



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. 14 of 11 January 2023 on the Candidacy of Veronica CUPCEA
Candidate for the Superior Council of Magistracy, the Board for the selection and career of
judges and the Board for the evaluation of the performance of judges*

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 16 December 2022 and 11 January 2023. The members participating were:

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

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

I. The procedure

Veronica CUPCEA, judge of the Orhei district 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 positions of member of the Superior Council of Magistracy and Board for the selection and career of judges and the Board for the evaluation of the performance of judges.

The candidate was appointed as a judge on 11 June 2007 to serve in Orhei district court. The candidate was appointed as a judge until the retirement age on 16 August 2012. On 27 January 2017, the candidate was appointed for a term of 4 years to the position of President of Orhei district court.

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 1 July 2022.

On 8 July 2022 the Commission sent a request to the candidate for completing and submitting by 15 July 2022 the Declaration of assets and personal interests for the past 5 years as required by art. 9 para. (2) of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter “Law No. 26/2022”). The declaration also includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. The candidate submitted a completed declaration to the Commission on 13 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 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 9 September 2022 the Commission sent to the candidate a request for clarifying information, containing 11 questions, including 34 sub-questions and 20 requests for further documentation. The candidate replied within the requested time period on 13 September 2022 to all questions and provided most of the requested documents.

On 7 October 2022, the Commission sent a second round of eight questions, including 18 sub-questions and 12 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 10 October 2022 to all questions and provided most of the requested documents.

On 18 November 2022, the Commission sent a third round of four questions, including 12 sub-questions and six requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 20 November 2022 to all questions, but did not provide the requested documents.

On 29 November 2022, the Commission sent a fourth round of three questions, including 13 sub-questions and three requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 1 December 2022 to all questions, but did not provide the requested documents.

Following the candidate's request, on 13 December 2022 the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022.

On 16 December 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, conflicts of interest, incompatibilities, restrictions and/or limitations.

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

Also, the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity as The Bangalore Draft Code of Judicial Conduct 2001 and as revised at the Round Table Meeting of Chief Justices on 25-26 November 2002 and endorsed by United Nations Social and Economic Council, resolution 2006/ 23 ("Bangalore Principles of Judicial Conduct") provide relevant guidance.

Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. N° 3") provides further guidance.

Art. 8 para. (4) of Law No. 26/2022 provides that a candidate shall be deemed to meet the criterion of *financial integrity* if:

- a) the candidate's assets have been declared in the manner established by law;
- b) the Evaluation Commission finds that his/her wealth acquired in the last 15 years corresponds to the declared revenues.

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

Art. 8 para. (5) of Law No. 26/2022 provides that in order to assess the applicant's financial integrity, the Commission is required to verify the following:

- a) compliance by the candidate with the tax regime in the part related to the payment of taxes when using the means and income derived from the property held, as well as taxable income and the payment of import duty and export duty;
- b) compliance by the candidate with the regime of declaring assets and personal interests;
- c) the method of acquiring the property owned or possessed by the candidate or persons referred to in art. 2 para. (2), as well as the expenses associated with the maintenance of such assets;
- d) the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2);
- e) existence or not of loan, credit, leasing, insurance or other contracts capable of providing financial benefits, in which the candidate, the person defined in art. 2 para. (2) thereof, or the legal entity in which they are beneficial owners, is a contracting party;
- f) whether or not donations exist, in which the candidate or the person established in art. 2 para. (2) has the status of donor or recipient of donation;
- g) other relevant aspects to clarify the origin and justification of the candidate's wealth.

In assessing and deciding upon the criteria related to financial and ethical integrity, the Commission is not to depend on the findings of other bodies competent in the field concerned. (art. 8 para. (6) of Law No. 26/2022) The Commission is required to assess the information gathered about candidates using its own judgment, formed as a result of multi-faceted, comprehensive and objective review of the information. None of the submitted materials has a predetermined probative value without being assessed by the Commission. (art. 10 para. (9) of Law No. 26/2022).

A candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the above-listed requirements which have not been mitigated by the evaluated person (art. 13 para. (5) of Law No. 26/2022). As noted in the recent Venice Report on vetting in Kosovo, "In a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources". Also, "[I]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability". Venice Commission, CDL-AD(2022)011-e, Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), §§10,9.

Shifting the burden of proof to the candidate, once the evaluating body has identified integrity issues, has been found permissible by the European Court of Human Rights, even in the vetting of sitting judges who may lose their positions or otherwise be sanctioned as a consequence of the

evaluation. In *Xhoxhaj v. Albania*, no. 15227/19, §352, 31 May 2021 the Court stated that “it is not per se arbitrary, for the purposes of the “civil” limb of Article 6 § 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC [Independent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file.”

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

III. Evaluation of the candidate

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

1. Source of funds for an apartment in Chisinau municipality, a land plot and an unfinished construction in Criuleni district and for the re-payment of a loan / Undeclared financial contributions in 2012

a. The facts

In 2012, the candidate and her husband acquired two properties: (1) a 92 sq.m. apartment in Chisinau that was purchased for 602,338 MDL and (2) a land plot of 0.0799 ha, auxiliary construction of 22.3 sq.m., and an individual house of 149.1 sq.m. in Criuleni district purchased for 300,000 MDL. The Criuleni property was paid for in two installments: 30,000 MDL at the signing of the sale-purchase contract and 270,000 MDL one month later. In October 2012, the candidate and her husband contracted a loan in the amount of 270,000 MDL for the period of 2012-2030, at 13% interest rate, from a bank in Moldova. The purpose of the loan was to pay the second installment towards the purchase of the Criuleni land plot and unfinished construction. The loan was paid off less than two years later in June 2014 with a payment of 246,250 MDL.

In response to written questions from the Commission, the candidate stated the funds used to purchase the apartment in Chisinau and to pay the first installment on the Criuleni property were her husband's and her cash savings from salaries and funds received from relatives. The candidate explained that she and her husband had saved between 20 and 40% of their monthly income since the early 1990's and the savings used for the purchase of the properties in 2012 also included the proceeds from the sale in 2011 of a studio-apartment in Chisinau for 174,812 MDL. The remaining amount of funds required for the two purchases was 457,496 MDL.

The candidate also informed the Commission that the funds used to pay off the Criuleni property loan in 2014 with a payment of 246,250 MDL were funds received from relatives. According to the candidate, this included: (1) the sale of four land plots by the candidate's mother, (2) the pension of the candidate's father-in-law transmitted as a financial contribution, (3) financial contributions from her parents and a close relative (4) the contribution of a close relative of her

husband's, whose child the candidate took care of from 2003 to 2008. The candidate did not provide any further details about these funds, about the number of plots of land sold by her mother (explaining that it might have been more than four), the dates of the transactions and the amount of the proceeds from the sales. The candidate also indicated that her mother had savings from the sale of birds, eggs, fruits and vegetables. As to her father-in-law's pension, the candidate did not provide any indication of the total amount received but indicated that his pension was around 5,000 MDL per month, all of which he gave to her family over the two to three years prior to his death in 2013. The candidate did not provide an estimate of the amount of other financial contributions from her mother and her husband's parents. The candidate also did not estimate the amount of financial contributions they received from her husband's close relative in the period of 2003 to 2008 when they were caring for the child of the close relative. At the public hearing, the candidate conceded that the financial contributions received from relatives for the re-payment of the 270,000 MDL loan were not all received in 2014, but also in earlier years.

At the public hearing, for the first time, the candidate explained that she and her husband did not plan to buy a house in 2012 but because it was a good offer at that time, they decided to contract the 270,000 MDL loan. In 2014, when judges' salaries increased considerably, they were able to pay off the loan earlier.

The only documentation provided by the candidate to confirm the source of the total of 902,338 MDL used to acquire the two properties in 2012 was the credit agreement for the loan of 270,000 MDL contracted on 23 October 2012 and the sale-purchase contract for the studio apartment Chişinău in 2011 for 174,812 MDL. The only documentation provided by the candidate about the loan payoff in 2014 with the payment of 246,250 MDL was the credit agreement and a bank statement confirming the payments made to close the loan.

