



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. 10 of 12 March 2024 on the Resumed Evaluation of Nicolae ȘOVA,
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 12 March 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

Nicolae ȘOVA, judge at the Chisinau 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 position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge for five years on 17 June 2005 to serve in the Botanica District Court in Chisinau municipality. The candidate was appointed as a judge until the retirement age on 30 June 2010. On 1 January 2017, the candidate was appointed as judge at the Chisinau Court. On 11 December 2018, the candidate was designated as judge specialized in insolvency cases at the Chisinau Court, Central Office, effective from 1 January 2019. On 2 November 2021, the candidate was appointed as interim vice-president of Chisinau Court, Central Office, and interim President of the Chisinau Court.

The candidate was initially evaluated by the Commission (hereinafter “initial evaluation”) starting on 8 July 2022. The candidate submitted the voluntary ethics questionnaire on 5 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 Integrity Authority, State Fiscal Service, General Inspectorate of Border Police, financial institutions, public

The candidate also responded to written questions and requests for information from the Commission.² The candidate did not request access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022 and therefore did not receive the materials. On 2 December 2022, the candidate participated in a public hearing before the Commission. The Commission issued its decision failing the candidate on 13 January 2023.

On 6 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. The candidate responded to two rounds of written questions from the Commission, including seven sub-questions and one request 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 7 February 2024. Following the candidate's request of 14 February 2024, on 15 February 2024, the candidate was granted access 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 22 February 2024. The candidate did not request a 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-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,

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 three rounds of questions to the candidate, including 29 questions, 71 sub-questions and 25 requests for further documentation.

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 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

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 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.

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 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;

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.

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.

- 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:

- 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

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

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 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

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.

¹⁶Section 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.

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

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 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

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

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.

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 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

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.

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.

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 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

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.

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.

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 asset 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 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.

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.

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

1. The purchase of an apartment at a preferential price in Chisinau municipality

a. The facts

In 2014, the candidate acquired an apartment of 72.2 sq.m. in Chisinau municipality at a preferential price through the program for improving the living conditions of judges, implemented by the Superior Council of Magistracy (hereinafter “SCM”). The candidate declared in his annual declaration of assets and personal interests (hereinafter “annual declaration”) submitted to the National Integrity Authority (hereinafter “NIA”) for 2016 that he bought this property for 25,884 EUR (est. 530,000 MDL).

At the time of submitting the request for improvement of living conditions to the SCM, on 20 September 2013, the candidate’s wife owned an apartment in Chisinau municipality with an area of 51.4 sq.m. acquired in 1996 through a donation contract. The candidate also owned three land plots, including a land plot of 0.12 ha in Truseni commune, Chisinau municipality, acquired through a sales-purchase contract of 24 May 2012. On this plot, the candidate received from the local authorities on 3 July 2012 the certificate of construction to build a house. The candidate had started construction of a house on this property at the time of his submission of the request for preferential housing to the SCM. In 2012, the candidate took out a loan of 250,000 MDL for repairs on the 51.4 sq.m. apartment in Chisinau municipality and for the construction of the house in Truseni commune, Chisinau municipality.

During the initial evaluation, the Commission asked the candidate to explain his eligibility for the preferential price housing program. The candidate indicated that at the time of conclusion of the investment contract to purchase the 72.2 sq.m. apartment in Chisinau municipality, he was living with a family of four people in the apartment of 51.4. sq.m., donated to the candidate’s wife by her parents. The candidate noted that his children were already grown and had to live together in limited space. The candidate stated that it was suggested that he participate in the purchase of a larger apartment, and he decided to take advantage of this opportunity.

During the initial evaluation the candidate confirmed to the Commission that he did not disclose to the SCM either the real estate his wife owned or the fact that he had started construction of a house in Truseni commune, Chisinau municipality “because the income received at that moment was indicating that the house would be finished in the distant future”. The candidate further stated that the difference between the market price and the preferential price provided through the SCM housing program was not so significant. He claimed that according to the initial information when

the contract was concluded, the price announced by the contractor was 430 EUR per sq.m. compared to the preferential price of 360 EUR per sq.m. offered to judges, which represented a 16% discount. At the public hearing during the initial evaluation, however, the candidate conceded that the 72.2 sq.m. apartment was acquired at a price that he would not have been able to obtain under ordinary market conditions.

During the initial evaluation the candidate also noted that he and his family never lived in the 72.2 sq.m. apartment but continued to live in the 51.4 sq.m. apartment. The candidate declared in his 2020 annual declaration that he had sold the preferential price apartment to his daughter's family through the sales-purchase contract of 24 December 2020 for 530,000 MDL (est. 25,000 EUR).

The Commission issued its decision failing the candidate on 13 January 2023. On 6 February 2023, the candidate appealed the Commission's decision to the SCJ pursuant to art. 14 para. (1) and (2) of Law No. 26/2022. 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 case by the SCJ, the SCJ special panel permitted the candidate to introduce additional evidence. The candidate provided to the SCJ special panel documents he had requested from the SCM on 14 February 2023, specifically the documents that he had submitted to the SCM in 2013 in order to participate in the preferential price housing program: (1) a copy of his application; (2) a certificate confirming that the candidate was an active judge; (3) an extract from the e-Cadaster of 19 September 2013, attesting that the candidate owned three plots of land (two in Stauceni and one in Truseni communes, both from Chisinau municipality) and (4) a certificate No. 756 of 18 September 2013 issued by the Municipal Enterprise for the Management of the Local Fund (hereinafter "IMGFL") attesting that the candidate's wife resided with her family in Chisinau municipality indicating the address of the 51.4. sq.m. apartment.

During the resumed evaluation the candidate was asked to explain why he did not inform the SCM that: a) his wife owned a 51.4 sq.m. apartment in Chisinau municipality and b) he had started construction of a house on one of the land plots that he owned. In his answers to the Commission, the candidate noted that he had enclosed certificate No. 756 of 18 September 2013 issued by IMGFL with his application to the SCM. The candidate claimed that that certificate attested that his wife was the owner of the apartment in Chisinau municipality and that she resided there with her family of four (the candidate and their two children). Therefore, the candidate considered that he had complied with the legal requirements when submitting his application to the SCM. The candidate further argued that he was not asked by the SCM to provide any additional documents or information as they were entitled to do.

The candidate also stated that the initiation of construction of the dwelling house should not be interpreted as the presence of adequate living conditions at the time he submitted the application

to the SCM, because the house was under construction and not habitable. According to the information obtained by the Commission during the resumed evaluation, the house was registered in the e-Cadaster on 17 December 2021 as an unfinished construction.

According to information obtained by the Commission during the resumed evaluation, the SCM received two plots of land located on V. Alecsandri and Ceucari Streets in Chisinau municipality for the purpose of providing, designing and constructing housing blocks in order to improve the living conditions of employees of the judiciary based on the decision No. 2/18 of the Chisinau Municipal Council of 12 March 2013. The municipality provided the right of use of a 876 sq.m. plot of land on V. Alecsandri Str., where the candidate's prospective apartment was located, to the SCM at no cost but remained the owner. According to the initial agreement between the SCM and "Basconslux" S.R.L., the SCM would receive 40% of the apartments to be sold to the employees of the judiciary at the price of 360 EUR per sq.m. and 60 % of the apartments would be left to "Basconslux" S.R.L. to sell at market price. According to a subsequent amendment to the agreement, the quotas were re-assigned as follows: 57 % of the apartments to the SCM and 43% of the apartments – to "Basconslux" S.R.L. In 2014, when the candidate signed the contract with "Basconslux" S.R.L., the price of the preferential price apartments was set at 360 EUR per sq.m. (est. 7,340 MDL). According to the information available to the Commission, the market price per sq.m. of the apartments was 10,711 MDL (est. 574 EUR) in 2014.

