Redacted version for publication

Decision No. 4 of 9 December 2022 on the Candidacy of Iurie BEJENARU, 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 Commissi n") deliberated in private on 27 October 2022 and on 9 December 2022. The membe s participating were:

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

Tatiana RĂDUCANU was recused from this matter and did not participate.

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

I. The procedure

Iurie BEJENARU, judge in the Civil, Commercial and Administrative litigation panel of the Supreme Court of Justice ("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 on 14 April 1994 at the People's Court of the Buiucani District in Chisinau. The candidate was appointed as a judge until the retirement age on 20 May 2003. The same da the candidate was appointed as a vice-president of the Buiucani District Court of Chisin u for 4 years. On 9 September 2004 the candidate was appointed as President of the Buiucani Dis rict Court in Chisinau for 4 years. The candidate was appointed as judge at the Supreme Court of Justice on 9 July 2008.

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 4 July 2022.

On 8 July 2022 the Commission sent a request to the candidate for completing and submitting by 15 July 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 11 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 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 he information produced by sources about a candidate was pertinent to the Commissi n'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 12 questions, including 36 sub-questions and 14 req ests for further documentation. The candidate replied within the requested time period on 5 August 2022 and provided most of the requested documents.

On 14 September 2022, the Commission sent a se ond round of 15 questions and 29 sub-questions, which included 8 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 and provided most of the requested documents.

On 27 September 2022, the Commission sent a third round of 2 questions including 8 sub-questions and 4 requests for further documentation, to clarify some issues that came out during the evaluation. The candidat replied within the requested time period on 29 September 2022 to all questions.

Following the candidate's request, on 24 October 2022, the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022.

On 27 October 2022, the candidate took part in a public hearing of the Commission.

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, conflic s 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 Conf rence of Judges on 4 February 2000, *Judge's Code of Ethics*, approved by the Sup rior 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, Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity as The Bangalore Draft Code of Jud cial 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 guidance.

Opinion no. 3 of the Consultative C uncil 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 p ticular 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 integri* 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 ref rred to in art. 2 para. (2);
e) existence or not of loan, credit, leasing, insurance or other contract 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 r th 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 jus ificati n 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 o 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 p rson (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 decis on 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 d es come from illegal sources." Also, "[I]in 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. Method of acquiring assets - Land plot of 0.06 ha in Chisinau Municipality, Durlesti City obtained in 2007 as part of the program for improvement of living conditions of judges

a. The facts

In 2007, based on a request to improve the living condi ons, the candidate obtained free from the government a 0.06 ha plot of land for construction in Chisinau, Durlesti City. The candidate argued that the necessity to improve his living condit ons was based on the fact that the total living surface of his 70.9 sq.m apartment, which had a 41.3 sq.m living surface area, located in Chisinau, was insufficient for the four people who then resided at that address. This apartment was owned by the candidate, his wife, his son and his mother. By Decision No. 4/24 of 02.10.2007 of the Durlesti City Council, the candidate rec ived a plot of land for free from the State. At that time, the candidate was working as a judge in the Chisinau Court, Buiucani office. When asked why he had petitioned to the Durlesti Local Council with the request to improve his living conditions and not to the Chisinau Municipal Council – since he was the acting judge at the Chisinau Court, Buiucani office – the candidate explained that he had initially submitted an application for the improvement of the housing conditions at the Prefect of Buiucani district, Chisinau Municipality The candidate further noted that, due to the impossibility of granting housing space, the Prefect of Buiucani district, Chisinau Municipality had suggested to him to apply to the Durlesti City Council, which is a territorial administrative unit of Chisinau Municipality

In 2016 the candidate sold this plot of land for a profit of 300,000 MDL. For nine years, between 2007 and 2016, the candidate and his family continued to live in the same apartment with 41.3 sq.m living space, that he had claimed needed improvement. At no time between 2007 and 2016 did the candidate undertake any construction efforts on this plot of land, obtain any permits or otherwise undertake to build a house. The candidate explained that he had not taken any actions in order to initiate the construction works as the validity of permissive acts (urbanism certificate, building permit) was for only 12 months, and there had been a lack of sufficient financial means for the construction of a house. According to the provision of art. 5 para. (3) and (4) of Law No. 163/2010, then in force, regarding the authorization for construction works, an urban planning certificate is valid for 24 months from the date of issuance of the certificate and can be further

extended up to 12 months. During the period of 2007-2015 the candidate and his wife received a total income of 3,743,765 MDL.

Art. 30 of Law No. 544/1995, in force at the time that the candidate requested the improvement of his living conditions stipulated that the public authority could improve living conditions of judges only in the form of an apartment or house. The law did not indicate the possibility to obtain a plot of land for construction. The candidate was asked whether it had been ethical f r him or his family to request a plot of land for the purpose of improving their living conditions and to have received a plot of land for construction without the law giving such a possibility, and taking into account the fact that he never lived on or constructed anything on this plot of l nd, and then sold this plot of land nine years later for a profit of 300,000 MDL. The candidate explained that it was his moral obligation towards his family to provide it with adequate housing space. The candidate further stated that, although the provisions of the law did not directly provide for the possibility of receiving a plot of land instead of an apartment or house, at the same time, the law did not prohibit the possibility for him to request a plot of land. Furthermore, it was at the discretion of the Durlesti City Council to allocate him the plot of land for free and that "they were entitled to reject [his] claim if they considered it to be an unfounded one". The candidate also explained that, from the moment he had inherited half of the shares in his parents' property in Chisinau and, thus, had become a co-owner, and was then ab e to improve his living conditions, the necessity to construct a house in Durlesti City, along with continuing to own this land had disappeared. The candidate had paid the requi ed capit l increase taxes following the sale of the plot of land.

