



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

Redacted version for publication

*Decision No. 6 of 9 December 2022 on the Candidacy of Angela BOSTAN,
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 28 October 2022 and 9 December 2022. The members participating were:

1. Herman von HEBEL
2. Victoria HENLEY
3. Vitalie MIRON
4. Tatiana RĂDUCANU
5. Nona TSOTSORIA

Nadejda HRIPTIEVSCHI was recused from this matter and did not participate.

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

I. The procedure

Angela BOSTAN, judge at the Chisinau Court of Appeal (“the candidate”), was on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 06 April 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge of the Cahul Court on 4 October 2006 for five years. On 23 July 2007 the candidate was transferred to the Hincesti Court. The candidate was appointed as a judge until the retirement age on 25 October 2011. On 22 February 2013 the candidate was appointed as Vice-President of the Hincesti Court for four years. The candidate was appointed to the Chisinau Court of Appeal on 4 February 2015.

On 21 June 2022 the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 5 July 2022. The candidate submitted the completed questionnaire to the Commission on 5 July 2022.

On 8 July 2022 the Commission sent a request to the candidate for completing and submitting by 15 July 2022 the Declaration of assets and personal interests for the past 5 years 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”). The declaration also includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. The candidate submitted a completed declaration to the Commission on 15 July 2022.

The Commission obtained information from numerous sources in order to assess the candidate’s financial and ethical integrity. The sources from which information was obtained concerning evaluated candidates included the National Integrity Authority, State Fiscal Service, General

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

To the extent that issues were raised from the candidate's declaration and questionnaire and collected information, those issues were raised in written questions with the candidate and during the public hearing.

Written communication with candidate:

On 1 August 2022 the Commission sent to the candidate a request for clarifying information, containing 11 questions, including 27 sub-questions and 13 requests for further documentation. The candidate replied within the requested time period on 5 August 2022 to all questions.

On 14 September 2022, the Commission sent a second round of 10 questions, including 26 sub-questions and 10 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 17 September 2022 to all questions. The candidate sent additional information on 29 September 2022.

On 12 October 2022, the Commission sent a third round of 6 questions, including 11 sub-questions and 3 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 15 October 2022 to all questions. The candidate sent additional information on 27 October 2022.

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 28 October 2022, the candidate took part in a public hearing of the Commission.

On 4 November 2022, the Commission sent a fourth round of 2 questions, including 3 sub-questions and 2 requests for further documentation. The candidate replied within the requested time period on 5 November 2022 to all questions.

II. The law relating to the evaluation

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).

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 for the purpose of assessing 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 behavior 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 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 is not to 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).

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 above-listed requirements which have not been mitigated by the evaluated person (art. 13 para. (5) of Law No. 26/2022). As noted in the recent Venice Report on vetting in Kosovo, "In a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources." Also, "[I]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability." 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), §§10,9.

Shifting the burden of proof to the candidate, once the evaluating body has identified integrity issues, has been found permissible by the European Court of Human Rights, 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*, no. 15227/19, §352, 31 May 2021 the Court stated that "it is not per se arbitrary, for the purposes of the "civil" limb of Article 6 § 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."

Under art. 5 para. (1) of the Evaluation Rules 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, pursuant to Law No. 26/2022, of 2 May 2022 (hereinafter “Evaluation Rules”), only if a candidate fully meets all of the indicators set for the in art. 8 para. (2)-(4) of Law No. 26/2022 does the candidate satisfy the criterion of “ethical and financial integrity.”

III. Evaluation of the candidate

The candidate was asked at the hearing about the following financial and ethical issues.

1. Source of funds for financing the candidate's mother apartment in Chisinau and the habitation right declared by the candidate in relation to this property

a. The facts

On 8 August 2018, the candidate's mother [REDACTED] purchased an apartment of 74,0 sq.m., in Chisinau for the price of 973,500 MDL. The apartment is located in the center of Chisinau and was put into operation by the construction company Basconslux in 2011.

The candidate provided to the Commission the sale-purchase contract for the apartment bought in the name of her mother. The candidate also provided the Commission a copy of the mother's statement (affidavit), according to which the apartment in Chisinau was purchased by her using four different financial sources.