During the resumed evaluation the Commission received a response from the SCM on the question whether the ownership of an apartment donated to the spouse of a program applicant before or after their marriage would disqualify the applicant. According to the SCM's response:

- "We observe that there is no explicit provision that would exclude judges or employees of national courts whose spouses own apartments/houses in the Chisinau municipality, obtained through donation contracts before or after marriage. Similarly, there is no explicit provision that would obligate judges and employees of national courts whose spouses own apartments/houses in the Chisinau municipality, obtained through donation contracts before or after marriage, to declare these apartments/houses to the Commission [for the selection of applicants enrolled in the list of judicial system employees who require the improvement of living conditions (hereinafter "the SCM Commission")]"
- "On the other hand, since, according to the Regulation³⁸, the status of applicants was attributed to judges who do not have housing or have insufficient housing within the Chisinau municipality, these circumstances were supposed to be verified in this context."

The Commission also received information from the SCM about whether a program applicant was obliged to disclose the fact that s/he had a house under construction and whether the

³⁸ Regulation approved by the Decision No. 03 of 6 September 2013 of SCM Commission for the selection of applicants enrolled in the list of judicial system employees who require the improvement of living conditions of the SCM (referred in the text).

preferential program was meant for improving the living conditions of the eligible judges' or employees' adult children. The SCM stated the following:

- „Regulation does not contain an express provision that would exclude judges or employees of courts and SCM from the program if they had real estate under construction. This issue was to be examined by the Commission [the CSM Commission], based on whether the building under construction represented housing space or not.
- At the same time, as derived from the mentioned Regulation, the implemented program was intended to improve the living conditions of judges and employees of national courts and SCM, not to improve the living conditions of adult children of eligible judges/employees”.

In his response to the statement of facts and serious doubts document, the candidate indicated that, when he submitted his application to the SCM, he and his family did not have sufficient living space and so he was eligible to participate in the preferential price housing program. The candidate argued that the Commission had not examined the materials submitted by him to the SCJ and had also not considered the donation contract according to which the apartment had been donated to his wife. The candidate also challenged the Commission's conclusion that he had not informed the SCM that his wife owned the apartment where they were living or that construction had begun on one of the plots of land, he owned in the Trusenii commune of the Chisinau municipality. The candidate considered that the extract from the e-Cadaster of 19 September 2013 that he had submitted to the SCM showed he had three plots of land and that the candidate started construction of a house on one of them. The candidate did not comment upon the SCM's explicit statement that the preferential price housing program was not intended to improve the living conditions of adult children of eligible judges/employees.

In his responses to the statement of facts and serious doubts document the candidate further argued that the Commission had invented the legal obligation of informing the SCM about the fact that his wife owned the apartment where they lived or that he had a house under construction. The candidate noted that, according to the SCM responses, he was not obliged to provide this information to the SCM Commission. The candidate concluded that, by manipulating information received by the Commission from the SCM, he had become the subject of abuse and discrimination by the Commission. He considered that the information received from the SCM during the resumed evaluation dispelled the fabricated reporting obligations imposed on him by the Commission. The candidate considered that the Commission had failed to treat him equally with other candidates and cited a single decision as an example to support this claim (Commission Decision No. 11 of 5 January 2023). The candidate argued that the Commission did not consider that the candidate in that evaluation had been appointed as interim president of one of the regional courts and during the evaluation he was not exercising any functions in Chisinau municipality. The candidate stated that, during the resumed evaluation, the Commission had not identified any other circumstances or legal grounds that could call into question his ethical and financial integrity.

b. The law

Art. 8 para. (2) lit. a) of Law No. 26/2022 provides that the candidate shall be deemed to meet the criterion of ethical integrity if s/he 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. 8 para. (4) lit. b) of Law No. 26/2022 provides that a candidate shall be deemed to meet the criterion of financial integrity if the Evaluation Commission finds that his/her wealth acquired in the past 15 years corresponds to the declared revenues. Art. 8 para. (5) lit. c) of Law No. 26/2022 provides that in order to assess the candidate's financial integrity, the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2), as well as the expenses for the maintenance of such assets.

According to the Regulation regarding the selection of candidates enrolled in the list of employees in the judicial system who require the improvement of living conditions, approved by the decision No. 3 of 6 September 2013 of the Commission for selection of candidates enrolled in the list of employees in the judicial system who require the improvement of living conditions, set up by the SCM decision No. 549/22 of 9 July 2013 (hereinafter "2013 Regulation"), the following people could request improvement of living conditions: a) judges from the Chisinau court who do not have housing space or have insufficient housing space, within the Chisinau municipality, b) judges that have permanent residence in Chisinau municipality, but work in other courts and they are not provided with housing at the place of work or have or have insufficient housing space, within the Chisinau municipality, c) employees in the national courts and the CSM that do not have housing space or have insufficient housing space, within the Chisinau municipality and the time of submitting the request have worked in the judicial system at least 6 months.

According to art. 3 para. (3) of Judge's Code of Ethics approved by Decision No. 366/15 of the Superior Council of Magistracy on 29 November 2007, "a judge must refrain from any behavior, action or manifestation that could prejudice the public's trust in the judicial system". Art. 11 para. (4) of the same Code provides that "the extrajudicial activities of the judge shall not cast doubts as to his/her impartiality, objectivity or integrity".

The 2015 Judge's Code of Ethics and Professional Conduct states in art. 5 para. (1) that the judge "shall respect the highest standards of integrity and responsibility, in order to ensure the society's trust in the courts. He/she is aware of the risks of corruption and shall not admit or create the appearance of a corrupt behavior in his/her work; shall not ask for, accept or receive gifts, favors or benefits for the fulfillment or non-fulfillment of the service duties or by virtue of the position held." In para. (5) it provides that the judge "shall conclude transactions regarding personal property in a way that does not cause doubt or does not affect his/her independence and impartiality or trigger conflict of interest". Also, according to art. 6 para. (2) of the same Code, a

judge “must refrain from any behavior, action or manifestation that could prejudice the public's trust in the judicial system”.

According to Principle 3.1 of the Bangalore Principles of Judicial Conduct of 2002, “A judge shall ensure that his or her conduct is above reproach in the view of the reasonable observer”. And Principle 3.2. states that “[t]he 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”.

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 single 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 of 1 August 2023, the SCJ special panel found that, when the candidate filed his application to the SCM to benefit from purchasing an apartment at a preferential price, he did not own real estate that would meet his needs which could have led to the rejection of his request. The SCJ special panel also noted that the Commission had not checked all the factual circumstances, such as the fact that the candidate’s daughter was married in 2017 and continued living with her husband in her parents’ 51.4 sq.m. apartment, and the Commission had not considered that the preferential price apartment was not transferred to the candidate’s ownership until 2017. The SCJ special panel concluded that, at the time he applied for the preferential price apartment, the candidate was eligible to participate in the program and the Commission’s decision finding serious doubts regarding the candidate’s ethical and financial integrity, because he had purchased the preferential apartment in 2014 and sold it in 2020, was unjustified.

The Commission is required to verify the method of acquiring property owned or possessed by the candidate or close persons and to verify the sources of income of the candidate and, where appropriate, of close persons.

In light of the SCJ special panel decision and the information assessed during the resumed evaluation, the Commission is not including the issue of the candidate’s eligibility for participation in the program 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-disclosure to the SCM that his wife owned the apartment where they resided and that he had a house under construction was not a departure from financial and ethical standards and that he did not violate the principle of integrity under the criteria established by Law No. 26/2022 for the reasons discussed below.

During the initial evaluation, the candidate confirmed to the Commission that he did not disclose to the SCM either the real estate his wife owned or the fact that he had started construction of a house in Truseni commune. He also did not provide the Commission with the documents that he had submitted to the SCM for participation in the preferential price housing program. During the examination of the case by the SCJ, the candidate provided for the first time those documents to the SCJ special panel. The candidate did not request the documents from the SCM until after the adoption of the Commission's decision failing the candidate. During the resumed evaluation the candidate argued that he provided information to the SCM concerning the apartment donated to his wife and the construction of the house on one of the land plots as per the certificate of 19 September 2013³⁹.

