



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

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

*Decision No. 10 of 4 January 2023 on the Candidacy 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 2 December 2022, 29 December 2022 and 4 January 2023. The members participating were:

1. Herman von HEBEL
2. Victoria HENLEY
3. Nadejda HRIPTIEVSCHI
4. Vitalie MIRON
5. Tatiana RADUCANU
6. 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. On 22 March 2017, the candidate was appointed as a judge at Orhei Court until the age limit is reached. On 27 November 2018, the candidate was appointed as judge with specialization in examining cases involving minors.

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 asked to submit the questionnaire later, the Commission extended the deadline to 11 July 2022. The candidate submitted the completed questionnaire to the Commission on 11 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 the 5-year declaration unsigned before the deadline on 15 July 2022 with an explanation that she had technical problems applying the electronic signature. The Commission accepted the candidate's submission of the electronically signed declaration on 18 July 2022, the next business day.

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 generally 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 12 September 2022, the Commission sent the candidate a request for clarifying information, containing seven questions, including 20 sub-parts and eight requests for further documentation. The candidate replied within the requested time period on 16 September 2022 and provided information and the requested documentation.

On 4 October 2022, the Commission sent a second round of questions, containing four questions and seven sub-parts, which included one request for further documentation, to clarify some issues. The candidate replied within the requested time period on 6 October 2022.

On 18 October 2022, the Commission sent a third round of questions, containing five questions and 8 sub-parts, which included two requests for further documentation, to clarify some issues. The candidate replied within the requested time period on 21 October 2022.

On 7 November 2022, the Commission sent a fourth round of questions, containing two questions and four sub-parts, which included one request for further documentation, to clarify some issues. The candidate replied within the requested time period on 9 November 2022 to two questions asked by the Commission.

On 2 December 2022, the candidate took part in a public hearing of the Commission.

On 8 December 2022, the Commission sent a fifth round of questions, comprised of one question, including two sub-parts, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 12 December 2022 to the question and provided most of the requested explanations.

The candidate did not request access to the evaluation materials before the hearing. After the

hearing, on 5 December 2022, the candidate requested access to the materials. As of the date of this decision, the candidate had not collected the materials.

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)-(5) 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. Failure to disclose bank accounts in the manner prescribed by law/Cash deposits

a. The facts

During the period 2012-2015, the candidate had four accounts in Moldovan banks opened in her name.

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

Between 2012 and 2015 the candidate declared one bank account in the column “IV. Financial Assets” of her annual declarations of assets and personal interests (hereinafter “annual declaration”). The candidate indicated the name of the bank but did not indicate the account number; therefore, it was not possible to identify which account was declared, only that the candidate had attempted to declare one bank account out of four.

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

At the public hearing, the candidate confirmed that she held all the bank accounts mentioned and confirmed that between 2012 and 2015, she declared in her annual declarations only one bank account without specifying the account number. She identified Bank account no. 1, the EUR account, as the account that she declared in her annual declarations. She also stated that she was not aware of one of the other bank accounts and that another account was declared in section 6, Loans, in the annual declaration. The loan declared in the Loans section in the candidate's annual declarations for 2012-2015 corresponds to a loan of 120,000 MDL contracted in 2012 but was not associated with any of the accounts that the candidate was asked about.

The candidate stated in response to written questions that Bank account no. 2 was a flexible credit account, with a limit of 30,000 MDL, which was used when necessary, and was replenished with funds from her salary. The candidate stated that the bank account no. 3, a credit account, was attached to Bank account no. 2. In response to written questions, the candidate also stated that she did not know why the transaction amounts on the two accounts do not correspond. The candidate did not provide any documentation from the bank regarding bank account no. 3. She informed the Commission that she had requested a copy of the credit contract from the bank, but the bank no longer has the contract.

At the public hearing, the candidate stated that Bank account no. 2 was associated with a credit card with a limit of 30,000 MD; whenever needed, the candidate could withdraw up to 30,000 MDL. The condition for use of the card was if withdrawals were made, the funds had to be replenished within two months in order to avoid interest charges on the amount withdrawn. According to the candidate, when she received her salary, she replenished the credit card account (Bank account no. 2) to avoid paying interest.

At the public hearing, the candidate stated that the information the Commission had received regarding cash deposits on that account was incorrect, that it was impossible to deposit money on that account and that she had not deposited money on this account as it was a credit card. Regarding the cash deposits to Bank account no. 2, the candidate did not provide other sources of funds for the deposits than her salary. The candidate did not explain what funds she used to pay living expenses or how she was able to deposit most of her salary into an account and not use it.