The first financial source, according to the declaration of the mother, were savings of the mother from work after retirement as an entrepreneur at the market in her village selling different goods before 2010 - 2013. However, according to information received from the tax authorities, the candidate's mother did not register any taxable income on the territory of the Republic of Moldova in the period of 2007 – 2022. The candidate herself was not able to clarify how much her mother earned from these entrepreneurial activities. Neither was she able to provide any authentic information regarding her mother's personal savings or the amount of money her mother had been able to contribute to the purchase of the apartment. The candidate stated also that her mother preferred to keep money in cash, because of mistrust in the banking system in Moldova. The candidate also indicated that due to her mother's health condition, her mother had not been able to request documents from the competent institutions and that the candidate was not able to request such documents on behalf of her mother, due to the protection of personal data.

At the public hearing, the candidate referred to the fact that her mother had also contributed to the purchase of the apartment by the selling of an apartment in Cahul. After the hearing, the candidate was able to provide further information about this apartment, which her mother had inherited from her brother (candidate mother's brother) and had sold on 1 August 2007 for 108,756 MDL (est. 6,500 EUR at the moment of selling). The candidate provided a copy of the sale-purchase contract for this sale in 2007.

Another source for the purchase of the apartment were contributions from a close family member of her mother, who had been working and living abroad since 1993. The candidate provided documentation relating to the income of this family member in the country of residence, but only related to the periods 1993-2008 and 2018-2020. In 2008, this family member retired, but continued to work occasionally at various places unofficially. The Commission was also provided

with additional information a day before the hearing, related to the retirement pension and withdrawals from bank accounts.

The candidate provided an affidavit from this family member, indicating that this member had contributed to the purchase of the apartment in Chisinau from personal savings. Bank statements were produced for the period of June to September 2016, confirming international transfers made by this family member to the candidate's mother, totaling 6,300 EUR. According to the affidavit, the family member had also donated in person 3,000 USD to the candidate's mother while on holidays in Moldova in 2017. The affidavit further stated that over a period of 10 years, the family member had financially supported the candidate's mother in the amount of about 7,000 to 10,000 USD.

At the public hearing, the candidate confirmed the international bank transfers (6,300 EUR supported by bank statements) and the cash donation of 3,000 USD when this family member was on holiday in the Republic of Moldova in 2017. In this context, the candidate confirmed that the total amount of money this family member had contributed to the purchase of the apartment in Chisinau was around 10,000 USD. During the hearing, the candidate also indicated that the total contribution of her mother and this family member to the purchase of the apartment was around 20,000 EUR, consisting of the sale of the apartment in Cahul, the entrepreneur's activity and the international transfers received from abroad.

A fourth source that the candidate mentioned in relation to the purchase of the apartment for the mother of the candidate in Chisinau was the financial contribution by a close relative of the candidate, who has been working abroad for 17 years. The candidate submitted two contradictory statements by her close relative about his contribution to the purchase of the apartment. In his first statement, the candidate's close relative informed the Commission that his contribution amounted to 30,000 EUR, of which 20,000 EUR was contracted as a loan from a bank and 10,000 EUR from his personal savings. He indicated that the money was sent to the candidate's mother via international transfers and via drivers of buses that transport parcels. However, the loan agreement with the bank revealed that the loan of 20,000 EUR was taken on 4 April 2019, i.e. 8 months after the purchase of the apartment. When the Commission asked the candidate for a clarification, the Commission was provided a second statement from the same close relative. According to this statement, he had contributed 30,000 EUR to the purchase of the apartment from his personal savings and had contracted the loan in April 2019 to carry out repair works and to purchase furniture and equipment.

At the public hearing, the candidate repeated the second statement by her close relative and added that her close relative had personally come back to Moldova to realize all the improvement works by himself, being helped by a friend. Regarding the inconsistencies in the two affidavits of her close relative, the candidate mentioned that it was probably a matter of expression and that the statements were produced in a hurry. The candidate also mentioned that the apartment at the moment of purchase was in a livable condition, but required some improvements. The work on the apartment started in spring - summer of the 2019 year and lasted until the autumn of that year. The candidate further emphasized that she has no further information about the exact amount of money spent for the improvement works and furniture, as all the expenses were supported by her close relative.

According to the candidate's declaration of assets and personal interests submitted for 2020 and 2021 (hereinafter "annual declaration"), the candidate declared her residency visa in an apartment located in Hîncești, which belongs to her with property right. In the same declarations, the candidate also declared the habitation right in two other buildings: another house in Hîncești, which belongs at the moment to a family member with property rights, and the apartment in Chisinau, which belongs to her mother.