It is noted that the extract from the e-Cadaster of 19 September 2013 only attests that the candidate owned three plots of land. It does not include information about construction of a house having started on one of the land plots. The records received during the resumed evaluation indicate that the candidate did not inform the SCM that his wife owned the apartment where they were residing or the fact that he had a house under construction. While there was no explicit provision that obligated a program applicant to declare such properties to the SCM, according to the rules,⁴⁰ the SCM Commission should verify all the circumstances to assess the eligibility of candidates.

Participation in the preferential price housing program created financial benefits for the candidate as he was able to purchase the apartment at the actual cost per sq. m. of 360 EUR (est. 7,340 MDL) which was considerably lower than market price. The failure of the candidate to disclose to the SCM the fact that his wife owned a donated apartment where the candidate lived with his family and that the candidate had a house under construction did not allow the SCM Commission to verify these circumstances as they were expected to do. By not disclosing complete information to the SCM, the candidate withheld an important fact from the SCM Commission's decision-making process. Withholding information in order to benefit from a housing program is a conduct that would be inexplicable from the point of view of a legal professional and an impartial observer and conveys an attitude towards the administration of public program benefits that inevitably causes the public to lose confidence in public officials.

The candidate contends that he was treated differently from other candidates. The candidate cites a single decision to support this claim (the Commission Decision No. 11 of 5 January 2023).

³⁹ Extract from the e-Cadaster.

⁴⁰ Regulation approved by the Decision No. 03 of 6 September 2013 of SCM Commission for the selection of applicants enrolled in the list of judicial system employees who require the improvement of living conditions of the SCM.

The candidate argued that the Commission did not consider that the candidate in that evaluation had been appointed as interim president of one of the regional courts and during the evaluation he was not exercising any functions in Chisinau municipality. Unlike this candidate, that candidate informed the SCM Commission that he had owned a house in one of the regions of the Republic of Moldova for 30 years. The candidate in that evaluation provided the Commission with all relevant documentation and information relating to his application to participate in the program and his reasons for seeking an apartment in Chisinau municipality. That candidate also provided the Commission with detailed information relating to the source of funds used to purchase the apartment. In view of all the above-mentioned, the facts in these two evaluations differ substantially and the issue of unequal treatment does not arise.

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

2. Purchase of the candidate's apartment by the candidate's daughter's family and transactions involving 25,495 EUR

a. The facts

(I) The candidate purchased the 72.2 sq.m. apartment in Chisinau municipality in 2014, discussed in issue No. 1, for 25,884 EUR (est. 530,000 MDL). In his 2020 annual declaration, the candidate declared that he sold this apartment to his daughter's family for 530,000 MDL (est. 25,000 EUR), through a sale-purchase contract of 20 December 2020. The candidate stated that his daughter's family paid him in cash.

According to information from the State Tax Service (hereinafter "STS"), the candidate's daughter had no income between 2017 - 2020. Her gross taxable income in 2021 was 37,621 MDL. During the period of 2017 - 2021 the candidate's son-in-law had gross taxable income of 119,300 MDL. Thus, during the period 2017 - 2021, the candidate's daughter's family had total gross taxable income of 156,921 MDL.

During the initial evaluation the Commission asked the candidate to identify the source of funds used by his daughter's family to purchase the apartment. The candidate provided a copy of the loan contract No. 5 signed on 14 December 2020 between a company (hereinafter "P.I. S.R.L.") and the candidate's son-in-law, through which the latter received a loan of 530,000 MDL. The candidate argued that this loan was the source of funds for his daughter's family to purchase the apartment from the candidate. According to the STS database, the candidate's son-in-law has been listed as a founder of P.I. S.R.L. since 23 July 2014, owning 100% of the company's shares.

In subsequent communication with the Commission during the initial evaluation, the candidate

stated that the 530,000 MDL loan from the P.I. S.R.L. was withdrawn from the company's bank account in two steps: a withdrawal of 350,000 MDL on 5 November 2020 and a second withdrawal of 190,000 MDL on 14 December 2020. The candidate provided two bank statements listing these two withdrawals, neither of which refers to loan contract No. 5 between the P.I. S.R.L. and the candidate's son-in-law. The bank statements indicate that the withdrawal of 350,000 MDL on 5 November 2020 was based on a "contract of loan No. 11 of 5 November 2020" and the withdrawal of 190,000 MDL on 14 December 2020 was based on the "contract of loan No.12 of 14 December 2020". According to this documentation, the 350,000 MDL was withdrawn based on a loan contract No. 11 that was signed a month prior to the contract for the 530,000 MDL loan and the withdrawal of the 190,000 MDL was based on contract No. 12 of 14 December 2020, although the candidate had previously presented contract No. 5 of 14 December 2020 as his son-in-law's loan. Both withdrawals were made by the candidate's daughter's father-in-law, the administrator of P.I. S.R.L. (hereinafter "administrator").

At the hearing during the initial evaluation, the candidate was not able to explain why the 350,000 MDL withdrawn from the P.I. S.R.L.'s bank account on 5 November 2020, more than a month prior to the signing of the contract for the 530,000 MDL loan on 14 December 2020, should be considered part of the loan. Similarly, the candidate was not able to explain why the contract number in the loan contract for 530,000 MDL that the candidate presented to the Commission (No. 5 of 14 December 2020) is different from the number of the loan contract indicated in the bank statement of the P.I. S.R.L. regarding the withdrawal of the 190,000 MDL (No. 12 of 14 December 2020").

During the resumed evaluation, the Commission sent several requests to the P.I. S.R.L. concerning the loan of 530,000 MDL. In their response to the Commission's requests, the company stated that, according to loan agreement No. 11 of 5 November 2020, the P.I. S.R.L. gave 500,000 MDL to the administrator for the candidate's son-in-law to purchase an apartment in Chisinau municipality. Of this amount, according to the company's reply, 350,000 MDL was actually given as a loan. On 14 December 2020, loan agreement No. 12 was signed, according to which, the P.I. S.R.L. gave another 500,000 MDL to the administrator. Out of this amount, according to the company, only 190,000 MDL was released to the borrower. According to point 1.4. of both contracts, the loans were issued for business purposes. The P.I. S.R.L. stated that, of the total amount of the two loan agreements (1,000,000 MDL), only 540,000 MDL was given to the administrator. The P.I. S.R.L. stated that according to the collection order No. 4 of 14 December 2020, the administrator had returned 530,000 MDL to the P.I. S.R.L. in accordance with the loan contracts No. 11 of 5 November 2020 and No. 12 of 14 December 2020. The P.I. S.R.L. provided cases of these loan agreements and the collection order No. 4 (of 14 December 2020).

The P.I. S.R.L. further stated that, on 14 December 2020, after return of 530,000 MLD by the administrator, a loan agreement No. 5 of 14 December 2020 was signed between the P.I. S.R.L. and the candidate's son-in-law, according to which the company had granted him a loan of

530,000 MDL. According to the company's response, that amount was released from the cashier of the business on the same day as payment order No. 3. The company did not submit a copy of this payment order to the Commission. The P.I. S.R.L. stated that the company's only owner (the candidate's son-in-law) and the administrator (the candidate's son-in-law's father) agreed, for personal reasons, that the owner of the apartment in Chisinau municipality would be the candidate's son-in-law, hence the "source of the funds was to be redirected" to the candidate's son-in-law. The loan of 530,000 MDL has not yet been repaid.

In response to the Commission's question as to why it had been necessary to sign two contracts of 500,000 MDL, if only 530,000 MDL was needed for the purchase of the apartment, the company responded that these were standard contracts used by the P.I. S.R.L. in compliance with the legislation in force. Furthermore, the company responded that, in accordance with the provisions of the loan agreements, the administrator was authorized to withdraw up to 500,000 MDL considering the expenses which the company had for pending activities at the time of the withdrawal.