The candidate did not declare in her annual declarations of assets and personal interests submitted to the National Integrity Commission (hereinafter "annual declaration") for 2012 to 2014 any financial contribution from relatives, as required by Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions. In response to written questions, the candidate stated that she did not declare these contributions because "according to art. 4 para. (3) of the Law No. 1264/2002, the valuation of the property is carried out, according to the legislation, by indicating the value (cost) mentioned in the document certifying the origin of the property (alienation, exchange, donation, inheritance, privatization, etc.)", and she and her family did not conclude donation contracts. "In fact, it was a common/extended family (parents – children/children – parents), in which they helped the parents with physical work, and the parents, in their turn, helped us with material support in various forms". The candidate also indicated that "under art. 2 of the Law No. 1264/2002, the family members of the subject of the declaration are: spouse, minor children and dependents, therefore the income from their parents did not have to be declared, because they did not fall under the scope of their family members, according to the above-mentioned law". The candidate further stated that "the material support provided by the parents cannot be interpreted as a donation under the legislation". At the hearing, the candidate referred to art. 2 – explanation of some terms, especially to the definition of term substantial difference, as being understood as "difference between the acquired property and the income obtained exceeding at least 6 times the average monthly salary obtained during the declaration period by the subject of

declaration and the members of his family” and stated that she did not consider the funds received as income or as “increasing of the family patrimony, only an unconditional material aid” that had not exceeded the threshold of six times the average monthly salary.

At the public hearing, the candidate conceded that her interpretation of the law regarding assets and income declaration was incorrect, specifically regarding the need to declare income from parents as family members and the inapplicability of provisions having to do with valuation of property. The candidate stated that her mistakes were not intentional.

b. The law

Art. 8 para. (5), lit. c) and d) of Law No. 26/2022 provides that the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

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

“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).

Pursuant to art. 8 para. (2) lit. c), para. (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.

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

According to art. 4 para. (1) of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force in 2012), the person making an income and asset declaration is required to declare „income obtained together with family members” during the declaration period. Art. 2 of Law No. 1264/2002 defines income as „any increase, addition or extension of the patrimony, regardless of the source or origin, expressed in patrimonial rights or in any other patrimonial benefit, obtained by the subject of the declaration or by the members of their families during the reference period both in the country and abroad”.

c. Reasoning

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

According to the candidate, over many years until 2017, she and her husband received financial support from her parents and her husband's parents. According to the candidate, as a result of these contributions, as well as salary savings and income from the sale of an apartment, the candidate and her husband were able to buy two properties in 2012 for about 902,38 MDL. However, the candidate did not provide estimates of the amounts received or supporting documents that would have confirmed the sources of the money received from her relatives. To purchase the Criuleni property, the candidate and her husband took a loan of 270,000 MDL. When asked at the public hearing why she and her husband took the loan in 2012, the candidate stated that they did not have enough funds to buy the property without the loan.

In 2014, the candidate and her husband paid off the loan of 270,000 MDL used to purchase the Criuleni property. The funds used to pay off the loan, according to the candidate's written answers to questions from the Commission, were from the following sources: her mother's sale of land plots, her father-in-law's pension, contributions from her mother and her husband's parents and the contributions from a close relative of her husband. At the public hearing, the candidate conceded that these funds were not received by them just in 2014 but were received over time, some far in advance of the purchases of the two properties in 2012. For example, the funds from the close relative whose child they had cared for were received between 2003 and 2008. The funds from her father-in-law's pension were received in 2011 and 2012. And the candidate had no idea when the land plots were sold by her mother, but it might have been before 2014. Thus, the funds supposedly used to pay off the loan were the same funds that, according to the candidate, had been used and depleted by the property purchases in 2012 generating the need for the loan in the first place. Serious doubts were raised about the existence of these sources of the funds to pay off the 270,000 MDL loan. These doubts were not lessened by the candidate urging, for the first time at the public hearing, that increases in her husband's and her salaries since 2014 allowed them to pay off the loan early.