A criminal case was initiated concerning the alleged falsification of the Durlesti City Council Decision No. 4/24 of 02.10.2007 and nnexes to this Decision, by which 114 people including the candidate, received authentication titles of the rights over the land plots belonging to the local public authority. This criminal case is currently pending before the Chisinau Court of Appeal. A criminal case was also ini iated in relation to [redacted] with regards to the fraudulent alienation of several land plots in Durlesti City. The candidate explained that he did not have any legal standing in these proceedings.

At the public heari g, the candidate confirmed the above facts and stated that owning the land had allowed his family over the years to accumulate the necessary financial resources for improving th ir housing conditions and to start building a house. He added that although the law at that time provided that only an apartment or house could be given under the program of improving the housing conditions of judges, this legal provision did not apply in practice. The local authorities sometimes gave apartments, but houses could not be given because they did not exi t. Since there were a lot of unenforced court decisions, the local authorities suggested that the candidate apply for a plot of land. The candidate stated that in 2010 he had incurred substantial medical expenses which had prevented him from constructing a house. The candidate further stated that having already received a land plot for construction under the program of improvement of living conditions of judges, he considered it unethical to request an apartment at preferential price, which was the widespread practice within the judicial system.

b. The law

Art. 30 para.(1) of Law No. 30/1995 regarding the status of judges stipulates that "In the event that the judge is not provided with housing or it is necessary to improve his housing conditions, or he has not been assigned the appropriate additional 15 sq.m area, the local public administration is obliged within 6 months from the date of appearance of above mentioned circumstances, to provide the judge with housing (apartment or house), taking into account the additional housing area of 15 sq.m". (This provision of the Law was in force during the period of 26.10.1995 – 18.12.2009).

Law No. 163/2010 regarding the authorization for execution of construction works stipulates that: "The validity period of the planning certificate for the design represents the duration of the development of the project documentation, which cannot exceed 24 months from the date of issuance of the certificate". (art. 5 para. (3)) "At the owner's request, the validity period of the planning certificate for the design can be extended only once for a period of up to 12 months". (art. 5 para. 4)

According to the Bangalore Principles of Judicial Conduct, "A judge shall ensure that his or her conduct is above reproach in the view of a reasonable obse ver" (3.1) and "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." 3.2.)

According to Commission's Evaluation Rules art. 5 para. (2), in assessing a candidate's ethical integrity, the Commission may take into account the g avity 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 fu ther reoccurrences. While determining the gravity, the Commission will take into account all ircums ances, including but not limited to:

a) whether the incident was single event;
b) causing no or insignificant damage to private or public interests (including public trust) – such a 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

The candidate obtained for free from the government a plot of land for construction in Chisinau, Durlesti City, contrary to the law which stipulated that the public authority could improve the living conditions of judges only in the form of an apartment or house. The purpose of the law was to provide judges housing, not to give them an apartment or house for free, which they could later sell for a clear profit and then use that money for other purposes. The circumstance that the local public authority did not have the possibility to provide the candidate with housing space (apartment or house) did not justify his actions to bypass the law and petition for the allocation of a plot of land. The candidate also argued that the law did not prohibit the possibility to request a plot of land either, and the admission or rejection of his request for land allocation had been at the discretion of the local public authority. The Commission did not share the candidate's interpretation of the law. The legal norm in question is a norm of disposition, which establishes and indicates the permitted legal behaviour and action. There was no need for the legislator to provide a separate legal norm prohibiting someone from requesting a plot of land for construction,

as art. 30 of Law No. 544/1995 clearly establishes the possibility to ask only for housing (in the form of an apartment or house). Furthermore, none of the obligations towards one's own family can justify the candidate's action to request advantages that were against the law. The Commission disagreed with the candidate that the entire responsibility had lain with the local authorities who were authorised to reject his claim had it been unfounded. The candidate could not have been exempted from his own obligation not to take advantage of a program for his own financial gain. For a judge to advance a claim contrary to law and thereby abuse a benefit of he program is hardly conduct that is above reproach or that reaffirms public confidence in the judiciary. Such conduct by the candidate casts doubts on his compliance with the ethical criterion.

The Commission also had doubts as to the choice of local authority used to address the request to improve the living conditions. Thus, instead of Chisinau Municipal Council, where the candidate was then working as a judge, he applied to Durlesti City. Moreover, the Commission took note that the Decision of the Durlesti City Council by which the candidate received the plot of land for free from the state, subsequently became the subject of a criminal investigation.

