



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. 19 of 11 February 2025 on the Second Resumed Evaluation of Ecaterina BUZU, Candidate for the Superior Council of Magistracy*

The Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (“the Commission”) deliberated in private on 11 February 2025. The members participating were:

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

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

*I. The procedure*

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

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

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

<sup>1</sup> The sources from which information was obtained concerning evaluated candidates generally included the National

The candidate also responded to written questions and requests for information from the Commission.<sup>2</sup> On 2 December 2022, the candidate participated in a public hearing before the Commission. The candidate responded to post-hearing questions from the Commission. The Commission issued its decision failing the candidate on 4 January 2023. Following the candidate's request, the candidate was granted access to the evaluation materials on 13 January 2023, according to art. 12 para. (4) lit. c) of Law No. 26/2022. On 4 January 2023, the Commission issued decision No. 10, concluding that the candidate did not meet the integrity criteria as serious doubts had been found as to the candidate's compliance with the ethical and financial integrity criteria and thus failed the evaluation. The Commission concluded that the candidate failed the evaluation on two issues: 1) failure to disclose bank accounts in the manner prescribed by law/Cash deposits and 2) use of an apartment rent free during 2004 - 2018.

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

The Commission commenced the resumed evaluation of the candidate based on the SCJ special panel decision of 1 August 2023 on 8 September 2023 (hereinafter "first resumed evaluation"). The Commission collected additional information from various sources as needed to address the issues being considered in the resumed evaluation.

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

On 30 January 2024, the Commission issued decision No.8 (hereinafter "first resumed evaluation decision") concluding that the candidate did not meet the financial integrity criteria as serious doubts had been found as to the candidate's compliance with the financial integrity criteria and

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

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

thus failed the evaluation. The Commission concluded that the candidate failed the evaluation on one issue: source of cash deposits to two bank accounts. As to the issue of the use of an apartment rent free during 2004 – 2018 (issue No. 2 referred to above), in light of the SCJ special panel decision of 1 August 2023 and the information assessed during the first resumed evaluation, the Commission did not include this issue in its determination on the candidate's passing or failing the evaluation in the first resumed evaluation, although the Commission could not agree with the SCJ special panel determination and provided its reasons.

On 27 February 2024, the candidate appealed the Commission's first resumed evaluation decision to the SCJ pursuant to art. 14 para. (1) and (2) of Law No. 26/2022. On 4 July 2024, 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 (hereinafter "the second resumed evaluation"). The SCJ special panel focused on the single issue that was included in the Commission's failing first resumed evaluation of the candidate, namely the financial integrity of the candidate related to the source of funds for cash deposits to the candidate's bank accounts No. 2 and 3 and for the living expenses of the candidate and her two daughters.

The Commission commenced the second resumed evaluation of the candidate on 25 September 2024. The candidate responded to one round of written questions from the Commission, comprised of two questions. The Commission collected additional information from various sources as needed to address the issues being considered in the second resumed evaluation.

## II. *The law relating to the evaluation and 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.<sup>3</sup> 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.<sup>4</sup> 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

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

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

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.<sup>5</sup> 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.<sup>6</sup>

Regarding the justification for vetting procedures, both in the Albanian and Ukrainian contexts, the Venice Commission repeatedly commented that the extraordinary measures to vet judges and prosecutors were “not only justified” but were “necessary for Albania to protect itself from the scourge of corruption which, if not addressed, could completely destroy its judicial system”.<sup>7</sup> 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.<sup>8</sup> 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 Parliament<sup>9</sup> 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*”.<sup>10</sup> The Venice Commission and the DGI also noted that it ultimately

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<sup>5</sup> 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.

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

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

<sup>8</sup> 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.

<sup>9</sup> 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).

<sup>10</sup> 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.

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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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

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

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

Also, the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity as The Bangalore Draft Code of Judicial Conduct 2001 and as

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

<sup>12</sup> 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.

<sup>13</sup> 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.