As to why the candidate had not disclosed the funds from family members in her annual declarations, in her written answers, the candidate provided a very confusing interpretation of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions, based on the arguments and provisions that did not apply to her situation and the obligation to declare financial contributions from family members. At the public hearing, the candidate admitted that she was mistaken in her interpretation of the law. The candidate's failure to declare the monetary contributions from family members aggravated the doubts about the sources of income to purchase the properties and pay off the loan.

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 and ethical integrity as per art. 8 para. (2) lit. c), (4) lit. a) and b) and 5 lit. b), c) and d) of Law No. 26/2022 with

respect to the sources of income for the purchase of the two properties in 2012, the payoff of the loan in 2014 and the failure to declare monetary contributions from family members in her annual declarations in the manner prescribed by law, which have not been mitigated by the candidate.

2. Source of funds to pay off the loan of 540,000 MDL in 2018/ Undeclared cash savings and financial contribution in annual declarations

a. The facts

In 2018, the candidate and her husband contracted a loan of 540,000 MDL, for the period of 2018-2028, at 7% interest rate from a commercial bank in Moldova. The purpose of the loan was to complete construction of the house in Criuleni district they had purchased in 2012. The loan was paid off in 2020.

In the written communication with the Commission, the candidate stated that the loan of 540,000 MDL was extinguished by paying off the outstanding balance in the amount of 446,670 MDL in 2020, which was done in three payments: (1) a payment of 182,000 MDL in April 2020 (2) a payment of 100,000 MDL in September 2020 and (3) a payment of 164,670 MDL in October 2020. The candidate indicated that funds for the last two payments in 2020 were received as financial contribution from her son in the amount of 150,000 MDL. According to the candidate's calculations, her husband's and her contributions to the payoff of the loan in 2020 totalled 296,670 MDL.

Also, in her written communication with the Commission, the candidate informed the Commission that, once the loan was taken, she paid the expenses for the maintenance of the family and her husband made the loan payments from his pension. The amount of 296,670 MDL that they paid between April and October 2020 included (1) her husband's pension accumulated for several months, (2) the income from his activity as an attorney, (3) family savings, because she did not start the new year with no savings.

At the public hearing, the candidate was asked about the amount of savings she had on hand in 2020. The candidate stated the specific sum of 484,189 MDL. When asked why she had not declared these cash savings in her 2019 declaration, she gave multiple somewhat varying responses: that she had disclosed the income from which the savings were derived and did not think she had to double-declare, that she had calculated the savings based on information in income and expense tables furnished by the Commission, that she never calculated the savings and was not sure that this was the exact amount and that it was only an approximate amount and that she might not have declared the savings if the amount of savings was actually smaller. The candidate stated that she always kept savings in cash, not in financial institutions. When the candidate submitted her 2019 declaration, she was required to declare cash savings totalling 15 average salaries which in 2019 was 104,625 MDL.

In addition to savings, the candidate stated that her husband's accumulated pension for several months and the income from his activity as an attorney were also used for their contribution to paying off the loan in 2020. Even if the husband's pension for eight months of 2020 was applied (160,168 MDL) and his attorney income (6,500 MDL), they still would have needed 130,000

MDL for the rest of their payments. When asked about the funds used to cover that portion, the candidate stated the sources were her husband's pension, her income and her son's income.

In written communication with the Commission and at the public hearing, the candidate confirmed that she did not declare in her 2020 declaration her son's financial contribution in the amount of 150,000 MDL to pay off the loan, referring to her answer and explanations to art. 4 para. (3) of Law No. 133/2016 on declaration of assets and personal interests.

b. The law

Art. 8 para. (5) lit. c) and d) of Law No. 26/2022 provides that the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

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

Art. 2 para. (2) of Law No. 26/2022 provide 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).

According to art. 4 para. (1) lit. a) of Law No. 133/2016 on declaration of assets and personal interests (in force in 2020), the subject of the declaration is obligated to declare income obtained by the subject of declaration together with the family members, the concubine/concubine in the previous fiscal year. Art. 2 of Law No. 133/2016 defines income as „any financial benefit, regardless of the source of origin, obtained by the subject of the declaration and by the family members, its concubine / concubine both in the country and abroad". Art. 4, para. (3) of Law No. 133/2016 on declaration assets and personal interests provides that are excepted from declaration are gifts received by the subject of declaration free of charge from the members of his family, from his parents, brothers, sisters or children, whose individual value does not exceed 10 average salaries per economy.