Furthermore, at no time between 2007 and 2016, did the candidate undertake any construction efforts on the plot of land, obtain any permits or otherwise under ake to build a house, and he and his family continued to live in the same apartment even 9 years after receiving this plot of land for free from the state. These facts went against the candidate's argument that he and his family had needed to improve their living conditions The Commission did not find it convincing that the candidate could not construct a house due to the lack of sufficient financial means given his financial resources (including his and his wife's total income during the period 2007-2015 of 3,743,765 MDL). Rather than supporting his position, the claimed lack of funds to build a house actually corroborates his lack of intent to build a house to improve his living conditions when he obtained the plot. Also, the candidat did not take any actions to obtain documents providing permission for him to initiate the construction works. Contrary to the candidate's suggestion that he could not afford to c mplete the construction in twelve months, it was possible for the candidate to obtain an rban planning certificate valid for 24 months from the date of issuance of the certificate, and that certificate could be extended by up to 12 more months. What is important is that the candidate failed to undertake any steps to build anything that would make an objective observer believe that he intended to construct anything at all on this plot of land. Thus, the candidate did not benefit from the provisions of the law enabling him to improve his living conditions. He just benefited from selling the plot of land for 300 000 MDL– which had been given to him for free by the state through Durlesti City Council Decision.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/ 022) about the compliance of the candidate with the criterion of financial and ethical integrity as per art. 8 para. (2) lit. a), para. (4) lit. b) and para (5) lit. c) of Law No. 26/2022 with respect to th legal and factual grounds for obtaining the land plot located in Chisinau Municipality, Durlesti City in 2007, which have not been mitigated by the candidate.

2. Method of acquiring assets/Source of Income/ - House of 101 sq.m and land plot of 0.06 ha located in Chisinau City obtained by the candidate's parents in 2008

a. The facts

In 2016, after the death of his father, the candidate inherited half a share of property consisting of a 101.5 sq.m. house and a 0.06 ha plot of land, located in Chisinau. The candidate explained that this real estate had been acquired by his parents in 2008 for the declared purchase price of 1,036,661 MDL and that the funds used to purchase the property were savings and resources accumulated by them over a number of years. The house had been built 40 years ago and required substantial repairs which took a long time to complete. The candidate stated that he repair costs were incurred by his parents, and that he himself did not make any contribution to this. The candidate did not provide documents regarding the source of the financial means used by his parents for the purchase of the property as well as the repair works. During the period 1994-2008, the candidate's parents obtained gross taxable income to the value of 34,125 MDL. His parents did not sell any movable or immovable property or declare ny other income to the Tax Office during that period. The candidate did not submit any concrete information and documents regarding other employment and income(s) of his parents received prior to 2008. The candidate also mentioned that this real estate was the only property they had bought during their lifetime.

The candidate explained that, by the wills dating from 2013, both of his parents left from their estate, in equal parts to all three of their sons a one third share of the house and land located in Chisinau. After the death of his father, the candidate and his brothers each received one third of their father's share of the property. Subsequen ly, both of the candidate's brothers renounced their shares of the inheritance and transmi ted them to the candidate. The candidate explained that this renunciation was conditioned by the t ansmission and assumption of his moral and material responsibility for the car of his mother. As a result, the candidate obtained half a share of the whole property, the other half share came into the possession of his mother. After the death of his mother in 2021, the candidate and his brothers each inherited one-third of their mother's share of the property. None of the testamentary heirs or their successors officially renounced their inheritance rights within the three-month period provided by the Civil Code. Therefore, it is considered that all her heirs accepted the inheritance and became the owners of one third of the half share that had belonged to the candidate's mother. At the moment, no documents have been submitted to the notary for the preparation of notary acts on inheritance after the death of the candidate's mother.

In 2011 he candidate's son received from the candidate's father three plots of agricultural land, one plot of construction land, which included a house with an area of 70.7 sq.m and three auxiliary c nstructions, with the combined cadastral value of 33,952 MDL. The candidate's son sold three agricultural lands in 2015, 2018 and 2021 for a total price of 62 000 MDL. The candidate's son sold a plot of land for construction and four constructions in 2021 for a total price of 5 000 EUR (104 600 MDL at the exchange rate at that time).

The candidate's parents had three children and 11 grandchildren. The candidate explained that his parents had donated and passed on by inheritance their estates not only to him and his son,

but practically, in equal parts to all their successors. The candidate informed the Commission that two plots of agricultural land with the combined value of 10,000 MDL were donated to one of his nephews. The apartment of the 70,9 sq.m, located in Chisinau, which had previously belonged to the candidate, his wife, his son and his mother had been sold to the same nephew in 2019 for 400,000 MDL. One of the candidate's brothers received two plots of agricultural land with the combined value of 10,000 MDL as a donation.

At the public hearing the candidate confirmed the above facts. In addition, he declared that one of his brothers helped with the repair of the house in Chisinau, as he worked in the construction business. The candidate did not provide any supportive documents.

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.

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 fami y 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."

A candidate does not meet the criterion of fin ncial 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).

Art.8 para. (4) lit. b) of Law No.26/2022 provides that a candidate shall be deemed to meet the criterion of financial integrity if the Evaluation Commission finds that his/her wealth acquired in the past 15 years co responds to the declared revenues.