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.<sup>14</sup> This important distinction between vetting and pre-vetting processes was highlighted in another recent Venice Commission Report on vetting in Kosovo, which stated that "[i]n a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources". Also, "[i]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability".<sup>15</sup> 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.<sup>16</sup>

According to well-established ECtHR case law, there is no right to a favorable outcome<sup>17</sup> and

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

<sup>15</sup> 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.

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

<sup>17</sup> See, *Kudla 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*

there is, in principle, no right under the Convention to hold a public post related to the administration of justice.<sup>18</sup> As a matter of principle, States have a legitimate interest in regulating public service positions.<sup>19</sup> 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*,<sup>20</sup> the ECtHR stated that “it is not per se arbitrary, for the purposes of the ‘civil’ limb of Article 6 para. 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC [Independent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file”. Interpreting doubts to the detriment of the person who has not provided the required information has been a standard in national integrity-related legislation in the Republic of Moldova.<sup>21</sup> 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

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and Decisions 1997-VI.

<sup>18</sup> 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.

<sup>19</sup> 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.

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

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



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 [Superior Council of Magistracy] 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”.<sup>22</sup> A joint report of four Moldovan CSOs mirrors these findings and documents cases where disciplinary liability of judges failed.<sup>23</sup> 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”.<sup>24</sup> The Organization for Economic Co-operation and Development (OECD) concluded as well that “some grounds for disciplinary liability were found to be vague [...]. Overall application of disciplinary and dismissal procedures is not perceived as impartial by non-governmental stakeholders and routine application of proportionate and dissuasive sanctions is lacking”.<sup>25</sup> 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”.<sup>26</sup> 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”.<sup>27</sup>

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

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

<sup>23</sup> Transparency International, and others, *State Capture: the Case of the Republic of Moldova*, 2017, p. 21.

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

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

<sup>26</sup> International Commission of Jurists, *The Undelivered Promise of an Independent Judiciary in Moldova*, 2019, p. 35.

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

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.<sup>28</sup> 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.<sup>29</sup> The Constitutional Court has also referred to this approach, as follows: The Court notes that the provision containing the contested text established that upon evaluation of the ethical and financial integrity of candidates for membership of the Superior Council of Magistracy, the Evaluation Commission “shall not depend on the findings of other bodies with competences in the field concerned”.<sup>30</sup> 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.<sup>31</sup> It also means that the Commission will treat differently persons whose situations are significantly different.<sup>32</sup> 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

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<sup>28</sup> 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.

<sup>29</sup> 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.

<sup>30</sup> 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.

<sup>31</sup> *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

<sup>32</sup> *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.

ECtHR has established that, once the applicant has shown a difference in treatment, it is for the Government to show that it was justified.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> To determine a candidate's integrity, Law No. 26/2022 requires the Commission to verify what a candidate has disclosed in terms of the acquisition of assets, sources of income, the existence of loans and other agreements that can generate financial benefits, donations and other aspects of the candidate's wealth (art. 8 para.(5)). Loans, for example, have been recognized as a means to cover up a declarant's incoming cash flow from undeclared sources.<sup>36</sup> 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".<sup>37</sup> Law No. 26/2022 also requires the Commission to scrutinize what a candidate did not disclose in assets declarations: "the Evaluation Commission shall verify compliance by the candidate with the legal regime of declaring assets and personal interests" (art. 8 para. (5) lit. b)). Undeclared income or expenditures are relevant for financial integrity, insofar items have not been declared truthfully, and for ethical integrity, including but not limited to insofar they relate to prohibited secondary incomes, tax evasion, or violation of anti-money-laundering provisions.

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

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

<sup>34</sup> *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.

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

<sup>36</sup> 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.

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

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.

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. Second Resumed Evaluation of the candidate*

#### *Issue 1. Source of cash deposits to two bank accounts*

In its initial evaluation decision, the Commission identified two bank accounts in which the amounts deposited in 2011 and 2012 raised doubts:

- Bank account No. 2– an account opened in 2010 and closed in 2017. This bank account had total cash deposits of approximately 111,000 MDL in 2011 and 2012.
- Bank account No. 3 – a credit account opened in 2010. This bank account had total withdrawals of approximately 79,000 MDL in 2011 and 2012.