In response to the Commission's question about how the loans could be used for the purchase of real estate, when, according to the contracts, they had been granted for business purposes, the P.I. S.R.L. replied that the administrator repaid 530,000 MDL to the company as confirmed by collection order No. 4 of 14 December 2020 and subsequently lent to the candidate's son-in-law. Therefore, the P.I. S.R.L. claimed that the loans granted to the administrator had not been used to purchase the apartment, but the loan given to the candidate's son-in-law.

In his responses to the statement of facts and serious doubts document, the candidate contended that the Commission had cast doubts on the authority of the *res judicata* decision of the SCJ special panel and questioned the authenticity and veracity of information provided to the SCJ special panel. The candidate did not provide any other comments upon these issues.

(II) According to the information available to the Commission during the initial evaluation, on 16 April 2021, the candidate purchased 25,495 EUR (est. 533,355 MDL). The candidate explained that this transaction was carried out for the purpose of buying a car model Toyota RAV-4 on the same date. During the initial evaluation the candidate stated that the source of funds used for this purchase was cash savings in the amount of 565,000 MDL declared in his 2020 annual declaration, obtained from the sale of an apartment for 530,000 MDL to his daughter's family and from the sale of a car model AUDI A6 for 35,000 MDL.

According to the sales-purchase contract for car model Toyota RAV4, the purchase price of 30,340 USD was to be paid in MDL. According to the payment receipt for the car, the payment of 30,340 USD was made in MDL in the total amount of 544,828 MDL.

At the hearing during the initial evaluation the candidate stated that the 25,495 EUR were purchased at the bank office located inside the car showroom on the day he bought the car. The

candidate also noted that the purchase of the car was carried out in MDL for which he received a payment receipt. The candidate was asked to explain why he bought Euros when the car was paid for in MDL. Although in the written communication with the Commission during the initial evaluation the candidate had confirmed that the 25,495 EUR were purchased in order to buy the car Toyota RAV4, at the hearing during the initial evaluation the candidate stated that he was not sure if the euros were bought or sold. He did not provide an explicit answer about whether he kept the 2020 savings in national or foreign currency and hence could not provide a firm answer on whether the 25,495 EUR were bought or sold by him.

During the examination of the case by the SCJ special panel, the candidate stated for the first time that he gave the money that he received from the sale of the apartment to a close acquaintance of his family, V.T., for safekeeping. The candidate submitted a copy of notarized statement No. 2-632 of 10 April 2023 of V.T. to the SCJ special panel. According to this document: *“V.Ț. declares that she is in friendly relationship with the [candidate’s] family [and] on 18.01.2021 at the request of [the candidate’s wife] she kept the amount of 550,000 MDL, with the possibility to convert it into foreign currency (USD or EUR). And on 16.04.2021, at the request of [the candidate’s wife], she returned to her the amount of 26,000 EUR...”*

The Commission submitted written questions to V.T. during the resumed evaluation. In her responses, V.T. noted that she had been in friendly relations with the candidate’s family for many years. The candidate knew that she had worked and lived in one of the European States for about 20 years and that she had citizenship in that country. Also, the candidate knew that V.T. had returned to the Republic of Moldova and had a decent financial situation. V.T. also noted that the candidate’s family was aware that she had savings in euros. According to V.T., the candidate’s family informed V.T. that they had 550,000 MDL in savings but were afraid to keep it at home because the amount had been disclosed in the asset declaration, which is a public document. The candidate was also afraid to keep the funds in financial institutions due to mistrust of the Moldovan banking system. Therefore, V.T. had been asked to keep the money with the possibility of converting it into euros. V.T. further noted that she had received 550,000 MDL on 18 January 2021. Because of mutual trust, they did not issue any documents in this regard. She claimed that the money was kept with her savings in a safe at a secure location which could not be disclosed to the Commission. Also, V.T. stated that on 16 April 2021⁴¹, at the request of the candidate’s wife, she had returned 26,000 EUR to the candidate’s wife. V.T. noted that the reason for converting the 550,000 MDL into euros was to buy the car, and the money had been converted from the funds she owned.

During the resumed evaluation, the Commission also asked the candidate why he did not inform the Commission that he had given 550,000 MDL to V.T. and why notarial statement No. 2-632 was drawn up on 10 April 2023 after his evaluation by the Pre-Vetting Commission. The candidate responded that, at the time of the hearings during the initial evaluation, he did not have

⁴¹ On 16 April 2021, the National Bank’s official exchange rate was 21.3806, meaning that 550,000 MDL amounted to 25,724 EUR.

V.T.'s consent to communicate this fact to the Commission. The candidate stated that he gave 550,000 MDL in cash to V.T. and received back 26,000 EUR in cash.

In response to the Commission's question why he had purchased 25,495 EUR if he had received 26,000 EUR from V.T. on 16 April 2021, the candidate responded as follows: "The question is suggestive and does not correspond to reality. I draw attention to the fact that on 16 April 2021, I did not purchase (bought) EURO or USD foreign currency but sold EURO foreign currency in the amount of 25,495 EUR at the price of 544,828.15 MDL, circumstance confirmed by Currency Exchange Bulletin No. 20710947 dated 16 April 2021 and the currency exchange receipt of the same date (copies are annexed). Thus, I note that close to that date, I sold the foreign currency received from V.T. in the amount of 25,495 EUR (see declaration no. 2-632 of 10 April 2023), but I did not buy, as insisted so far." The candidate also stated that, during the examination of the case by the SCJ, he had familiarized himself with the evaluation materials where he had found a document allegedly stating that he had purchased 25,495 EUR on 16 April 2021. The candidate argued that the information in the evaluation materials concerned the purchase of euros by the bank from the candidate, not vice-versa. The candidate provided the copies of the Currency Exchange Bulletin No. 20710947 of 16 April 2021 and the currency exchange receipt of the same date. According to the Currency Exchange Bulletin, on 16 April 2021 at 11:06:46 one of the Moldovan banks received 25,495 EUR from the candidate and paid him 544,828 MDL.

During the resumed evaluation the Commission received information from that Moldovan bank. Initially the bank informed the Commission that the candidate purchased the foreign currency. According to their modified response, on 16 April 2021, at 11:06:46, the bank purchased 25,495 EUR from the candidate and issued 544,828.15 MDL to him in Agency No. 2 within Branch No. 1 of the bank. The bank submitted a copy of Currency Exchange Bulletin No. 20710947 of 16 April 2021 to the Commission – the same document that the candidate had presented in his responses to the Commission. At the hearing during the initial evaluation, the candidate stated that he had exchanged the money in the bank office located inside the car showroom on the day he bought the car. Agency No. 2 in Branch No. 1 and the car showroom are located at the same address.

During the resumed evaluation, the Commission also received information from C. S.R.L., the company from which the candidate bought the car model Toyota RAV4 on 16 April 2021. According to the documents submitted, the candidate paid 544,828 MDL (est. 30,340 USD) to purchase the car on 16 April 2021 at 10:04 AM.

The Commission obtained information from the STS concerning the operation of cash and control registers and equipment. According to the STS, all companies are obliged to have functional fiscal terminals that produce real-time fiscal receipts. Also, a cash register and a piece of control equipment/tax printer are considered to be in working order if they print the current calendar date and time on documents with a maximum deviation of 15 minutes from the real time (with the exception of the one-hour deviation during the transition from daylight saving time to standard

time or vice versa, which will not exceed November 20/April of the current year). Furthermore, each business is obliged independently program information about the time and date in the cash register and control equipment.