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

"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. The Commission is also required to verify sources of income and the method of acquiring assets of the candidate, family members and close persons to the candidate, which includes candidate's parents. In 2008, a residence and plot of land were purchased in the name of the candidate's parents for a declared price thirty imes their gross taxable income in the fourteen years before the house was purchased. Fu thermor , they did not sell any movable or immovable property, nor did they have any other source of income or savings which would justify the source of funds used to purchase the property. The candidate's parents' income therefore could not have covered the purchase of this property which raises doubts about the source of income and method of acquisition of the property.

Furthermore, the house was built in 1968 and required subst ntial repairs which took a long time to complete. The candidate did not provide information and confirmative documents regarding the repair costs, nor did he explain the source of funds used for these works. The Commission didn't accept the candidate's explanation tha all the expenses were borne by his parents. The alleged involvement of one of the candidate's brothers in the repair works, without any supporting documentation, is not sufficient to mitigate questions about the renovation of the house.

The Commission also took into account that a disproportionally large part of the property belonging to his parents was transferred to him and his son. The candidate did not substantiate his claim that his parents' wealth and property were distributed equally to all the children and grandchildren. Thus, the candidate became the owner of 2/3 shares of the house and plot of land located in Chisinau, while his brothers and their heirs became the owners of 1/6 each. The fact that, in the cadastre, only the candidate's share of this house and the plot of land have been registered, while he other successors have not yet registered their rights, raises questions regarding the beneficial ownership of this property, particularly considering that the candidate's parents did not have sufficient funds to pay for this property in 2008 and to cover the repair costs. In addition, the total declared cadastral value of the properties donated to the candidate's son in 2011 was 33,952 MDL. Later, these properties were sold for the total amount of 166,600 MDL. In contrast, one of the candidate's brothers and one of his nephews received as donations from hi parents two plots of agricultural land each, with the combined value of 10,000 MDL. Fur hermore, one of the candidate's nephews purchased a 70.9 sq.m apartment belonging to the candidate's family and his mother for the sum of 400,000 MDL. Therefore, the argument that the candidate's parents' wealth and properties had been distributed equally among all the successors is not supported, as the candidate and his son actually obtained most, if not all, of the properties which had significant monetary value.

To summarize, in the absence of any documentation establishing otherwise, the candidate's parents appeared to lack sufficient income to purchase the house and undertake substantial repairs. The fact that the candidate received 2/3 of this property and that he is the only person

registered in the cadastre with the right of property, raises questions regarding the beneficial ownership over this property from the moment of its purchase. This conclusion is further strengthened by the uneven distribution of the candidate's parents' properties among their successors.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) Law N 26/2022) about the compliance of the candidate with the criterion of financial integrity as per art. 8 para. (4) lit. b), para. (5) lit. c), d) and g) of Law No. 26/2022 with respect to the mode of obtaining the house of 101 sq.m. and land plot of 0.06 ha in Chisinau City by the candidate's parents, and the source of funds used to renovate this house, which have not been mit gated by the candidate.

3. Sub-estimated value of car model BMW 730I m/y 2004 and car model BMW 730LD m/y 2008. Failure to disclose in the manner prescribed by law and to pay capital increase tax of car model BMW 730i m/y 2004

a. The facts

(I) Between 2008 and 2011, the candidate held the right of usufruct over a 2004 BMW 7 series 730I car ("hereafter BMW m/y 2004"). During this period, the owner of the vehicle was the candidate's relative[1]. The candidate stated that his elative gave him the right to use this car for free, as this relative had a company car, and could allow the candidate to use his car when necessary. In 2011 the candidate purchased his vehicle for the declared price of 110,000 MDL (equivalent to 6,738 EUR at the e change rat at the time). The candidate sold this car on 20 September 2013 for the declared price of 150,000 MDL, 40,000 MDL more than the declared purchase price. The candidate did not pay tax on the capital increase of 40,000 MDL following the sale of this car.

In his 2013 Tax Form (Form CET08-2013), submitted for the purpose of calculating the increase or decrease of the capital the purchase price of this car was indicated as 240,000 MDL. When asked about the disc epancy between the sales price declared in his annual declaration and in his tax form, the candidate noted that he had made an error when informing the Tax Service that the declared purchase value of the car was 240,000 MDL. The candidate stated that, on the same day as he sold the BMW m/y 2004, he had purchased another BMW for the price of 240,000 MDL. The candidate therefore stated that the purchase price for BMW m/y 2004 should have been indicated as 110,000 MDL.