In the initial evaluation, the Commission concluded that the amounts deposited in 2011 and 2012 represented close to 90% of the candidate’s total salary in those years (total salary for 2011 was 72,056 MDL; total salary for 2012 was 60,082 MDL), yet the candidate indicated no other sources of income for the deposits. The candidate argued that the amount of 32,831.97 MDL (the

difference between the total withdrawals of 79,124.35 MDL and deposits of 111,956.32 MDL) represented penalties and interest. The candidate did not declare these two bank accounts in her declarations on assets and personal interests (hereinafter “annual declarations”) for 2012 – 2015 as required by law. The Commission had 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. b) and ethical integrity as per art. 8 para. (2) lit. c) of Law No. 26/2022 with respect to the declaration of assets and interests in the manner prescribed by law which were not mitigated by the candidate, and about the compliance of the candidate with the criterion of financial integrity as per art. 8 para. (4) lit. b) and para. (5) lit. c) and d) with respect to the sources of the cash deposits to one of the candidate’s bank accounts.

In its decision of 1 August 2023, the SCJ special panel concluded that the Commission’s decision failing the candidate because of serious doubts concerning the sources of funds for various bank accounts and failure to properly disclose the accounts was unfounded from the perspective of proportionality, misinterpretation of undefined legal notions and fair treatment and therefore, the candidate had the right to a favourable decision. The SCJ special panel noted that bank account No. 2 was a flexible credit account with a limit of 30,000 MDL, which the candidate used when necessary and replenished with her salary. According to the SCJ special panel, the Commission should have considered that bank account No. 3 was connected to credit bank account No. 2 and that they operated in parallel. The SCJ special panel also noted that 79,124.36 MDL deposited into account No.3 related to turnovers, rather than to card top-up operations. Referring to the bank statement, the SCJ special panel noted that it was incorrect to suggest that the candidate had deposited 79,022.73 MDL in cash into this account. The SCJ special panel noted that, when making “a hasty conclusion” that the amounts deposited in 2011 and 2012 were close to 90% of the candidate’s total salary for those years and that she did not have any other source of income for cash deposits, the Commission ignored the fact that the candidate had received a 120,000 MDL loan in September 2012. The SCJ special panel indicated that the difference of 32,831.97 MDL between the total withdrawals of 79,124.35 MDL and the cash deposits of 111,956.32 MDL, was the amount of penalties and interests paid by the candidate during the years of 2011 - 2012.

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

According to the information collected by the Commission during the first resumed evaluation procedure, between 2011 - 2012 the candidate made 92 deposits totaling 60,030 MDL to accounts

Nos. 2 and 3, as was detailed in Annex No.1 to the Commission's first resumed evaluation decision: *Deposits made by the candidate during 2011 – 2012*. Out of 92 deposits, 76 were made during the first half of the month and 16 during the second half. The deposits ranged from 0.25 MDL to 28,132.49 MDL. Typically, the candidate deposited 1,500 MDL to 2,000 MDL per month. The data showed that several deposits were often made on the same day, varying between two and six per day.

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

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

During the first resumed evaluation, the Commission inquired whether the loan of 120,000 MDL taken by the candidate in September 2012 was the source of cash deposited into accounts Nos. 2 and 3. The Commission concluded that the loan of 120,000 MDL could not be used to replenish the candidate's credit bank accounts because, according to the information submitted by the bank, the loan was intended and was used for the renovation of the house in the district of Orhei. Furthermore, the transactions registered in the 120,000 MDL credit account confirm that the only activity in the account related to repayment of the loan and no transfers to other accounts or cash withdrawals were recorded. According to the 120,000 MDL loan contract, the monthly payment

on the loan was 2,029 MDL. The bank data showed that between September - December 2012 the candidate paid 5,392.27 MDL in repayment of the loan.