In the first version of her annual declaration for 2020, submitted on 29 March 2021, the candidate had not included the right of habitation for the apartment in Chisinau belonging to her mother. The candidate explained that she had not indicated the right of habitation in her first declaration because she was not sure that she had the obligation to do so under the conditions of Law nr. 133/2016. The candidate mentioned that she had not calculated the number of days she had actually lived in this flat with her mother. In order to exclude any doubts, she submitted a corrected declaration for 2020, declaring the right of habitation held in relation to this apartment. Asked if she had the habitation right for this apartment for the period 2018 – 2019, the candidate stated that in that period, she had not lived in that apartment for a period longer than the one indicated in Law no. 133/2016. She had only occasionally visited her mother to give her the necessary support and care. When asked by the Commission to explain on which provisions of Law No. 133/2016 she relied on, the candidate explained that the obligation to declare the right of habitation results from art. 4 para. (1) of Law No. 133/2016 and she did not have the right of habitation for this apartment during the years 2018-2019, because in that period, she only visited her mother, during the cold times of the year, when her mother lived in this property. The candidate also stated that she did not have a real right of possession and use for the apartment.

At the public hearing, the candidate clarified that she lived and resided in the period 2020-2021 *de facto* in two different properties: in Chisinau, in the apartment of her mother and in Hîncești in the candidate's family member house. The candidate emphasized that she had moved temporarily to Chisinau due to health problems of her mother and that she was the only caretaker of her mother at the time. She emphasized that this was with the express consent and permission of her close relative [who contributed to the purchase of the mother's apartment] and her mother. She also indicated that none of the close persons who had financially contributed to the purchase of the apartment had registered their temporary or permanent residency visa in this apartment after 2018.

b. The law

Art. 8 para. (4) lit. a) and para. 5 lit. b) of Law No. 26/2022 provides that in determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets and personal interests.

In addition, art. 8 para. (5), lit. c) and d) of Law No. 26/2022 provides that 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) and the sources of income of the candidate and, where appropriate, of the 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.

The Evaluation Rules state that undeclared income or expenditures are relevant for financial integrity, including but not limited to insofar as they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions. (art. 6 para. (1)). The rules also provide that the Annex to the Evaluation Rules defines the method for calculating undeclared wealth. (art. 6 para. (2) of Evaluation Rules)

Art. 4 para. (1), lit. b) of Law No. 133/2016 on declaration of assets and personal interests, requires the subject of a declaration to declare “movable and immovable property, including unfinished property, owned with the right of usufruct, use, habitation, superficies by the subject of the declaration, including as beneficial owner, by his family members and his concubine/concubine or in their possession on the basis of mandate contracts, commission contracts, fiduciary administration, translational contracts of possession and use.”

“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).

c. Reasoning

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests and is required to verify sources of income and methods of acquiring assets by the candidate, family members and close persons to the candidate.

According to the candidate, three persons have contributed to the purchase of this apartment: the candidate’s mother, a family member living abroad and a candidate’s close relative. The candidate has failed to demonstrate the sources of income by her mother to contribute to the purchase of the apartment. Her mother did not register any taxable income in the years prior to the purchase of the apartment, and explanations about personal savings and income from entrepreneurial activities on the village market remain unsubstantiated.

As for the financial contribution from a family member living abroad, the candidate has been able to provide documentation relating to international bank transfers amounting to 6,300 EUR. In addition, an affidavit by this family member indicates that a donation in cash of 3,000 USD has taken place in 2017. The affidavit also states that over a period of 10 years, a total amount of between 7 – 10,000 USD has been provided to support the candidate’s mother. However, this statement is not accompanied by supporting documentation and it remains unclear whether such support was provided in the context of the purchase of the apartment.

The Commission is concerned by the two clearly contradictory affidavits submitted by the candidate’s close relative about his contribution to the purchase of the apartment. The first affidavit states that the close relative provided 30,000 EUR to the purchase of the apartment,

based on personal savings (10,000 EUR) and on a loan from a bank (20,000 EUR). Confronted however with the fact that the loan was taken only 8 months after the purchase of the apartment, the candidate submitted a second affidavit, according to which the personal savings of the close relative amounted to 30,000 EUR and the loan was meant for repair works and purchases of furniture and equipment. Documentation to support this second affidavit was however not provided.