(II) On 20 September 2013, the candidate purchased a 2008 BMW 7 series 730LD car (hereafter "BMW m/y2008"), for the declared price of 240,000 MDL (equivalent to 14,300 EUR). In 2016, the candidate sold this car for the declared price of 290,000 MDL, 50,000 MDL more than the declared purchase price. According to his 2016 Tax Form (CET15-2016), the candidate paid tax on the capital increase from the sale of this car. Nine years later, in 2022, such cars are on sale

[1] From 2006 to 2008, the candidate held the right of usufruct for another BMW m/y 1999, owned by the same relative.

for the price of 277,760 MDL (equivalent to 14,000 EUR).[2] The candidate explained the difference between the market value of the BMW m/y 2008 and the declared value of the car in 2013 as a result of direct negotiations of the price between the parties to the contract. The candidate also mentioned that the car was improved by installing a GPS system and a better performing audio system, but no confirmatory documents were provided to support this claim

At the public hearing, the candidate confirmed these facts. He noted that he had come to realize that he had made an error in reporting to tax authorities the purchase price of the BMW m/y 2004 only after having received the questions from the Commission. He also noted that he did not make efforts to pay taxes that he had failed to pay after selling this car.

b. The law

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

Art. 15 of the Fiscal Code provided the income tax of 18% at the time the candidate submitted his tax form to the Tax Service. Art.37 of the Fiscal Code regulated the mode of calculating the capital increase. A person must pay tax of 18% from 50% of the capital increase he/she gained in the previous year.

Art. 4 para. (1) lit. a) of Law No. 133/2016 on declaration of assets and personal Interests, requires the subject of the declaration to declare the income obtained by the subject of the declaration together with family members, the cohabitant in the previous fiscal year."

Pursuant to art. 8 para. (2) lit.) and (4) lit. a) and para. (5), lit. b) of Law No. 26/2022 a candidate's failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

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

c. Reasoning

The Commission is required to verify that the candidate has complied with the legal regime of decla ing assets and personal interests. Between 2008 and 2011, the candidate had held the right of usufruct over a BMW m/y 2004. In 2011, the candidate purchased this vehicle for the declared price of 110,000 MDL from his relative and then sold it in 2013 for a declared price 40,000 MDL more than he paid for it. The candidate did not pay tax on that capital increase. This car was mortgaged by the new owner in 2018 for the sum of 6,098 USD (est. 101,226 MDL). Hence, 7 years after the candidate had purchased this car, it was mortgaged by the new owner for a similar price to what the candidate claimed to have paid. Also, similar cars to that which the candidate

[2] Medium sale prices calculated on platform 999.md, makler.md, interauto.md.

bought in 2011 for the declared purchase price of 6,700 EUR, are listed for sale today at around 6,500 EUR.[3] Thus, similar cars are now selling for the price that the candidate claims to have paid 11 years ago. Therefore, the Commission has serious doubts in respect to the declared purchase price of this car.

The Commission also noted that the candidate had had the right of usufruct over a BMW m/y 2004 car for over 2 years. It is unclear what the economic benefit was to the candidate's relative in providing the latter with the right of usufruct of such an expensive car. Furthermore, from 2006 to 2008, the candidate held the right of usufruct for another BMW m/y 1999, owned by the same relative. The sub-evaluated market value of the 2004 BMW 7 series 730I car model combined with the long period of time during which the candidate used it for free, raises serious doubts regarding the beneficial ownership of the candidate over this car from the moment of its purchase. Even more so, the candidate did not pay the capital increase of 40,000 MDL in accordance with the provision of art. 15 and 37 of the Fiscal Code (40,000/50%*18% = 3,600 MDL) likely due to the fact that the sales price was erroneously declared as being 240,000 MDL.

The Commission also had doubts as to the real purchase price of the second car, a BMW m/y2008, which the candidate had bought in 2013 and sold for 50,000 MDL more than the declared purchase price three years later. Nine years later in 2022, such cars are on sale for the price of 277,760 MDL (equivalent to 14,000 EUR.)[4], still more than the purchase price declared by the candidate. These circumstances raise serious doubts regarding the declared value of this car. The candidate could not provide convincing explanations or supportive documents that could mitigate the Commission's doubts concerning the sub-evaluated purchase price of this car.

The Commission observed a pattern whereby the candidate used expensive cars for free from the same relative and then purchased them at an underestimated price. In light of above circumstances, the Commission has serious doubts (art. 13 para. (5), Law No. 26/2022) about the compliance of the candidate with the criterion of financial integrity as per art. 8 para. (4) lit. a) and para. (5) lit. a), b), c) and g) of Law No. 26/2022 and ethical integrity as per art. 8 para. (2) lit. c) of Law No. 26/2022 with respect to the sub-estimated value of the cars acquired by the candidate, declaration of assets and interests in the manner prescribed by law and failure to pay capital increas tax following the sale of one of these cars, which have not been mitigated by the candidate

4. Failure to disclose donations and contributions made by the candidate and his wife to their son in 2017 and 2018 in the manner prescribed by law

a. The facts

(I) In his 2019 declaration of assets and personal interests (hereinafter "annual declaration"), the candidate's son declared 60,000 EUR and 21,208 USD as donations received as wedding gifts, and 40,000 EUR received as gifts for the christening of his child. The candidate stated that he had

[3] Medium sale prices calculated on platform 999.md, makler.md, interauto.md.
[4] Medium sale prices calculated on platform 999.md, makler.md, interauto.md

paid 10,150 MDL to reserve the wedding hall and 303,142 MDL in cash for restaurant services. The candidate had also paid 4,000 EUR (83,006 MDL according to the exchange rate) in cash to a studio for organizing the wedding ceremony. The candidate did not declare these donations totaling 303,142 MDL and 4,000 EUR in his 2018 declaration. The candidate only declared them in his 5-year declaration as "contributions" to his son's wedding. The candidate did not incur any expenses for the christening ceremony.