Art. 4 para. (1) lit. d) of Law No. 133/2016 on declaration assets and personal interests (in force in 2020) provided that are to be disclosed financial assets of the subject of declaration, i.e., cash

in national currency or foreign currency exceeding the value of 15 average salaries per economy and not subject to deposits in financial institutions.

According to Instruction on Declarations No. 2 of 13.01.2017, approved by National Integrity Authority, under the Law no. 133/2016 on declaration assets and personal interests: In section C - Cash in national currency and/or in foreign currency that exceeds the amount of 15 average salaries in the economy and which is not subject to deposits in financial institutions and other documents incorporating patrimonial rights - is to be declared cash in national currency or in foreign currency that exceeds the value of 15 average salaries in the economy at the date of submission of the declaration and which is not the subject of deposits in financial institutions or other documents incorporating property rights, on the basis of which the holders hold financial means with a value exceeding the set limit, specifying and indicating the name and surname of the subject of the declaration, the family member or his/her concubine or, where appropriate, of the person to whom the financial means were transmitted, the year and month when the rights were acquired, the amount and the currency.

According to Government Decision No. 21/2019 of 18 January 2019 on the approval of the amount of the average monthly salary in the economy the average salary per economy in 2019 was 6,975 MDL.

According to Government Decision No. 678 of 27 December 2019 on the approval of the amount of the average monthly salary in the economy, the average salary per economy in 2020 was 7,953 MDL.

According to Government Decision No. 923 of 22 December 2020 on the approval of the amount of the average monthly salary in the economy the average monthly salary per economy in 2021 was 8,716 MDL.

Pursuant to art. 8 para. (2) lit. c), para. (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.

c. Reasoning

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

The candidate provided inconsistent explanations about the sources of funds and the amounts of each that were used to pay off the loan in 2020. The candidate stated that one source was savings from 2019 which the candidate first stated, rather definitively, was in the amount of 484,189 MDL. The candidate prevaricated about the amount of savings they held after she was asked why the savings had not been disclosed in her 2019 annual declaration. Other than savings, the husband's pension and earnings supposedly made up the remainder of their contribution to paying off the loan. When asked about the source of the additional 130,000 MDL for their contribution, the candidate said it was her income, her husband's pension and her son's income – a variance

from the candidate's prior responses about the sources and amounts of funds contributed from each, raising serious doubts about the payoff of the loan.

The Commission noted that the candidate's explanations, both in writing and at the hearing, for not declaring assets and income contained a very confusing interpretation of the law on declaration of assets and personal interests. Regarding the obligation to disclose cash savings that exceed 15 average salaries per economy, the candidate herself confirmed that she and her husband had savings in cash at the end of 2019 amounting to an estimated 484,189 MDL. Fifteen average salaries per economy in 2019 was 104,625 MDL. The cash savings claimed by the candidate was required to be disclosed. The candidate's failure to declare cash savings aggravated doubts that were raised as to the source of funds to pay off the loan in 2020.

Likewise, after contending that her son's contribution did not have to be declared both because her son was the donor and because the amount contributed was less than was required to be disclosed, the candidate finally conceded at the end of the hearing that the 150,000 MDL received from her son in 2020 was required to be disclosed. While there is an exception for disclosure for gifts from family members that do not exceed 10 average monthly salaries, in 2020, the amount of 10 average salaries per economy was 79,530 MDL. The candidate's failure to declare the financial contribution of her son aggravated doubts that were raised as to the source of funds to pay off the loan in 2020.

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 and ethical integrity as per art. 8 para. (2) lit. c), (4) lit. a) and b) and para. 5 lit. b), c) and d) of Law No. 26/2022 with respect to the sources of funds used to pay off the loan in 2020 and the failure to declare cash savings and monetary contributions from her son in the manner prescribed by law, which have not been mitigated by the candidate.

IV. Decision

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

Done in English and translated into Romanian.

Signature:



Herman von HEBEL
Chairman Commission