The Commission is therefore concluding that the serious doubts it raised with the candidate in relation to the financing of the purchase of the apartment in 2018 by her mother have not been mitigated by the candidate.

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 b) and para. (5) lit. b), c) and d) of Law No. 26/2022 with respect to purchase and financing of the mother's property in Chisinau in 2018, which have not been mitigated by the candidate.

2. Ethical violation concerning participation in the General Assembly of Judges

a. The facts

On 20 September 2019, as president of the Administrative Panel of the Chisinau Court of Appeal, together with other judges, the candidate examined the case regarding the obligation of Superior Council of Magistracy to convene the General Assembly of Judges. In the Decision of 20 September 2019, the panel determined that the General Assembly of Judges should be convened on 27 September 2019, with the establishment of an agenda for the meeting. On 27 September 2019, the candidate participated in the General Assembly of Judges that was convened on the basis of this decision. At the opening of the Assembly, the candidate publicly announced the decision adopted on 20 September 2019 and read the operative part of the decision to the Assembly. In addition, in her opening speech, the candidate expressed her personal position on the state of affairs in the judiciary and the need for change.

The candidate confirmed to the Commission that at the opening of the Assembly, she publicly announced the decision adopted on 20 September 2019 and read out the operative part of the decision. The candidate denied that she had a "role" in the Assembly and her participation at the meeting was conditioned by the fact that she is a magistrate and that the General Assembly of Judges is a body of judicial self-administration. The candidate stated that participation in judicial self-administration is her right and that such self-administration amounts to the real capacity of courts and judges to solve the problems in the functioning of the judicial system, autonomously and responsibly. The candidate also stated that, as a magistrate, she had the right to exercise her freedom of expression within the General Assembly, and that she expressed her personal position, as a judge participating in the Assembly and not as a judge who issued the decision regarding its convening. The candidate emphasized that her presence and her opinions expressed at this Assembly represented her personal vision on the situation in the judiciary at that time and that she felt that for this opinion she was criticized and "persecuted" by some SCM members.

At the public hearing, the candidate confirmed that she opened the General Assembly of 27

September 2019, as the President of the SCM was not present, and that she read out the decision of the Administrative Court Panel. She confirmed that she announced that the decision was final and enforceable and that she read the resolution of 24 September 2019, by which her panel ordered the adoption of the administrative act to enforce the decision of 20 September 2019. The candidate also confirmed that she announced the number of persons in attendance and declared there was a quorum and therefore a deliberate and valid Extraordinary Assembly. She also confirmed that she then proposed to proceed with the agenda and announced that the regulation required the election of a Chairperson and Secretary for the forum. She then nominated Alexandru Gheorghies as President of the General Assembly of Judges and asked that his candidacy be voted on and that the vote be counted.

The candidate also explained that she had been asked by her colleagues to open the General Assembly in order to give it a status of solemnity as President of the panel that decided upon the action and which made it possible to convene this Assembly. In relation to the expression of her personal opinions, the candidate stated that she considers that it is her right to express her opinions, including critical ones, in relation to the functioning of the judicial system.

b. The law

Art. 4 para. (2) of the Judge's Code of Ethics and Professional Conduct (2015) states:

The judge shall carry out his/her duties impartially and without prejudice, shall not manifest a preconceived attitude by expression or deeds and shall not allow words, phrases, gestures or other actions that could be interpreted as signs of bias or prejudice.

Art. 5 para. (12) of the Judge's Code of Ethics and Professional Conduct (2015) states:

The extrajudicial activities of the judge shall not give rise to any doubt as to his/her impartiality, objectivity or integrity.

Art. 5 para. (13) of the Judge's Code of Ethics and Professional Conduct (2015) states:

The judge shall not use the judge's symbols, the official documents of the judge for purposes other than those of office.

Art. 6 para. (2) of the Judge's Code of Ethics and Professional Conduct (2015) states:

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

Principle 2.2 of the Bangalore Principles of Judicial Conduct (2002) states:

A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

Principle 3.1 of the Bangalore Principles of Judicial Conduct (2002) states:

A judge shall ensure that his or her conduct is above reproach in the view of the reasonable observer.

Principle 3.2. of the Bangalore Principles of Judicial Conduct (2002) states:

The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the

judiciary. (...).