(II) In 2017, the candidate's wife donated the sum of 280,000 MDL to their son. In 2018, the candidate's wife donated the sum of 196,157 MDL to their son. The candidate provided two donation contracts to the Commission related to those donations. The candidate did not declare these donations in his annual declarations for 2017 and 2018. In his answers to the Commission, the candidate acknowledged that he had unintentionally omitted to declare the donations made by his wife in the annual declaration for the years 2017 and 2018. The candidate also stated that his son had declared these amounts in his declaration of assets and personal interests as a civil servant.

At the public hearing, the candidate confirmed the above facts and explained that he had not made any cash donations to his son or his son's family for their wedding other than those that were related to expenses for this event. He also noted that he had not made any donations to his grandchild for the christening and that his contributi n to this event was limited only to the provision of some gifts to the child.

b. Law relating to disclosure of assets and finan ial interests

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, personal interests and existence of donations. Law No 26/2022, art. 8 para. (4) lit. a) and para. (5) lit. b) and f).

Pursuant to art. 8 para. (2) li c) para. (4) lit. a) and para. (5) lit. b) and f) of Law No. 26/2022 a candidate's failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

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

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

According to the provision of art. 4 para. (1) lit. c) of Law No. 133/2016 on declaration of assets and personal interests, the subject of declaration is obliged to declare in his/her annual declaration

the goods transmitted by the subject of the declaration for a fee or free of charge, personally or by his family members, his concubine/concubine to any individual or legal entity during the declaration period, if the value of each good exceeds the amount of 10 average salaries per economy.

According to art. 15 para. (1) lit. g) of Law No. 544/1995 on the status of judges as well as rt.13 para. (1) of Law No. 82/2017 on integrity, judges are obliged to submit their declaration of ass ts and personal interests in accordance with the provisions of Law No. 133/2016 on dec ar tion of assets and personal interests.
According to Government Decision No. 1233/2016, the average monthly salary per economy, forecasted for 2017, was 5,600 MDL. According to Government Decision No. 54/2018, the average monthly salary per economy, forecasted for 2018, was 6,150 MDL.

Pursuant to art. 4 para. (1) lit. c) of Law No. 133/2016 on declarati n of assets and personal interests and the Instruction on the mode of completing the declaration of assets and personal interests approved by Decision of Chairman of NIA No. 2/2017, for Section IV, Subsection D of the NIA Declaration "Goods transmitted for a fee or free of charge, personally or by family members, concubine, to natural or legal persons during the d claration period, if the value of each asset exceeds the amount of 10 average salaries per economy" the following information must be included:
a) "Description of the transferred property" indicat s any movable or immovable property, including investments in the share capital of economic agents, transferred by contract for a fee or free of charge in written or oral form by the subject of the declaration, family members, concubine, to any individual or legal entity provided that the value of the respective good exceeds 10 average salaries per economy at the date of filing the declaration.

According to art. 288 para. (5) of the Civil code (then in force), the goods that are not related to the category of immovable goods, including money (cash) and securities, are considered movable goods.

c. Reasoning

The Commission is required to verify that the candidate has complied with the legal regime of declaring ass ts, personal interests and existence of donations. The observance of the legal regime of the declaration of personal assets and interests by judges aims to prevent unjustified and illicit enrichment and avoid conflicts of interest in their activity, as well as aiming to hold them accountable for such deeds. In his annual declarations for the years 2017 and 2018, the candidate did not declare his wife's donations to their son nor did he declare for the year 2018 the payments for his son's wedding ceremony. The candidate acknowledged that he had omitted to declare these donations. Each of the donations was valued higher than the amount of 10 average salaries in the economy which triggered the obligation for reporting: in 2017, the donation of 280,000 MDL exceeded the 56,000 MDL threshold for reporting; in 2018, the donations of 196,157 MDL and roughly 386,000 MDL exceeded the 61,500 MDL threshold. The fact that the candidate declared some of these sums belatedly, in his 5-year declaration or that his son declared them in his own annual declaration as a civil servant did not mitigate the failure of the candidate to declare

these sums in his 2017 and 2018 NIA declarations (Section IV, Subsection D of the NIA Declaration).

The Commission considered in particular that the candidate had repeatedly failed to declare donations in the manner prescribed by law and that the amounts were substantial, in this case exceeding 862,000 MDL. Thus, the Commission concluded that there was a reasonable doubt about the compliance of the candidate with the requirements stipulated in the legislation relating to disclosure of assets and financial interests.

In light of above circumstances, the Commission has serious doubts (art. 13 para (5) 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) with respect to declarations of donations and contributions made by him and his wife o his son, which have not been mitigated by the candidate.

