Decision No. 42 of 12 June 2023 on the Candidacy of Aliona NESTEROV,
Candidate for the Superior Council of Prosecutors

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 27 April 2023 and 12 June 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

Aliona NESTEROV, Deputy Prosecutor General (the candidate"), was on the list of candidates submitted by the Superior Council of Prosecutors to the Commission on 7 April 2022, as updated 13 January 2023, for evaluation for the position of member of the Superior Council of Prosecutors.

The candidate has been a prosecutor since 1 November 2011. Between 2011 and 2015, she served as a prosecutor in the Ciocan District Prosecutor's Office, Chisinau municipality. From 2015 to 2017, the candidate was on childcare leave. From 2016 to 2020, she served as a prosecutor at the Chisinau municipality Prosecutor's Office. On 7 September 2020, she was appointed as prosecutor at the Anticorruption Prosecutor's Office. On 16 January 2023, she was appointed as Deputy P osecutor General, ad interim.

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 complet d questionnaire to the Commission on 30 June 2022.

On 23 January 2023, the Commission sent a request to the candidate for completing and submitting by 30 January 2023 the Declaration of assets and personal interests for the past five 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 30 January 2023.

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 Servi e, 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 wit the candidate and during the public hearing.

Written communication with candidate:

On 17 March 2023 the Commission sent to the candidate a request for clarifying information, containing 15 questions, including 41 sub-qu stions and 16 requests for further documentation. The candidate replied within the requested time period on 21 March 2021 and submitted just documents, but no answers. Due to technical problems, the candidate sent additional information on 22 March 2023.

On 27 March 2023, the Commis ion sent a second round of seven questions, including 11 sub-questions and six requests for fur her documentation, to clarify some issues that came out during the evaluation. The candidate r plied within the requested time period on 30 March 2023 to all questions and provided all requested documents.

On 14 April 2023, the Commission sent a third round of one question, including two sub-questions and two r quests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 20 April 2023 to all questions and provided all requested documents.

The candidate did not request access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022 and therefore did not receive the materials.

On 27 April 2023, 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 judg s, 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 prosecutors ove the period of time covered by the evaluation. The codes were *Prosecutor's Code of Ethics,* approved by the Prosecutor General order No. 303/35 of 27 December 2007, *Prosecutor's Code f Ethics,* approved by the Superior Council of Prosecutors' decision No. 12-3d-228/11 of 4 October 2011, *Prosecutor's Code of Ethics and Conduct*, approved by Superior Council of Prosecutors' decision No. 12-173/15 of 30 July 2015 and *Prosecutor's Code of Ethics*, approved by the General Assembly of Prosecutors' decision No. 4 of 27 May 2016, amended by General Assembly of Prosecutors' decision No. 1 of 22 February 2019.

Opinion No. 13 (2018) of the Consultative Council of European Prosecutors (CCPE) on the "Independence, accountability and ethics of prosecutors", adopted on 23 November 2018 ("CCPE (2018) Op. No. 13") provid s further guidance.

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

a) the candi ate'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 ve ification 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 mainten nce of such assets;
d) the sources of income of the candidate and, where appropriate, of the persons refe red 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 C mmission 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 th 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]in other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability". Venice Commis ion, 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 C mmission 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 of 2 May 2022, pursuant to Law No. 26/2022, (hereinafter "Evalua ion Rules"), only if a candidate fully meets all of the indicators set for the in art. 8 para (2) - (5) of Law No. 26/2022 does the candidate satisfy the criterion of "ethical and financial integrity".

III. Evaluation of the candidate

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

1. Real price vs contractual price of property purchased in 2017

a. The facts

On 16 November 2017, the candidate purchased an apartment of 49.8 sq.m. in Chisinau municipality. The price stated in the contract was 279,853 MDL (est. 13,441 EUR), which was the same as the cadastral value. The candidate provided a copy of the sale-purchase contract to the Commission, which reflected this price. The candidate informed the Commission that the actual price was approximately 31,000 EUR (est. 627,130 MDL). The candidate explained to the Commission that it had been a precondition of the seller to include the cadastral value of the apartment as the price in the contract.

In the candidate's d claration of assets and personal interests submitted to the National Integrity Authority (hereinafter "annual declaration") for 2017, she declared the value of this property as 279,853 MDL (e t. 13,441 EUR). The candidate explained that she did so as the law required declaration of the contract price, which in her case was the cadastral value and not the market value of the property. In subsequent years, she continued to declare this contractual price.