In his answers to the statement of facts and serious doubts document, the candidate provided excerpts from the SCJ special panel's findings according to which, "... During the court hearing, the candidate proved that after the alienation of the apartment, he transferred the financial means, for safekeeping to a close acquaintance of the Sova family, and in April 2021, these financial sources were returned in foreign currency, euros, subsequently he performed currency exchange operations again, in view of the need to pay for a car purchased from the authorized Toyota dealer, the payment being made in MDL at the dollar exchange rate, these arguments being rejected by presenting the notarized statement." The candidate further stated that, in accordance with art. 10 para. (7) of Law No. 26/2022, the Commission was obliged to assess him based on his explanations provided to the SCJ special panel, that he had intended to purchase a car, but had not been sure where he would buy it – from the Republic of Moldova or from abroad – which necessitated the conversion of national currency obtained from transactions into euros. He also noted that, according to the SCJ special panel, the circumstances had not revealed the candidate's intention to conceal the source of financial means. The candidate also contended that the Commission had cast doubt on the fact that V.T. had kept the candidate's money in cash, as submitted to the SCJ special panel, although it had obtained additional information to verify this information.

The candidate also noted that the Commission's doubts about the exchange of currencies were removed by the information received from various public and private entities during the resumed evaluation. The candidate argued that the Commission disagreed with the existing *de facto* situation and had unjustifiably challenged information to invent serious doubts and to disqualify him. He also claimed that, during the initial assessment, when assessing the method of conversion of currencies at the time of purchasing the Toyota car, the Commission had intentionally confused the purchase of national currency with the foreign currency account, as well as the manner in which such operations had taken place.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues as per art. 8 para. (4) lit. b) of Law No. 26/2022.

Art. 8 para. (5) lit. c), d) and e) of Law No. 26/2022 provides that in order to assess the candidate's financial integrity, the Commission is required to verify the method of acquiring property 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 and other agreements, where the candidate or the persons referred

to in art. 2 para. (2) is a contracting party.

Art. 3 para. (1) of the Commission's Evaluation Rules states that undeclared income or expenditures are relevant for financial integrity, insofar as items have not been declared truthfully, and for ethical integrity, including but not limited to insofar as they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions.

c. Reasoning

In its decision of 1 August of 2023, the SCJ special panel noted that “the candidate explained to the Commission during the hearing what were his sources for the purchase of the apartment and of the currency, funds that were declared according to the legal manner and regime of declaration” and that they were not subject of control by the NIA⁴². The SCJ special panel also held that the serious doubts about the loan of 530,000 MDL could not be regarded as “true violation of the financial integrity” of the candidate. The SCJ special panel did not comment upon the loan contracts nos. 5, 11 and 12 of 2020 and the inconsistencies found by the Commission in its initial evaluation decision.

The SCJ special panel stated in its decision that the candidate had proved that after selling the apartment he had transmitted the funds for safekeeping to a close acquaintance of his family, and in April 2021, this money had been returned in euros. According to the SCJ special panel, the candidate then performed currency exchange operations to pay in MDL at the USD exchange rate for a car purchased from an authorized Toyota dealer. The SCJ special panel found that the candidate mitigated the Commission’s questions by submitting a notarized declaration from V.T. Furthermore, according to the SCJ special panel, the Commission was required to assess the candidate’s explanations in accordance with art. 10 para. (7) of Law No. 26/2022, as the candidate had explained that he had intended to purchase the car but was not certain whether he was going to purchase it in the Republic of Moldova or abroad. According to the SCJ special panel, this circumstance “led converting into euros the national currency obtained as a result of the transactions”. The SCJ special panel concluded that the candidate’s answers did not reveal any intent to hide the source of funds and that it cannot be a reason to fail him.

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. As ordered by the SCJ special panel, during the resumed evaluation the Commission obtained additional information and identified additional evidence which the Commission found of particular significance for the resumed evaluation decision.

In determining whether the candidate meets the criterion of financial integrity, the Commission

⁴² Apparently, the SCJ special panel is referring to 530,000 MDL that the candidate declared in his annual declaration for 2020.

must verify that the candidate has complied with the legal regime of declaring assets and personal interests and that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues. In order to assess the candidate's financial integrity, the Commission is required to verify the sources of income of the candidate, and where appropriate, of close persons, including family members.

During the initial evaluation the candidate claimed that he bought a car in April 2021 for 544,828 MDL (est. 30,340 USD) using the proceeds from the sale of the apartment to his daughter's family for 530,000 MD (est. 25,884 EUR) and the sale of a car model AUDI A6 for 35,000 MDL. The candidate, in written communication during the initial evaluation, confirmed that on the same day when he bought the car, he exchanged 25,495 EUR (est. 533,355 MDL) in order to buy the car. However, at the hearing during the initial evaluation the candidate could not confirm if he bought or sold the euros. During the initial evaluation, the Commission examined together the sources of funds for the purchase of the candidate's apartment and transactions involving the exchange of 25,495 EUR. The Commission did the same in the resumed evaluation.

During the initial evaluation the candidate stated that the money for the 72.2 sq. m. apartment that he sold to his child's family was paid to him in cash. The Commission did not receive any proof of the money actually being paid to the candidate. With regards to the source of funds used by the candidate's child's family to purchase the apartment the candidate presented a copy of a loan contract No. 5 of 14 December 2020 of 530,000 MDL signed between his son-in-law and the P.I. S.R.L. owned by his son-in-law. The candidate also presented two bank statements of P.I. S.R.L. attesting the withdrawal of 350,000 MDL on 5 November 2020 and of 190,000 MDL on 14 December 2020. The Commission focused on two significant inconsistencies. First, how the withdrawal of 350,000 MDL on basis of loan contract No. 11 of 5 November 2020, a month prior to the signature of the contract of 14 December 2020 could be considered as evidence for the 530,000 MDL loan contract. And second, why the description of the bank withdrawal of 190,000 MDL on 14 December 2020 is referred to loan contract No. 12 of 14 December 2020, whereas the copy of the loan contract of 14 December 2020 presented by the candidate to the Commission was numbered as contract No. 5. In its initial evaluation decision, the Commission held that it had serious doubts about the source of funds for the candidate's daughter's family to buy an apartment from the candidate and because of the inconsistent and insufficient explanations and evidence presented regarding the loan contract for 530,000 MDL.

On 6 February 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. In his appeal to the SCJ special panel, the candidate did not mention contract Nos. 5, 11 and 12. In his supplementary submissions (para. 3.1.), provided to the SCJ special panel on 27 February 2023, the candidate noted that the contractual price of the apartment had been paid in full by his daughter's family. According to him, the sources of funds of the loan of 530,000 MDL to his son-in-law and the procedure of obtaining it could not be imputed to him and he claimed that he was not responsible

for the record keeping and accounting of the P.I. S.R.L.

During the resumed evaluation the Commission obtained information from the P.I. S.R.L. concerning the loan of 530,000 MDL. The P.I. S.R.L. stated that, according to loan agreement No. 11 of 5 November 2020, the P.I. S.R.L. granted 500,000 MDL to the administrator for the candidate's son-in-law to purchase an apartment in Chisinau municipality. Of this amount, 350,000 MDL was actually given as a loan. On 14 December 2020, loan agreement No. 12 was signed with the administrator in the amount of 500,000 MDL. Out of this amount, according to the P.I. S.R.L. only 190,000 MDL was released to the administrator. Thus, of the total amount of the two loan agreements (1,000,000 MDL), only 540,000 MDL was given to the administrator. According to point 1.4. of both contracts, the loans were issued for business purposes. The P.I. S.R.L. stated that the administrator returned 530,000 MDL to the P.I. S.R.L. on 14 December 2020, as attested by the collection order No. 4 of 14 December 2020. The P.I. S.R.L. provided the copies of the loan agreements Nos. 11 (of 5 November 2020) and 12 (14 December 2020) and collection order No. 4 (of 14 December 2020). The P.I. S.R.L. stated that on 14 December 2020, loan agreement No. 5 had been signed between the administrator and the candidate's son-in-law, according to which the company had granted him a loan of 530,000 MDL, released from the cashier of the P.I. S.R.L. on the same day based on payment order No. 3. The company did not submit a copy of the payment order No. 3 to the Commission. The loan of 530,000 MDL has not yet been repaid.