In its first resumed evaluation decision, the Commission cited serious doubts about the candidate's financial integrity in connection with the source of funds for the candidate's bank accounts Nos. 2 and 3. The Commission had not identified other sources than the candidate's salary to replenish the bank accounts. These factors heightened the Commission's doubts about the source of funds used to make the deposits and to pay the candidate's living expenses. Despite providing the candidate with repeated opportunities, the Commission's serious doubts were not mitigated by her at any stage during the initial and first resumed evaluations.

On 27 February 2024 the candidate appealed the Commission's first resumed evaluation decision. In its decision of 4 July 2024, the SCJ special panel concluded that the Commission had incorrectly determined that the candidate could not justify the source of funds for the cash deposits to her bank accounts and for her and her daughters' living expenses during 2011 – 2012. The SCJ special panel concluded that the Commission had not analyzed all of the income obtained by the candidate and her family members, and that the Commission had not clarified that the 60,030.20 MDL did not constitute bank deposits, but replenishment of the credit card from which the candidate had covered family needs, including her and her family's maintenance.

The SCJ special panel concluded that, based on contract No. 332/10/242 of 24 December 2010, the candidate was able to withdraw amounts needed in cash within the limit of 30,000 MDL and she was to repay a minimum amount of 5% of the credit balance on a monthly basis on the due date. Before the SCJ, the candidate maintained that she had returned 60,030.20 MDL to the bank, consisting of 52,580.01 MDL reimbursement of the credit, interest in the amount of 7,436.76 MDL and penalties in the amount of 13.40 MDL. She also claimed that the funds withdrawn from the credit card with the limit of 30,000 MDL were used by her for personal needs (food, clothing, assets, communal services etc.). The SCJ special panel accepted the candidate's arguments that 52,580.01 MDL was withdrawn by the candidate and used for personal needs, including living costs and concluded that this amount should also be treated as income obtained by the candidate in 2011 – 2012. The SCJ special panel noted that the Commission had not analyzed this argument during the first resumed evaluation.

The SCJ special panel also accepted the candidate's arguments that she had replenished her revolving credit account from sources other than her salary, specifically two payments: 1) the replenishment of the card with 2,000 MDL following a withdrawal of a stipend of 1,200 USD, confirmed by cash order of 8 May 2012, and 2) the replenishment of the card with 28,640.20 MDL on 17 September 2012, from the loan contract of 14 September 2012 (for renovation of the house in Orhei district). The SCJ special panel also accepted the candidate's argument that her daughter's income for 1 October – 31 December 2012 should also be taken into account in analyzing the candidate's income. The candidate claimed before the SCJ that her daughter received 5,600 MDL during that period. The SCJ special panel concluded that, although the

candidate had not presented to the Commission all information on her sources of income, her income for 2011 – 2012 was not limited to her salary and the Commission’s understanding of the candidate’s sources of funds for reimbursing the credit in 2011 – 2012 did not reflect the objective reality. The SCJ special panel accordingly ordered the resumed evaluation of the candidate.

During the second resumed evaluation of the candidate, the Commission focused on the issues identified by the SCJ special panel in relation to the sources of funds of the candidate in 2011 – 2012 and the calculation of the income and expenses related to the candidate’s revolving credit account. The Commission attempted to collect complete information on the turnover in the revolving credit account that the candidate opened based on contract No. 332/10/242 of 24 December 2010. However, the bank provided the turnover only for 2011 and 2012, because the contract and the documents related to 2010 had been destroyed in 2021. The candidate had not furnished a copy of the account contract to the Commission until the first resumed evaluation. Based on the available information about the candidate’s revolving credit account for 2011, the candidate had debits of 39,214 MDL and credits in the amount of 12,004 MDL. In 2012, the candidate had debits of 12,700 MDL on the account and credits in the amount of 39,910 MDL.