5. Ethical violation for failure to self-recuse

a. The facts

(I) On 1 December 2021 the candidate was a member of the panel of judges at the Supreme Court of Justice that examined a case (A. SRL v. L.F.) in which one party was represented by lawyer Dorin Popovici. The case involved the collection of a debt and legal expenses sought by the client of lawyer Dorin Popovici. By decision of 1 December 2021 the panel of judges of the Supreme Court of Justice (of which the candidate was a member) maintained the decision of the first instance court by which lawyer Dorin Popovici's client was to be paid the sum of 8,181 EUR as debt and 7,469 EUR as penalties, a decision in favor of the client of Dorin Popovici. The candidate has longstanding friendship with lawyer Dorin Popovici, going back to when they were both judges at the Chisinau Court, Buiucani Office (where candidate was a judge from 1994 to 2008 and Dorin Popovici became a judge in 2003).

According to the information from Border Police, between 2 and 8 January 2009 the candidate travelled by car with lawyer Dorin Popovici and both of their wives to one of the countries in Europe. Between 17 and 29 August 2012 the candidate travelled by car with lawyer Dorin Popovici and both of their wives to the same country in Europe. Between 28 June and 3 July 2013, the candidate travelled by car to the same country in Europe with Dorin Popovici and two close relatives of lawyer Irina Tocan.

During the written procedures, the candidate stated that the examination of the case had taken place in a composition of three judges and that he had not been the rapporteur. The candidate further noted that, at the Supreme Court of Justice, cases are examined in the absence of the parties on the basis of the documents in the file and only on points of law. At the same time, the candidate considered that Dorin Popovici's participation in the given case as a representative of a party did not serve as a legal basis provided by the Code of Civil Procedure upon which it was necessary for him to declare his recusal from examining the case. The candidate considered that his relationship with Dorin Popovici could not have influenced the outcome of the case.

At the public hearing, the candidate confirmed the above facts. However, he changed his position as to the reasons for not recusing himself from the consideration of the case. Namely, the candidate stated that he had not known that Dorin Popovici was representing a party in the case and had not therefore recused himself. Dorin Popovici may have acted as the representative for the party in the first-instance Court and at the Court of Appeal. Thus, the reason for not abstaining from participating in the case had been because the candidate had not seen Dorin Popovici's name in the documents submitted to the Supreme Court of Justice. When asked about the records in he Integrated Case Management System (in Romanian: *Programul Integrat de Gest unioare a Dosarelor*, thereafter "PIGD"), which indicated that Dorin Popovici was a legal representative of the company, the candidate stated that he hadn't looked into this database as he wasn't a rapporteur. He eventually stated that he had not paid attention as to who was the r presentative of the particular company.

(II) On 11 May 2022 the candidate was part of the panel of judges at the Supreme Court of Justice which examined the appeal of a case in which one party was represented by lawyer Irina Tocan. The case involved a request for privatization of a residential space by and exclusion of Irina Tocan's client from the list of participants in privatization of the property. The first instance court and the Court of Appeal had partially admitted the requ st of the party who was opposing lawyer Irina Tocan's client. By decision of 11 May 2022, the panel of the Supreme Court of Justice (of which the candidate was a member) admitted the appeal of lawyer Irina Tocan's client and sent the case for retrial. That decision changed th decisio of the Court of Appeal in favor of the client of lawyer Irina Tocan. The candidate has longstanding friendship with Irina Tocan, her husband and the brother.

According to the information from the Border Police, between 3 and 6 August 2012 the candidate travelled by car with lawyer Irina T can and both of their spouses to one of the countries in Europe. On 30 December 2012 the candidate again travelled with lawyer Irina Tocan and both of their spouses to the same c untry in Europe. Between 28 June and 3 July 2013 the candidate also travelled by car to the same country in Europe with Dorin Popovici and lawyer Irina Tocan's two close relatives.

During the wr tten procedures, the candidate noted that the examination of the case had taken place in a composition of three judges and that he had not been the rapporteur. The candidate further stated that at the Supreme Court of Justice cases are examined in the absence of the parties on the basis of the documents in the file and only on points of law. At the same time, the candidate considered that Irina Tocan's participation in the given case as a representative of a party did not serve as a legal basis provided by the Code of Civil Procedure upon which it was necessary for him to declare his recusal from examining the case. The candidate considered that his relationship with Irina Tocan and her family could not have influenced the outcome of the case.

At the public hearing the candidate confirmed that he is acquaintances with Irina Tocan with whom he travelled abroad and has a close relationship with her close relative.

b. The law

According to art. 50 para. (1) lit. e) of the Civil Procedure Code, the judge should be recused

when he/she has a personal interest, directly or indirectly, in solving the case or there are other circumstances that call into question his objectivity and impartiality. According to art. 52 para. (1) of the Civil Procedure Code, "if there are grounds specified in art. 50 and 51, the judge, is obliged to abstain from judging the case".

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

According to art. 15 para. (1) lit. a) and d) of Law No. 544/1995 on the s atus of j dges, a judge is obliged to be impartial and to refrain from acts that harm the interests of the service and the prestige of justice, that compromise the honour and dignity of judges, cause doubts about their objectivity.

Pursuant to the Judge's code of ethics and professional conduct, 2015, Art. 4, para. (3) "Impartiality", the judge shall refrain from any proceedings in which his/her impartiality could be called into question in any proceedings where this is equired by law, including in cases where, he/she knows that he/she, personally or as cust dian, or his/her spouse or any other relatives, have a financial interest in the subject of the dispute or any other interest, which could affect the outcome of the proceedings.