After the hearing, the Commission asked the candidate to verify the extracts from the bank relating to Bank accounts no. 2 and 3. The candidate confirmed that the information the Commission received from the bank is correct. Between 2011-2012 she charged 79,124.35 MDL against her flexible card. Between 2011-2012 she deposited cash to replenish the card in the amount of 111,956.32 MDL.

The amounts deposited in 2011 and 2012 are 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. Moreover, the difference

between the total charges of 79,124.35 MDL and deposits of 111,956.32 MDL is 32,831.97 MDL, which according to the candidate represents penalties and interest.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets and personal interests as per art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 and that his/her wealth acquired in the past 15 years corresponds to declared revenues, pursuant to art. 8 para. 4 lit. b) of Law No. 26/2022. Pursuant to art. 8 para. (5) lit. c) and d) of Law No. 26/2022, in order to assess the candidate's financial integrity, the Commission is also required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2022 and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

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

A candidate does not meet the criterion of financial integrity under art. 8 para. (4) lit a) of Law No. 26/2022 when assets have not been declared in the manner required by law. A finding that the candidate has violated the legal regime of declaring personal assets and interests is a failure to meet the criterion of ethical integrity under art. 8 para. 2 lit. c).

According to art. 4 para. (1) lit. d) Law No. 1264/2002 (in force until 01.08.2016), the subject of the declaration was obliged to declare financial assets, i.e. bank accounts, investment funds, equivalent forms of saving and investing, investments, bonds, cheques, bills of exchange, certificates of exchange, other documents incorporating property rights of the declarant or their family members, direct investments in national currency or foreign currency made by them or by their family members, as well as other financial assets.

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

c. Reasoning

According to the candidate, in her annual declarations she declared Bank account no. 1, although without an account number. Between 2012-15 the candidate declared a loan she received but this

did not correspond to any of the accounts the candidate was asked about. Of the other accounts she was asked about, the candidate explained that she didn't know about one of them, apparently Bank account no. 3, because the bank opened it automatically when Bank account no. 2 was opened, as Bank account no. 3 was connected to Bank account no. 2. The candidate did not provide any explanation for not declaring Bank account no. 2 and Bank account no. 4.

When accounts are not declared that involve considerable activity, serious doubts can arise especially if there is any suspicious activity related to the account. In this case, two of the accounts that were required to be disclosed (Bank Accounts No. 2 & 3) were related to a credit card issued to the candidate. The amount of credit charges over two years was not insignificant nor was the amount of deposits made to replenish the credit account. The candidate maintained that her salary was the only source of funds used to replenish the charges yet the total amount of the deposits in 2011 and 2012 was close to 90% of the candidate's salary in 2011-12. Moreover, the total amount of cash deposits over the two-year period exceeded the total amount of credit charges by more than 30,000 MDL, not an insignificant discrepancy. The candidate claimed that the 30,000 MDL were for penalties and interest. That amount, however, appears substantially higher than the amount of interest that could accrue over two years in an account with a credit limit of 30,000 MDL. Moreover, neither the extracts produced by the bank or those produced by the candidate reflect any penalties or interest charges against the account. The candidate provided no sources other than salary for the deposits to the account including the 30,000 MDL.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criterion of financial integrity as per art. 8 para. (4) lit. a) and para. (5) lit. b) and ethical integrity as per art. 8 para. (2) lit. c) of Law No. 26/2022 with respect to declaration of assets and interests in the manner prescribed by law which have not been 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.

2. Use of apartment rent free 2004-2018

a. The facts

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

In November 2018, one of the candidate's children and that child's spouse purchased the apartment from the owner, who was then 20 years old for the price of 252,191 MDL. The couple sold the apartment in November 2020 for the price of 680,522 MDL (33,500 EUR)

The candidate stated in response to written questions that she was not related to and had no family relationship with the minor who owned the apartment or his guardian, who was the minor's grandmother.

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

The candidate also confirmed at the public hearing that one of her children and that child's spouse had purchased this apartment in 2018 and the candidate confirmed the details of the transaction. She explained that when the minor turned 18 years old, the guardian told her that the guardian's grandson did not want to live in the apartment and they wanted to sell it. The guardian asked the candidate if she wanted to buy it. The candidate did not have the funds but one of her children and that child's spouse bought it. The candidate initially stated that she was not involved in the purchase transaction and had only told her children that every transaction has to be official and the amount that was negotiated has to be reflected truthfully in the contract. The candidate stated that the purchase price was negotiated between the guardian and her grandson and the candidate's daughter and her spouse. Upon further questioning, the candidate conceded that she was present at the negotiations with her child and her child's spouse when the agreement was reached. There were no real estate agents involved in the transaction. The candidate told the Commission that the apartment was sold for a higher price in 2020 than it was purchased for in 2018 because of repairs that had been made by the candidate's child and that child's spouse. When the apartment was offered for sale in 2020, the apartment was evaluated by real estate agents and the assessed value was reflected in the contract.