It is noted that, according to contract No. 11 of 5 November 2020 and No. 12 of 14 December 2020, the loans were granted for business purposes, and they could not be used to purchase real estate. When confronted with this question, the P.I. S.R.L. claimed that the administrator partially repaid the loans (530,000 MDL) granted by the company as per collection order No. 4 of 14 December 2020 and that, on the same day, the same amount was loaned to the candidate's son-in-law as per collection order No. 3. Thus, according to the P.I. S.R.L., it was not the loans given to the administrator, but the loan given to the candidate's son-in-law that was used to purchase the apartment. It follows that the withdrawals of 350,000 MDL and 190,000 MDL were not related to the purchase of the candidate's preferential apartment. The P.I. S.R.L. did not submit collection order No. 3 to substantiate its position.

The Commission has doubts about the reliability of the statements provided by the P.I. S.R.L. At first, they claimed that the loan agreement No. 11 was granted to the administrator for the candidate's son-in-law to purchase an apartment in Chisinau municipality, while the loan agreements Nos. 11 and 12 were given for business purposes. Later they argued that the withdrawn 540,000 MDL under the loan agreements Nos. 11 and 12 were not related to the purchase of an apartment. It remains unclear why the administrator would have taken 190,000 MDL as a loan on 14 December 2020 and paid back 530,000 MDL to the P.I. S.R.L. on the same day. It also remains unclear why the contract of 14 December 2020 between the P.I. S.R.L. and the candidate's son-in-law was numbered as contract No. 5, while the loan contract of 14 December 2020 based on which the administrator withdrew 190,000 MDL was numbered as contract No. 12. It is also questionable why collection order No. 4 would be related to the money

returned by the administrator and the money after its return would be given to the candidate's son-in-law based on collection order No. 3. Significantly, the P.I. S.R.L. did not provide a copy of collection order No. 3. The P.I. S.R.L. did not furnish any other explanations or supportive documentation to substantiate that the loan of 530,000 MDL was in fact given to the candidate's son-in-law. The candidate also did not comment upon this issue. Thus, the Commission was unable to independently verify the claimed loan of 530,000 MDL purportedly given to the candidate's son-in-law and purportedly paid to the candidate. The Commission did not receive any proof of the money actually being paid to the candidate. The novel explanations concerning the loans, provided by P.I. S.R.L. to the Commission during the resumed evaluation, instead of mitigating, heightened the Commission's doubts about the funds received by the candidate after the sale of the preferential apartment, as well as his credibility and honesty.

In conclusion, the Commission has serious doubts whether the candidate actually received 530,000 MDL for the sale of the apartment to his daughter's family even if the P.I. S.R.L. might have been able to lend this money to the candidate's daughter's family based on inconsistent explanations and conflicting evidence presented during the initial and resumed evaluation regarding the loan contracts.

In its initial evaluation decision with respect to the candidate's purchase of 25,495 EUR, the Commission found that the candidate did not explain why he purchased euros to buy the Toyota car when the transaction took place in national currency (MDL). Moreover, at the hearing during the initial evaluation the candidate could not provide an explicit answer on whether he bought or sold the 25,495 EUR, casting doubts on whether the 25,495 EUR were purchased from the savings that he declared in his 2020 annual declaration, or from other funds. The candidate also did not explain whether he kept the 2020 savings in national or foreign currency.

During the examination of the case by the SCJ special panel, the candidate stated for the first time that he gave the funds that he received from the sale of the apartment to V.T. for safekeeping. During the resumed evaluation the Commission contacted V.T. with questions about the 550,000 MDL. V.T. confirmed that she had received 550,000 MDL for safekeeping on 18 January 2021 and on 16 April 2021 returned 26,000 EUR to the candidate's wife. V.T. also noted that she converted the 550,000 MDL into euros as the candidate wanted to buy a car. In response to the Commission's question why he did not inform the Commission that he had given 550,000 MDL to V.T. and why notarial statement No. 2-632 had been drawn up on 10 April 2023 after his evaluation by the Pre-Vetting Commission, the candidate responded that, at the time of the hearings during the initial evaluation, he did not have V.T.'s consent to communicate this fact to the Commission. The Commission does not find this explanation plausible. Nothing prevented the candidate either during the written proceedings or at the hearing during the initial evaluation from informing the Commission that he had given the money to an individual for safekeeping but did not have that person's authorization to provide further details at that time, which would have made the later information more plausible. Moreover, it was not credible that the candidate could not remember at the hearing during the initial evaluation whether he bought or sold 25,495 EUR.

During the resumed evaluation the Commission received information from various entities concerning the transactions related to 25,495 EUR. Thus, according to Currency Exchange Bulletin No. 20710947, the candidate exchanged 25,495 EUR at 11:06:46, while, according to collection order No. 2062, he bought a car at 10:04 AM on the same day, 16 April 2021. According to the STS, a cash register and a piece of control equipment/tax printer are considered to be in working order if they print the current calendar date and time on documents with a maximum deviation of 15 minutes from the real time (with the exception of the one-hour deviation during the transition from daylight saving time to standard time or vice versa, which will not exceed November 20/April of the current year).

Thus, the regulations in force obliged the C. S.R.L. and the Moldovan bank to maintain their cash register and control equipment in good working order, meaning that the maximum possible deviation from the real time should not have exceeded 15 minutes. Time difference between the exchange of the amount/s (11:06:46 AM) and the purchase of the car (10:04 AM) indicate that the money was not exchanged until after the purchase of the car, which raises doubts as to whether the candidate used the money exchanged at the bank or whether there were other funds involved in the transactions. The candidate did not comment upon these matters in his response to the statement of facts and serious doubts document.

In conclusion, in addition to the fact that it is doubtful whether the candidate actually received 530,000 MDL from the sale of the apartment, the Commission's serious doubts are heightened by the candidate's inconsistent explanations about the handling of these funds. In his written communication with the Commission during the initial evaluation the candidate had confirmed that the sources of funds used for purchasing 25,495 EUR on 16 April 2021 were cash savings declared in his 2020 annual declaration in the amount of 565,000 MDL. At the hearing during the initial evaluation the candidate stated that he was not sure if 25,495 EUR were bought or sold by him. The candidate did not provide an explicit answer about whether he kept 530,000 MDL in national or foreign currency. Later, during the examination of the case by the SCJ special panel, the candidate stated for the first time that he gave 550,000 MDL for safekeeping to V.T. on 18 January 2021 who supposedly returned 26,000 EUR to the candidate on 16 April 2021. The candidate claimed that he exchanged 25,495 EUR to MDL on 16 April 2021 to purchase a car model Toyota RAV4. The candidate's initial claimed inability to recollect how he kept the supposed proceeds from the sale of the apartment and whether he bought or sold currency followed by a very specific but entirely new explanation about the transactions with V.T. created doubts about the candidate's credibility and honesty. Furthermore, serious doubts about the transactions are raised because there was a currency exchange at the car dealership which took place after the purchase of the car. It also remains unclear whether 26,000 EUR supposedly returned by V.T. to the candidate or other funds were involved in the money exchange transactions. Thus, the source of funds for purchase of a car model Toyota RAV4 remains unclear.

In light of above circumstances, 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), d), g) of Law No. 26/2022 with respect to whether the candidate actually received 530,000 MDL for the sale of the apartment from his daughter's family and gave it to V.T. for safekeeping and the source of funds for the transaction involving 25,495 EUR and the purchase of the car, which have not been mitigated by the candidate.

3. Sub-evaluation of two properties and failure to pay capital increase tax in the manner prescribed by law

(I) On 2 May 2002 the candidate acquired a land plot with an area of 0.06 ha and an unfinished house of 99.3 sq. m. (with 66% construction completed) located in Chisinau municipality, Stauceni commune for 55,000 MDL (est. 4,290 EUR). According to the sales-purchase contract of 11 March 2011, the candidate sold this property with the same 66% construction completed for 14,161 MDL (est. 867 EUR). The candidate and his wife both signed the sales-purchase contract of 11 March 2011.