The Commission was not able to confirm whether the 52,580.01 MDL withdrawn by the candidate from the account during 2011 – 2012 was used for personal needs, such as living expenses, as she claimed before the SCJ special panel, because in 2011 the candidate received her salary from the Superior Council of Magistracy in cash and she has had a salary card only since 2012, at a different bank than the bank where the revolving credit card account was maintained, which allowed tracing only some of the candidate’s expenses in 2012. During 2012, the candidate withdrew 19,746.12 MDL from her salary card and directly paid various merchants a total of 7,699.90 MDL. The candidate had 76.14 MDL left on her salary card account at the end of 2012. However, in light of the SCJ special panel decision of 4 July 2023, the Commission did not add these amounts as expenses, since the living expenses are included in the candidate’s family’s Consumption Expenditure for Population (CEP)<sup>38</sup>.

Before the SCJ, the candidate claimed that she had replenished her revolving credit account with 28,640.20 MDL on 17 September 2012 using funds she received from the loan contract of 14 September 2012. However, the documentation provided by the bank during the first resumed evaluation regarding the 120,000 MDL loan contract indicates that the funds from that credit were not paid to the candidate until 21 September 2012. Thus, the amount of 28,640.20 MDL deposited on 17 September 2012 on the candidate’s revolving credit account could not be used from the funds the candidate received from the 120,000 MDL loan. According to the 120,000 MDL loan contract, the monthly payment on the loan was 2,029 MDL. The bank data shows that between September - December 2012 the candidate paid 5,392.27 MDL to repay the loan. The candidate did not contest this information from the first resumed evaluation decision.

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



The SCJ special panel accepted the candidate's argument that in 2012 she had two additional sources of funds, namely 2,000 MDL used to replenish the revolving credit account as indicated in the cash order of 8 May 2012 and the salary of her daughter for October – December 2012. While the Commission accepts both sources in light of the SCJ special panel's decision, according to the information collected by the Commission, the net salary of the candidate's daughter for that period was 4,764 MDL (not 5,600 MDL as claimed by the candidate). Accordingly, the Commission used the amount of 4,764 MDL in the second resumed evaluation.

The candidate's total net salary for 2011 was 72,056 MDL and 60,082 MDL for 2012. Because the Commission used net amounts in the evaluations of all candidates, the Commission used the net amount for the candidate's salary for 2011 and 2012. According to the information available to the Commission, the candidate's family's CEP costs amounted to 59,464 MDL in 2011 and to 55,990 MDL in 2012.

Based on all information that the Commission was able to collect and confirm during the second resumed evaluation, in 2011 the candidate's incoming cash flows included her salary of 72,056 MDL and debits of 39,214 MDL (total of 111,270 MDL) on her revolving credit account. The candidate had the outgoing cash flows of CEP amounting to 59,464 MDL and on revolving credit account credits of 12,004 MDL (total of 71,468 MDL). At the end of 2011, the candidate had a positive balance of 39,802 MDL. In 2012, the candidate's incoming cash flows included her salary of 60,082 MDL and debits of 12,700 MDL on her revolving credit account, as well as 2,000 MDL from a stipend and her daughter's salary of 4,764 MDL (total of 79,546 MDL). The candidate had the outgoing cash flows of CEP expenses of 55,990 MDL, credits of 39,910 MDL on her revolving credit account and loan repayments of 5,392 MDL (total of 101,292 MDL). At the end of 2012, the candidate had a negative balance of 21,746 MDL. The Commission did not take into account the 120,000 MDL loan received in September 2012, since according to the bank documents available during the first resumed evaluation, the loan was spent during that year on renovation of a house in Orhei district.