According to the well-established case-law of the European Court of Human Rights, "the existence of impartiality for the purposes o Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is to say whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality... There is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as o impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test) (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 118-119, ECHR 2005-XIII).

The Constitutional Court of Moldova in its Decision No. 18/2017 referenced the aspect of impartiality of judges, stating that when examining the guarantees of a fair trial, the European Co rt established that the judge's impartiality is assessed both according to a subjective approach, which takes into account the judge's personal beliefs or interests in a case, and according to an objective test, which determines whether the judge has offered guarantees sufficient to exclude any reasoned doubt from this point of view *(Demicoli v. Malta, 27 August 1991, Series A no. 210).*

According to the Bangalore Principles of Judicial Conduct, Principle 2. "Impartiality" 2.5. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that

the judge is unable to decide the matter impartially.

As per the Commentary on the Bangalore Principles of Judicial Conduct (2007), "among others, a reasonable apprehension of bias might be thought to arise in the following circumstances: "if there is personal friendship... between the judge and any member of the public involved in the case or if the judge is closely acquainted with any member of the public involved in the case" (para. 90).

c. Reasoning

In 2021 and 2022, the candidate participated in the panel of judges at the Supreme Court of Justice, which examined two distinct proceedings in which the parties were r presented by lawyers with whom the candidate had enjoyed a longstanding friendship The legal framework regulating impartiality of judges and refraining from any acts that cas doubt on it are clear and foreseeable. These standards require from a judge to seek to recuse hims lf/herself when he/she has a personal interest, directly or indirectly, in solving the case or there are other circumstances that call into question his objectivity and impartiality. (art. 50 para. (1) lit. e) and art. 52 para. (1) of the Civil Procedure Code, art. 15 para. (1) lit. a) and d) of Law No. 544/1995 on the status of judges). Ethics Code of Judges of 2015 imposes similar obligations on the judges. According to the well-established case-law of the European Court of Human Rights, even appearances may be of a certain importance, and that justice must not only be done, it must also be seen to be done. Judges should comply with both subjective and objective tests of impartiality. Appearance of partiality under the objective test is to be measured by the standard of an objective observer. It is considered that the personal friendship between a judge and any member of the public involved in the case or close acquaintance of a judge with any member of the public involved in the case might give rise a reasonable apprehension of bias. The above standards serve to promote the confidence which the courts in a democratic society must inspire within the public. (See, *Castillo Algar v. Spain*, 28 Octobe 1998 § 45, *Reports* 1998-VIII).".

Systematic analysis of the domestic law and practice and the international materials concerning the activities of judges elucidate that respect for ethics and rules is the main duty that particular judges should follo in the course of their activities. The candidate had not sought to be recused despite confirmed personal relationship with the representatives involved in the cases pending before him. This relationship apparently extended to their family members. The fact that the candidate had enjoyed a longstanding friendship with former judge Dorin Popovici and that they had travelled together on several occasions apparently including holiday trips, sometimes with their spouses, may call into question his impartiality and objectivity. The same conclusion is to be reached in connection with the second case, in which the party was represented by Irina Tocan. The candidate had enjoyed a close relationship with her and her close relatives and had travelled with them on several occasions apparently including holiday trips, sometimes with their spouses. The candidate had not abstained from the examination of the above-mentioned cases and had not taken any actions to resolve the conflict of interest in the context of examining the given cases. Also, the fact that, at the Supreme Court of Justice, cases are scrutinized in the absence of the parties, based on written proceedings and only on points of law, does not mean that the rules which regulate the conflicts of interests as well as recusals/abstention do not apply.
The Commission also noted that, at the public hearing, the candidate had departed from his

previous written submissions that his relationship with Dorin Popovici did not require recusal and stated instead that Dorin Popovici's name, as a representative of a party, had not been mentioned in the documents presented to him and suggested that he was unaware of Dorin Popovici's participation and that was why he had not sought to be recused. The Commission noted that Dorin Popovici's name appears in the PIGD database as a representative of one of the parties in the case (see the screenshot below).

Judges have an obligation to familiarize themselves with the cases they are adjudicating, whether they are rapporteurs or not, and must seek to be recused when there is a bias or suspicion of bias. Thus, the candidate's belated argument that he did not know that Dorin Popovici was a participant in the case cannot be sustained.

The Commission noted that the judges – and specifically the ones serving at the highest branch of the judiciary – should display particular diligence when performing their functions. They are obliged to recuse themselves from consideration of the cases which might call into question their objectivity and impartiality. The candidate's failure to recuse himself from two proceedings in which his friends were representing parties, had not ensured respect for the principle of impartiality and had given rise to doubts as regards his compliance with ethical standards, as a result of which public trust in the justice system had been undermined.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) 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 the examination of two cases by the candidate in which he had close relations with the lawyer of one of the parties, which have not been mitigated by the candidate.

IV. Decision

Based on art. 8 para. (1), para. (2) lit. a) and c), para. (4) lit. a), b) and para. (5) lit. a), b), c), d), f) and g) 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 Commiss on

Done in English and translated into Romanian.

Signature: 

Herman von HEBEL
Chairman, Commission