After the public hearing, the candidate provided additional information about the apartment in Chisinau. She reiterated that living in the apartment that belonged to the minor was proposed to her by the guardian, on the condition only of paying for the communal services and taking care of the apartment, which was problematic because of the roof (she did cosmetic repairs with the help of her brothers) because the guardian knew that she did not have financial resources and had two minor children. The candidate also furnished photographs of the apartment to show the condition of the apartment and the reason it was proposed for sale at the negotiated amount less than the amount of its sale after repair. The photographs, with time stamps from 2016, showed damage to ceilings and other portions of the interior. No photographs or other information were submitted showing the condition of the apartment when it was sold in 2020.

b. The law

Art. 8 para. (2) a) of Law No. 26/2022 provides that a candidate is deemed to meet the criterion of ethical integrity if, among other criteria, he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

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

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

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

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

According to Commission's Evaluation Rules, art. 5 para. (2), in assessing a candidate's ethical integrity, the Commission may take into account the gravity or severity, the surrounding context, and the willfulness, of any integrity incident, and as to minor incidents, whether there has been a sufficient passage of time without further reoccurrences. While determining the gravity, the Commission will take into account all circumstances, including but not limited to:

- a) whether the incident was a single event;

- b) causing no or insignificant damage to private or public interests (including public trust) – such as the occasion of an ordinary traffic violation;
- c) or not being perceived by an objective observer as an attitude of disrespect for the social order arising from disregard for its rules and regulations.

c. Reasoning

According to international standards, judges are obliged to refrain from any acts or acts likely to compromise their dignity in the profession and in society. The dignity and honor of the profession of magistrates depends on community standards, which vary according to place and time. The test is whether reasonable, fair and informed members of the community would qualify a certain behavior as likely to diminish the community's respect for the magistrate or the judicial system in its whole.

When the candidate moved into the apartment in 2004, [REDACTED], had limited financial resources and was providing for her two daughters. For that reason, the arrangement of not paying rent, only utilities, was appealing to the candidate. Eight years into the arrangement, in 2012, the candidate was appointed a judge. The living arrangement continued for another six years after the candidate became a judge and two years beyond the time when the minor became 18 years old, when the arrangement originally was to end. In the view of the Commission, the arrangement, while advantageous to the candidate, was disadvantageous to a minor child and thus raised ethical considerations that a judge should have considered. While the guardian of the minor arguably bears responsibility for not acting to fully protect the minor's financial interests, the candidate remaining in the unbalanced arrangement for fourteen years, especially after the candidate became a judge, raises the spectre of the minor being taken advantage of, which is not conduct consistent with the high standards expected of judges. Moreover, the photographs submitted by the candidate of the condition of the apartment in 2016 show considerable damage, apparently from leakage and other causes. This unfortunately suggests that the candidate did not fulfil her obligation to take care of the apartment, again to the detriment of the minor when selling the apartment. In the view of the Commission, reasonable, fair and informed members of the community would assess the candidate's behaviour as conduct likely to diminish public respect for the candidate and the judiciary.

When asked at the public hearing whether the candidate had any concerns, ethically or otherwise about the fairness of the transaction, the candidate stated that she was not sure she understood the question, "whether I had any doubts about it?" The candidate noted that the child had a guardian who was responsible for the minor and that the minor was under the protection of the guardian. The Commission found the candidate's response, essentially disavowing any responsibility for fairness to the minor, particularly troubling as the candidate was appointed as judge with specialization in examining cases involving minors in 2018.

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 her use of an apartment owned by a minor child without paying rent for 14 years, which have not been mitigated by the candidate.

IV. Decision

Based on art. 8 para. (1), (2) lit. a) and c), para. (4) lit. a) and b) and para. (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 unanimously by all participating members of the Commission, with the exception that Commission member Vitalie MIRON does not consider that the candidate failed the evaluation on Issue 2, Use of apartment rent free 2004-2018.

Done in English and translated into Romanian.

Signature:



Herman von HEBEL
Chairman, Commission