Principle 4.6 of the Bangalore Principles of Judicial Conduct (2002) states:

A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

Principle 4.13 of the Bangalore Principles of Judicial Conduct (2002) states:

A judge may form or join associations of judges or participate in other organizations representing the interests of judges.

According to art. 8 para. (2) of Law No. 26/2022, a candidate shall be deemed to meet the criterion of *ethical integrity* if:

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

And finally, according to art. 5 para. (2) of the Evaluation Rules, 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 assessing the candidate's conduct at the 27 September 2019 General Assembly of Judges, the Commission is not evaluating the candidate's attendance at the meeting or her expression of her personal opinions as a magistrate. Judges are permitted to participate in organizations representing the interests of judges (Principle 4.13 of the Bangalore Principles of Judicial Conduct (2002)) and are entitled to freedom of expression, belief, association and assembly, "but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality of the judicial office and the impartiality and independence of the judiciary (Principle 4.6 of the Bangalore Principles of

Judicial Conduct (2002)). According to the well-established case-law of the European Court of Human Rights, questions concerning the functioning of the justice system fall within the public interest, the debate of which generally enjoys a high degree of protection under the European Convention. However, the Court has also recognized that public officials serving in the judiciary should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called in question. The dissemination of even accurate information must be carried out with moderation and propriety. The Court emphasized the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties. It is for this reason that judicial authorities, in so far as concerns the exercise of their adjudicatory function, are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges (*Baka v. Hungary* [GC], no. 20261/12, § 164, 23 June 2016 with further references).

Of concern with respect to the candidate's participation at the General Assembly was the role she undertook. She essentially opened the General Assembly, standing in place of the President of the SCM and read both the decision and resolution of her Court Panel that had ordered the convening of the General Assembly. She declared the decision final and enforceable. The candidate also declared there was a quorum and therefore, a deliberate and valid Extraordinary Assembly. She proceeded with the agenda and directed the election of the presiding Chairperson and Secretary for the forum, also herself nominating a judge for President of the General Assembly of Judges. The candidate essentially presided over and directed the Assembly she had ordered be convened.

The candidate's leadership role at the General Assembly was improper in that it contributed to an appearance of bias: due to the candidate's role in the appellate proceedings and the decision and resolution which convened the General Assembly, the judge was seen as implementing her own decision. Such involvement inevitably raises doubts about the judge's impartiality and undermine public confidence in the impartiality of the judge and the judiciary. An appearance of bias or partiality erodes public confidence in and respect for the judiciary. The Code of Ethics provides that the extrajudicial activities of a judge shall not give rise to any doubt as to his/her impartiality, objectivity or integrity (art. 5 (12) of the Judge's Code of Ethics and Professional Conduct (2015). A judge must refrain from any behavior, action or manifestation that could prejudice the public's trust in the judicial system. Art. 6 (2) of the Judge's Code of Ethics and Professional Conduct (2015). A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary. (Principle 2.2 of the Bangalore Principles of Judicial Conduct (2002)). The Commission noted the candidate's statement that she had been asked by her colleagues to open the General Assembly in order to give it a status of solemnity as president of the panel that admitted the action and made it possible to convene this Assembly. Rather than mitigating the candidate's behavior, the invitation should have served as a warning to the candidate that her participation was being sought to lend the imprimatur of her office and role in the appellate decision that convened the Assembly to the General Assembly proceedings and therefore, was improper.

In assessing the candidate's ethical integrity with respect to an ethical violation, the Commission noted that the incident involved a single event, however, it was highly public and took place in

the context of judicial self-administration that is to be carried out by the General Assembly. As such, the Commission considered it a serious violation of the rules of ethics and professional conduct of judges within the meaning of art. 8 para. (2) of Law No. 26/2022. The Commission was troubled by the candidate's lack of appreciation of any negative ethical implications from her conduct.

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 ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to participation of the candidate in the General Assembly of Judges, which have not been mitigated by the candidate.

IV. Decision

Based on art. 8 para. (1), (2) lit. a), (4) lit. a) and b), and (5) lit. b), c) and d) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate does not meet the integrity criteria as serious doubts have been found as to the candidate's compliance with the ethical and financial integrity criteria and thus fails the evaluation.

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 from 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 by a majority of four participating members of the Commission.

The dissenting opinion of Vitalie MIRON is attached to this decision.

Done in English and translated into Romanian.

Signature:



Herman von HEBEL
Chairman, Commission