



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.1 of 25 October 2022 on the Candidacy of Livia MITROFAN,
Candidate for the Superior Council of Magistracy***

The Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (“the Commission”) deliberated in private on 7 October 2022 and 25 October 2022. 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

Livia MITROFAN, judge at the Chisinau Court, Center Office (“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 30 June 2017 at the Chisinau Court, Ciocana Office.

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 30 June 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 14 July 2022.

Pursuant to art. 10 para. 1 of Law No. 26/2022, after receipt of the candidate’s declaration and questionnaire, 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 22 August 2022 the Commission sent to the candidate a request for clarifying information, containing 12 questions, including 24 sub-questions and 12 requests for further documentation. The candidate replied within the requested time period on 26 August 2022 to all questions.

On 6 September 2022, the Commission sent a second round of questions with only one sub-questions and one request for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 8 September 2022 and provided the required information.

On 7 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) he/she 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.

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. 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 article 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. The shifting of 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), (3) and (4) of Law No. 26/2022 does the candidate satisfy the criterion of “ethical and financial integrity.”

III. Evaluation of the candidate

At the hearing, the candidate was asked about the following financial issues: 1) purchase of an apartment of 45,7 sq.m located in Chisinau and financing the purchase of this apartment, 2) declared value of car model Mercedes Vaneo m/y 2004.

The Commission did not have serious doubts concerning any ethical integrity issues with respect to the candidate as per art. 8 para. (1) and (2) of Law No. 26/2022

1. Purchase of an apartment of 45,7 sq.m located in Chisinau and financing the purchase of this apartment

a. The facts

According to information provided by her bank, during the period 2008-2014, the candidate received from her mother, who was working abroad, via bank transfers a total sum of 52,240 EUR and 4,000 USD. The candidate provided a number of contracts demonstrating the types of employment and level of compensation received.

On 16 July 2012 – at that time the candidate was not yet a judge – the candidate bought an old apartment located in Chisinau for the sum of 256,428 MDL. On the same day, the candidate withdrew 36,000 EUR (est. 542,732 MDL) from her bank account. In both the written responses to the Commission’s questions and the hearing of 7 October 2022, the candidate explained that the major purpose of the bank transfers she received from her mother, was to purchase the apartment. She also confirmed that on 16 July 2012, she did take the total amount of 36,000 EUR from her bank account in order not only to pay for the purchase of the apartment, but also to carry out a number of repairs in the apartment because of the poor condition of the apartment at the time and to purchase furniture. During the hearing of 7 October 2022, she provided a detailed overview of the status of the apartment at the moment of purchase and the repairs that needed to be undertaken.

b. Reasoning

According to the information provided by the candidate, her mother worked abroad under a number of labor contracts during the period 2007-2014. Based on the labor contracts provided, the Commission was able to establish that the income earned by her mother was sufficient to allow for the transfer of funds to the candidate in that period of time. The candidate furthermore provided a copy of the sale-purchase contract for the apartment of 45,7 sq.m. located in Chisinau, from which it appears that the purchase price amounted to 256,428 MDL.

From the information provided by the candidate and by her bank, the Commission was able to establish that on the date of the purchase of the apartment, the candidate withdrew from the bank a total amount of 36,000 EUR (est.542,732 MDL). Although this amount exceeds the amount required for the purchase of the apartment, the candidate was able to demonstrate in great detail that these resources were needed for a number of serious repairs that had to be made to the old apartment and for the purchase of furniture.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial integrity as per art. 8 para. (4) lit. a) of Law No. 26/2022 with respect to the purchase and financing of the apartment because the candidate's detailed explanations mitigated the Commission's concerns regarding this issue.

2. Declared value of car model Mercedes Vaneo m/y 2004

a. The facts

On 21 October 2012, the candidate's husband imported a car, model Mercedes Vaneo m/y 2004, and registered the car on 31 January 2012. According to the information from the Customs Office, the declared purchase value of the car amounted to 48,000 MDL with customs taxes paid in the sum of 21,862 MDL. Both her husband in his annual declarations submitted to the National Integrity Authority (*hereinafter annual declarations*) commencing in 2013 and the candidate's annual declaration commencing in 2017, consistently declared the value of the car to be 28,494 MDL.

b. Law relating to disclosure of assets and financial interests

According to art. 4 para. (1) lit. b) of Law No.133/2016, the subject of the declaration shall declare movable and immovable assets, including unfinished property, owned by usufruct right, the right of use, dwelling, superficies by the subject of the declaration and family members, his/her cohabitant, including as beneficial owners, or in their possession under mandate, commission, fiduciary administration contracts, agreements that transfer property and transfer-for-use rights. According to art. 13 lit. f) of the Order of the Chairman of National Integrity Authority No.2 of 13.01.2017, in the "Value of the asset according to the document certifying the provenance" column of the declaration, if the movable property was obtained through sale-purchase transactions (including by power of attorney), the contractual value is to be indicated. And if the movable asset was obtained under free of charge contracts, the indication of the value is not mandatory, if it is unknown.

c. Reasoning

Although the candidate did not produce a sale-purchase contract for the car, the Commission found it plausible that the contractual value of the car amounted to 48,000 MDL. The Commission furthermore found that the custom taxes paid by her husband amounted to 21,862 MDL. Both in the written rounds of questions to the candidate and during the hearing, the candidate acknowledged that the declared price of 28,494 MDL for the car was based on an error. This error occurred for the first time in the annual declaration by her husband in 2013. Both he and the candidate, when she started her declarations upon becoming a judge in 2017, continued to reproduce this error in their yearly declarations. It was only during the present evaluation procedure, that the candidate realized that these declarations were based on an error. The mistaken price did not benefit the candidate or her husband. The Commission finds the candidate's explanation plausible and considers it to be an unintentional error.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial integrity as per art. 8 para. (4) lit. a) of Law No. 26/2022 with respect to the declared value of the car because the candidate acknowledged that she had made a mistake and the mistake was of a clearly unintentional character.

IV. Decision

Based on art. 8 para. (1), (2) and (4) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate is compliant with the ethical and financial integrity criteria and thus passes the evaluation.

V. Appeal and publication of the decision

Art. 14 para. (1) of Law No. 26/2022 provides that a candidate is entitled to appeal a decision of the Commission within 5 days from receiving the decision.

Art. 13 para. (7) of Law No. 26/2022 provides that 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