According to the purchase contract of 2002 the cadastral value of the land plot and unfinished house was 50,818 MDL and the contractual price of these properties was 55,000 MDL. No cadastral value is mentioned in the sales contract of 2011 - only the contractual price of 14,161 MDL.

At the hearing during the initial evaluation, the candidate stated that the purchase price of 55,000 MDL (est. 4,290 EUR) for this property in 2002 was the real price paid, but that the real sales price for this property in 2011 was around 200,000 MDL, not the declared sales price of 14,161 MDL (est. 867 EUR). When asked why an undervalued price was used in the sales-purchase contract, especially why the seller would include a lower price, the candidate noted that it was a common practice in the past for sellers of real estate property to avoid payment of capital increase taxes.

(II) According to the sales-purchase contract of 24 May 2012 the candidate's wife purchased a land plot for construction of 0.12 ha in Chisinau Municipality, Trusenii commune for the price of 20,000 MDL (est. 1,285 EUR). In his annual declarations for 2012 - 2020, the candidate indicated the cadastral value of the plot as 207,564 MDL (est. 10,500 EUR).

During the initial evaluation the Commission asked the candidate to explain the difference between the cadastral value and the contractual price of the land plot and whether the price of 20,000 MDL stated in the purchase contract reflected the real price of the property at the time of purchase. During the initial evaluation, both in writing and at the hearing, the candidate stated that he and his wife did not have any relationship with the sellers of the land plot, that the contract price was the result of direct negotiations between his wife and the seller and that the price that was included in the contract was at the insistence of the seller of the property. The candidate further stated that the real price paid for this property was roughly the same as the cadastral value,

which was 207,564 MDL.

On 6 February 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 resumed evaluation the Commission provided to the candidate information concerning the market prices of the plots of lands provided by the "LARA" real estate company (hereinafter "LARA" company"). According to that information, the market price for one acre of land (for construction) in a suburb of Chisinau in 2011 was 49,011 MDL. Thus, the market value of 0,06 ha (6 acres), was 294,066 MDL (est. 18,000 EUR). According to "LARA" company, the value of a completed house in a suburb of Chisinau municipality in 2011 was 7,283 MDL per sq.m. Thus, the approximate value of a 99.3 sq. m. completed house was 723,200 MDL. The market price of one acre of land (for construction) in a suburb of Chisinau, in 2012, was 62,253 MDL. So, the market value of a land plot of 0,12 ha (12 acres) in Chisinau municipality, Truseni commune was 747,036 MDL (est. 48,000 EUR).

According to the provisions of art. 15 and art. 37 of the Tax Code in force at the time, the candidate was required to pay capital increase tax of 18% from 50% of the surplus amount of the capital increase. Therefore, if the contract of sales-purchase of 11 March 2011 had reflected the sales price of 200,000 MDL (as the candidate stated at the hearing during the initial evaluation), the candidate and his wife would have owed at least 13,050 MDL in capital increase tax (18% x [50% x (200,000-55,000)]). However, the candidate indicated only the fictitious price of 14,161 MDL for the sale of the property and thereby avoided paying the taxes owed on the sale of this property.

In his answers to the statement of facts and serious doubts document, the candidate argued that the Commission had not provided evaluation reports carried out by the "LARA" company either during the initial or resumed evaluations. The candidate also claimed that, when compared to other candidates, he had been treated differently. The candidate cited the Commission Decision No. 4 of 6 December 2023 as an example to support this claim. The candidate noted that the Commission neither questioned the value of the real estate purchased in that case by that candidate from her mother, nor the authenticity of the value of the transaction for taxation purposes based on valuations presented by the "LARA" company. The candidate argued that it was not acceptable to treat certain candidates favourably compare to the ones with whom the Commission was uncomfortable. The candidate further claimed that the Commission had selectively accepted the binding effect of the SCJ special panel's decisions.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues as per art. 8 para. (4) lit. b) of Law No. 26/2022.

According to art. 8 para. (5) lit. a) of Law No. 26/2022, in assessing the candidate's financial integrity, the Commission is required to verify the compliance by the candidate with the tax regime in the part related to the payment of taxes on using funds and income derived from the owned property, as well as taxable income and the payment of import duty and export duty.

Art. 8 para. (5) lit. c) of Law No. 26/2022 provides that in order to assess the candidate's financial integrity, the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2).

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

"Close persons", as defined in Law No. 133/2016 on declaration of assets and personal interests are: "husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as any person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and any person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law).

Art. 15 of the Tax Code of Republic of Moldova (in force in 2011) provided the income tax of 7% (of the annual taxable income that does not exceed the amount of 25,200 MDL) and 18% of the annual taxable income that exceeds the amount of 25,200 MDL.

Art. 37 of the Tax Code of Republic of Moldova (in force in 2011), establishes in para. (7) that the sum of the capital increase in the fiscal year is equal to 50% of the total surplus of the capital increase recognized above the level of any capital losses incurred during the fiscal year.

Art. 19 of the Family Code in force in 2002 and 2011, provides that the assets acquired by the spouses during their marriage are common property, unless a matrimonial contract provides differently.

Art. 8 para. (2) lit. a) of Law No. 26/2022 provides that the candidate shall be deemed to meet the criterion of ethical integrity if s/he 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.

According to art. 3 para. (3) of Judge's Code of Ethics approved by Decision No. 366/15 of the Superior Council of Magistracy on 29 November 2007, "a judge must refrain from any behavior, action or manifestation that could prejudice the public's trust in the judicial system".

According to Principle 3.1 of the Bangalore Principles of Judicial Conduct of 2002, “A judge shall ensure that his or her conduct is above reproach in the view of the reasonable observer”. And Principle 3.2. states that “[t]he behaviour and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary. (...).

c. Reasoning

In its decision of 1 August 2023, the SCJ special panel disagreed with the Commission’s conclusion that the candidate undervalued the purchase price of a land plot for construction of 0.12 ha in Truseni commune, Chisinau municipality and the sales price of the land plot of 0.06 ha and an unfinished house in Stauceni commune of Chisinau municipality and that he failed to pay the capital increase tax, which led to the failure to pass the evaluation. The SCJ special panel noted that the sales-purchase contracts submitted by the candidate confirm the value of the transactions. According to the SCJ, by disclosing the contractual prices the candidate mitigated the serious doubts about his financial integrity. The SCJ special panel concluded that during the initial evaluation and examination of the case by the SCJ, the Commission failed to prove that the sales-purchase contracts did not stipulate the actual prices and that the conclusion that the real estate price was understated was erroneous. Furthermore, according to the SCJ special panel, the candidate was not a signatory of the contract on the purchase of the land plot in Truseni commune. The SCJ special panel considered that the candidate’s answers did not reveal his intention to avoid paying taxes provided for by the law, but rather his firm conviction that there was no capital increase as a result of selling the real estates in Stauceni commune of Chisinau municipality. The SCJ special panel found that some violations “that were tolerated, sometimes even accepted and administered by state authorities, such as accepting the discrepancy in the declared price agreed on in legal documents on real estate or means of transport, are not of such a magnitude as to consider that [the candidate] is lacking financial or ethical integrity”.

The SCJ special panel did not address the difference in the sales-purchase prices that were acknowledged by the candidate at the hearing during the initial evaluation or the candidate’s admission that undervalued price was used in the sales-purchase contract in order to avoid payment of capital increase taxes.

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.

In assessing the financial integrity of the candidate, the Commission is required to verify that the candidate’s wealth acquired in the past 15 years corresponds to the declared revenues, whether the candidate complied with the tax regime and the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2022 and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2). The Commission is required to verify that the candidate has complied with the tax

regime related to the payment of taxes on taxable income.

