Superior Council of Magistracy or the Disciplinary Board of Judges.

Furthermore, the Commission observes that on 1 August 2023, the SCJ special panel annulled the Commission's decision of 18 January 2023, with the result that at present no decision failing the candidate is in force. Only a resumed evaluation of the candidate would lead to a new decision passing or failing the candidate.

³Section 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.

⁴ See for example SCJ special panel decision of 20 November 2023 in relation to the appeal of Iurie Bejenaru against the Commission's decision and the SCJ special panel decision of 9 January 2024 in relation to the appeal of Gheorghe Graur against the Commission's decision.

⁵ SCJ special panel decision of 20 November 2023 in relation to the appeal of Iurie Bejenaru against the Commission's decision, https://jurisprudenta.csj.md/search_col_civil.php?id=72975

Decision

The Commission commenced the resumed evaluation of the candidate as a judicial candidate for member of the Superior Council of Magistracy and the Disciplinary Board of Judges on 8 September 2023. At the candidate's request, the Superior Council of Magistracy terminated the candidate's employment as a judge as of 24 October 2023. Although the candidate did not withdraw from the competition pursuant to art. 13 para. (1) of Law No. 26/2022, a necessary consequence of his termination as judge is that the candidate can no longer be considered a judicial candidate for membership of the Superior Council of Magistracy or the Disciplinary Board of Judges. As a result, the candidate no longer qualifies as a candidate pursuant to art. 2 of Law No. 26/2022 and the Commission hence terminates the resumed evaluation of the candidate.

Appeal and publication of the decision

Art. 14 para. (1) of Law No. 26/2022 provides that the candidate is entitled to appeal a decision of the Commission within 5 days from receiving the decision.

Art. 13 para. (7) of Law No. 26/2022 provides that 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 by all participating members of the Commission.

Done in English and Romanian.

Signature:



Herman von HEBEL
Chairman of the Commission