At the hearing, the candidate explained that the apartment was purchased for her mother with her mother's funds. The candidate's mother found the apartment and decided to purchase it as it was located very close to the candidate's apartment. This way, her mother could assist the candidate in the care and upbringing of the candidate's children.

The apartment was registered in the candidate's name, as her mother was not present in Moldova. Her mother left the country to work abroad in 2007 and only returned in 2022. The candidate

considered her own involvement in the purchase of the apartment as just technical assistance. At the hearing, she stated that she now regretted being directly involved in the purchasing process, but she also felt that she had a moral obligation to assist her mother.

The price of the apartment was negotiated between the seller and the candidate's mother. The seller had insisted on using the cadastral value as the price in the sale-purchase contract for the apartment. In written responses to the Commission, the candidate stated that the nota y was not involved in the negotiations concerning the price to be paid for the apartment and that the notary just relied on the cadastral value of the apartment to be included in the contract. n r sponse to a question from the Commission as to whether this approach was ethical and could have assisted the seller in avoiding paying taxes on any capital increase, the candidate answered that she had acted to assist her mother in the purchase of the apartment and that it was her mother's investment. She also stated that the use of the cadastral value as the price in the sale-purchase contract was a very common practice at the time and a condition set by the seller. She also considered that the seller would not have to pay tax for any capital increase as it was the sale of the seller's own dwelling, for which such tax is not required to be paid. The candidate admitted that – as she now looks back at the purchase – she did not consider it ethical to not reflect the real price of the apartment in the contract, but that, again, she wa driven by a moral obligation to assist her mother who was not able to do this herself as she was living abroad at the time.

The candidate explained that in her annual declarations she has always used the contractual price. She had done so based on consultations with various colleagues and on feedback from the hotline information desk of National Integrity Autho ity (hereinafter "NIA") that she regularly consulted. The candidate also stated that in 2022, Parliament had amended the law to require that the real sale-purchase price rather than the cadastral price should be declared, but this amendment only applies to real estate purchased from 2018 on, i.e. after she had officially purchased this apartment in 2017.

At the hearing the andidate also informed the Commission that her mother has never lived in the apartment but ow ives with the candidate and that the apartment is rented out. The candidate herself only lived there briefly for two months in 2022 after she sold her own apartment and was about to move into her new apartment, while some renovations were being completed.

The candidate presented documents to the Commission confirming her mother's stay and work in a fore gn country and her mother's return to the Republic of Moldova in 2022. The candidate also presented documents regarding her mother's income which demonstrated that she had enough funds to purchase the apartment at the time.

b. The law

Art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 provide that in determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the

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

In addition, art. 8 para. (4) lit. b) and para. (5) lit. c) and d) of Law No. 26/2022 provides that the Commission is required to verify that a candidate's wealth acquired in the past 15 years corresponds to the declared revenues, to verify the method of acquiring assets owned or possessed by the candidate or persons referred to in art. 2 para. (2) and to verify the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

Art. 8 para. (2) lit. a) of Law No. 26/2022 requires the Commission to determine that a candidate 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 Commission's Evaluation Rules art. 5 para. (2), in assessing a candidate's ethical integrity, the Commission may take into account the gravity or severity, the surrounding context, and the willfulness, of any integrity incident, and as to minor incidents, whether there has been a sufficient passage of time without further reoccurrences. While determining the gravity, the Commission will take into account all circumstances, including but not limited to:

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

Pursuant to art. 4 para. (1) lit. b) of Law No. 133/2016 on the declaration of assets and personal interests (in force in 2017), persons required to file declarations on assets and personal interests were required to declare movable and immovable goods, including any incomplete ones, owned with right of usufruct, of use, habitation, superficies by the subject of the declaration, including as beneficial owner or by his/her family members or by his/her cohabitant or in their possession based on mandate, commission or trust agreements, as well as based on translative agreements of possession and of use.

According to art. 4 para. (1^1) of Law No. 133/2016 on the declaration of assets and personal interests (in force since 29 October 2021), in Annex No. 1 Section III and Section IV letter A, the subjects referred to in art. 3 para. (1) declare the actual value of immovable and movable property, representing the actual price paid for such property and the expenses for its improvement or repair.