In May 2002, the candidate and his wife purchased a 0.06 ha plot of land and an unfinished house in the Stauceni commune of Chisinau municipality for the declared price of 55,000 MDL (est. 4,290 EUR) and sold it in March 2011 for the declared price of 14,161 MDL (est. 867 EUR). In 2012, the candidate's wife purchased a 0.12 ha plot of land located in the Truseni commune of Chisinau municipality for the declared price of 20,000 MDL. At the hearing during the initial evaluation, the candidate stated that the declared sales price of a 0.06 ha plot of land and an unfinished house in 2011 of 14,161 MDL (est. 867 EUR) was not the real price received and that the real sales price for this property was around 200,000 MDL. The candidate also confirmed at the hearing during the initial evaluation that the purchase price of 0.12 ha located in the Truseni commune of Chisinau municipality was roughly the same as the cadastral value of 207,564 MDL, acknowledging that the sum of 20,000 MDL indicated in the sales-purchase contract was not the real price.

Before the SCJ special panel, the candidate claimed that the Commission "did not mention what it believed the real prices should have been and did not grant him the right to respond with regards to the actual prices that should have been indicated. A simple statement by the candidate, such as that the price was fictitious and understated without having evidence to support it, cannot be retained as justificatory for reinforcing the conclusion of "serious doubts".

During the resumed evaluation, the Commission provided the candidate information about the sales-purchase prices of the properties as stated by the candidate himself at the hearing during the initial evaluation (200,000 MDL for a 0.06 ha plot of land and unfinished house sold in 2011 and 207,564 MDL for a 0.12 ha plot of land purchased in 2012) and the average market value of the plots of land in 2011 and 2012 as provided by the "LARA" company. According to this information, the average market value of a 0.06 ha land plot in suburbs of Chisinau in 2011 was 294,066 MDL (est. 18,000 EUR) and for a land plot of 0.12 ha was 747,036 MDL (est. 48,000 EUR) in 2012.

The sales-purchase contract for 0.12 ha plot of land was signed by the candidate's wife. However, under the provision of the Family Code, this property is considered common property of the candidate and his wife. According to art. 19 of the Family Code, in force in 2002 (signature of the purchase contract) and 2011 (sale of the property), the assets acquired by the spouses during their marriage are common property, unless a matrimonial contract provides differently. The candidate did not provide such a contract. Even more so, during the examination of his case by the SCJ special panel, the candidate acknowledged that he was the co-owner of this property. The sales contract for the 0.06 ha plot of land and an unfinished house in 2011 was signed by both spouses.

As mentioned above, at the hearing during the initial evaluation, the candidate admitted that the sales-purchase prices for these properties were undervalued and provided amounts that he

considered himself as real. It is noted that according to the purchase contract of 2002 the cadastral value of the land plot and unfinished house was 50,818 MDL and contractual price of these properties was 55,000 MDL. The sales contract of 2011 only includes the contractual price of the land plot of 14,161 MDL. The Commission considered that according to the candidate's annual declarations for 2012 - 2020, the cadastral value of the 0.12 ha land plot was 207,564 MDL (est. 10,500 EUR). The candidate became a co-owner of the right of property over 0.12 ha plot of land purchased for undervalued price which raises serious questions regarding the method of acquiring this property and the financial integrity of the candidate. The Commission's doubts are further heightened because of the undervalued sales price of the 0.06 ha plot of land and an unfinished house.

The candidate retracted the real sales-purchase prices that he had previously provided to the Commission before the SCJ special panel which cast doubt on the candidate's honesty and credibility. The Commission retains serious doubts about the sales-purchase prices of these properties, as contractual prices of 20,000 MDL (est. 1,285 EUR) for 0.12 ha plot of land and 14,161 MDL (est. 867 EUR) for 0.06 ha plot of land and unfinished house is negligible and unrealistic. The Commission's doubts about the real sales prices of these properties are heightened by the market prices of land plots in the Chisinau suburbs in 2011 and 2012 provided by "LARA" company.

The Commission used the sales price of 0.06 ha plot of land and an unfinished house submitted by the candidate at the hearing during the initial evaluation (200,000 MDL) for calculation of the capital increase tax on the sale of this property. According to the provisions of art. 15 of the Tax Code in force at the time, the candidate had to pay capital increase tax of 18% from 50% of the surplus amount of the capital increase. Therefore, if the contract of sales-purchase of 11 March 2011 had reflected the sales price of 200,000 MDL (as stated by the candidate), the candidate and his wife owed at least 13,050 MDL as capital increase tax ($18\% \times [50\% \times (200,000 - 55,000)]$). However, the candidate indicated only the fictitious price of 14,161 MDL for the sale of the property. He thus avoided paying the taxes owed on the sale of this property.

The Commission cannot endorse undervaluing sales-purchase prices and subsequent failure to pay taxes owed as a petty violation which cannot lead to finding that the candidate is lacking financial or ethical integrity. To the objective observer, tax violations are not insignificant, especially when committed by an experienced lawyer, in this case a judge, aspiring to become a member of the self-governing body of judges. Existence of a common practice in the past to sub-value the sales-purchase prices in order to avoid paying taxes cannot justify the candidate's actions.

The candidate contends that the Commission selectively takes into account the SCJ special panel's findings and that he was treated differently. The candidate cites a single decision as an example to support this claim (Commission Decision No. 4 of 6 December 2023). The candidate

in that evaluation received a house from her parents through the alienation contracts with the condition of maintenance for life. The house was not purchased by that candidate, as claimed by the candidate, and no issue concerning the payment of taxes was raised. In that evaluation, the Commission was able to independently evaluate and conclude that the candidate's mother had had the resources to buy the two plots of land and build the two houses. The candidate in that case presented two evaluation reports asserting the different levels of completion of the construction of the house. The candidate in the present case requested that the Commission unconditionally accept as truth the contractual prices provided in the contracts and disregard even the prices provided by him at the hearing during the initial evaluation. He also disagreed with the use of information provided by the "LARA" company. However, the candidate did not submit any alternative data refuting the information provided by the "LARA" company. The Commission reiterates that it did not consider information provided by "LARA" company when calculating the amount of the tax on capital increase. In view of all the above-mentioned, the Commission considers that the facts in these two evaluations differ substantially.

To conclude, the Commission has serious doubts about the sales price of the land plot with area of 0.06 ha and an unfinished house located in Chisinau municipality of Stauceni commune of 14,161 MDL (est. 867 EUR) in 2011, which is more than 3.5 times lower than its cadastral value in 2002 (50, 818 MDL). By undervaluing the sales price of the land plot and an unfinished house, the candidate avoided payment of capital increase tax on the sale of this property. The Commission also has serious doubts regarding the veracity of the declared purchase price of 20,000 MDL for the plot of 0.12 ha located in Chisinau municipality, Trusenii commune in 2012. These actions cast doubts both on the candidate's financial and ethical integrity. A judge is generally held to a higher standard of reputation and law-abidance than ordinary citizen. As a judge, the candidate is required to respect the highest standards of integrity and accountability. This includes the obligation not to enter into transactions in respect of personal property that may cause any doubts about the judge's integrity. Judges, in their official statute, assume responsibilities that go beyond those of ordinary citizens.

In light of above circumstances, 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. a) and para. 5 lit. a) and c), and ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to sub-evaluation of sales-purchase of two properties and failure to pay capital tax increase due to the sub-evaluated sale price, which have not been mitigated by the candidate.

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. (1), (2) lit. c), (4) lit. b) and (5) lit. c), d), g) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate does not meet the financial and ethical integrity criteria as serious doubts have been found as to the candidate's

compliance with the ethical and financial integrity criteria and thus fails the evaluation.

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 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.)⁴³ 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.⁴⁴ 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

⁴³ *Sevdari v. Albania*, no. 40662/19, para. 87, 13 December 2022.

⁴⁴ *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.

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.]

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 by all participating members of the Commission.

Done in English and Romanian.

Signature:



Herman von HEBEL
Chairman, Commission