*b. The law*

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

*c. Reasoning*

In its decision of 4 July 2024, the SCJ special panel found that the Commission did not take into

account all of the candidate's sources of income for 2011 – 2012, including sources that she had not raised before the Commission (her daughter's salary for October – December 2012 and a stipend received by the candidate in 2011), and that the Commission had not taken into account the withdrawals from the candidate's revolving credit account in the amount of 52,580.01 MDL that the candidate had spent on personal needs. The SCJ special panel concluded that the Commission's understanding of the candidate's sources of funds for reimbursing the revolving credit in 2011 – 2012 did not objectively reflect the reality. During the second resumed evaluation, the Commission focused on the shortcomings that the SCJ special panel identified in the Commission's decision on the resumed evaluation of the candidate.

Following the SCJ special panel decision, during the second resumed evaluation the Commission took into account the additional sources of funds claimed by the candidate before the SCJ, namely 2,000 MDL remaining from the stipend received by the candidate in 2011 and the candidate's daughter's salary of 4,764 MDL for October – December 2012. The Commission notes that the candidate had not presented this information during the initial and first resumed evaluations. Furthermore, she always claimed that her salary was the only source of funds for the deposits on the revolving credit account. During the second resumed evaluation, the Commission used net salary amounts, not gross amounts claimed by the candidate before the SCJ, in line with the guidelines in Annex I of the Commission's Evaluation Rules and the Commission's consistent practice throughout the evaluation of all candidates.

The Commission did not accept the argument that the amount of 28,640.20 MDL which the candidate used to replenish her revolving credit account on 17 September 2012 was from funds she received from a renovation loan contract of 14 September 2012 because bank data showed that the candidate did not receive the renovation loan funds until 21 September 2012.

The Commission was still unable to identify how the 52,580.01 MDL that was withdrawn by the candidate during 2011 – 2012 was used because most of it consisted of cash withdrawals and therefore did not calculate it as income or as expenses. The Commission calculated only the amounts of credits and debits to the candidate's revolving credit account, responding to the SCJ special panel criticism of the fact that the credit limit of 30,000 MDL was used multiple times and that the candidate also had income in the form of the funds withdrawn on the account, not just cash replenishments as expenses. The Commission used this approach in calculating the candidate's incoming cash flows and outgoing cash flows for the years 2011 and 2012 because of the lack of complete bank information on the revolving credit account and the interconnected accounts and to avoid any overlap with the calculations of the amounts on the card account connected to the revolving credit account.

Based on all of the information available to the Commission regarding the candidate's incoming and outgoing cash flows for 2011 and 2012, the Commission determined that the candidate had a positive balance of 39,802 MDL in 2011 and a negative balance of 21,746 MDL in 2012. The negative balance of 21,746 MDL raises concerns related to inexplicable wealth of the candidate

in 2012. The candidate never claimed cash savings at the end of 2011, therefore the Commission cannot presume that she might have used some savings from 2011 to cover the negative balance of 2012 but the Commission also cannot exclude such a possibility with certainty.

While the Commission is troubled by the differing explanations provided by the candidate about available funds and their uses throughout the initial evaluation, the review by the SCJ special panel of the initial evaluation decision, throughout the first resumed evaluation and the review by the SCJ special panel of the resumed evaluation decision, the Commission did not find that the negative balance of 21,746 MDL in 2012 rises to a level creating serious doubts about the candidate's financial integrity under criteria provided by Law No. 26/2022. The Commission notes that the events analyzed in the evaluation process took place in 2010 – 2012 and that not all of the banking information is available to fully clarify the financial situation of the candidate.

In light of the above circumstances, on the second resumed evaluation of the candidate, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial integrity as per art. 8 para. (4) lit. b) and para. (5) lit. c), d) and e) of Law No. 26/2022 with respect to the sources of funds for two bank accounts because the candidate mitigated the Commission's concerns regarding this issue by new evidence and explanations provided to the SCJ.

#### *IV. Decision*

Upon the second 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) and (4) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate is compliant with the ethical and financial integrity criteria and thus passes the evaluation.

#### *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 participating members of the Commission.

Done in English and Romanian.

Signature:

A handwritten signature in blue ink, appearing to read 'H. von HEBEL', with a horizontal line underneath.

Herman von HEBEL  
Chairman, Commission

Pre-Vetting Commission