Pursuant to art. 4 para. (1^1) of Law No. 133/2016 on the declaration of assets and personal interests (in force since 6 May 2022), in Annex No. 1, sections III and IV the subjects provided for in art. 3 para. (1) will declare the real value of the immovable and movable assets they own and which were acquired after the year 2018 inclusive, this representing the real price paid or those assets and the expenses for their improvement or repair, as well as the market value of goods, this representing the value at which similar goods were sold on the day of acquisition of the good.

Pursuant to art. 4 para. (1^2) of Law No. 133/2016 on the declaration of assets and personal interests (in force since 6 May 2022) for the real estate they own, and which were acquired up to and including 2017, the subjects provided for in art. 3 para. (1) shall declare th cadastral value of the asset or the value of the asset according to the document certifying its provenance, if the asset has not been assessed by the cadastral bodies. For the movable ass ts that they own and that were acquired up to and including 2017, the value of the asset will be declared according to the document that certifies its provenance.

c. Reasoning

On 16 November 2017, the candidate purchased an apartment of 49.8 sq.m. in Chisinau municipality. The price stated in the contract was 279,853 MDL (est. 13,441 EUR), which was the same as the cadastral value, but the actual price paid was approximately 31,000 EUR (est. 627,130 MDL). The apartment was purchas d for the candidate's mother, with her mother's funds, but was registered in the candidate's name, as her mother was not present in the country. The use of the cadastral value in the sale-purchase contract was a precondition of the seller. In all of her annual declarations since 2017, the candidate has declared the contractual price.

Based on the information provided by the candidate, the Commission has no doubts about the source of funds fo the mother to purchase the apartment. The Commission notes that according to the relevant prov sions of Law No. 133/2016, in force since 29 October 2021, the candidate should have dec ared the real value rather than the contractual value of the apartment. However, by amendment of that law that entered into force on 6 May 2022, the real value should only be declared in relation to real estate purchased from 2018, i.e. after the date that the candidate purchased the apartment in November 2017. The Commission therefore has no doubts about the ca didate's declarations concerning the apartment in her annual declarations since the purchase of the apartment in 2017.

The Commission's particular concern was whether the candidate acted in conformity with ethical standards by agreeing to the use of the cadastral value of the apartment in the contract, knowing that this was not the real price agreed upon between the parties.

In its evaluation of the candidate, the Commission takes into account the following

considerations.

Throughout the evaluation, the candidate has been transparent about the course of events relating to the purchase of the apartment. She presented to the Commission a copy of the sale purchase contract for the apartment, but also informed the Commission that this was not the real pr ce agreed upon between the parties. The latter was considerably higher than the contractual pri e.

At the hearing, the candidate demonstrated that she was struggling herself with this issue. She explained that she was caught between her moral obligation to assist her moth r in purchasing the apartment and the obligation to provide correct information about the value of real estate.

The candidate explained that the negotiations over the price of the apartment were done by her mother as her mother was buying the apartment with her own resources. The involvement of the candidate in the purchase process was limited and was, in the words f the candidate at the hearing, merely a "technical operation". The candidate was inv lved only because her mother was abroad and therefore could not undertake the administrative steps herself.

The use of the cadastral value in the contract was at the explicit request of the seller, who made this a precondition for finalizing the agreement. Not agreeing to use this value would have generated the risk that the purchase of the apar ment w uld not have taken place.

The candidate clarified that the notary had not been involved in the negotiations over the price for the apartment and that the notary re ied on the cadastral value of the apartment to be included in the contract. This was, according to the candidate, common practice at that time in the Republic of Moldova.

Although the price used in th sale-purchase contract was not the real price agreed upon between the parties, there was ac ording to the candidate, no risk that this would assist the seller in avoiding paying tax on capital increase. The seller was known to the candidate as the apartment was very close to the apartment of the candidate herself. As the apartment was the seller's own dwelling, he wo ld not have been required to pay such tax.

Although the Commission finds it unethical to agree to the inclusion of a price in the sale-purchase contract of an apartment, when it is known to the candidate that this price is not the co rect one – an assessment the candidate acknowledges herself at the hearing - the Commission concludes that in light of the specific circumstances of the present case, this does not amount to a failure of the ethical integrity criteria. In this context, the Commission takes into consideration, that her involvement in this transaction constitutes an isolated event, that the candidate has been transparent about this issue throughout the evaluation and that she agreed to this arrangement in order to help her mother in the purchase of the apartment as the latter was not in the Republic of Moldova at that time and therefore was not able to sign the contract herself. The Commission also takes into consideration that her involvement in this transaction did not provide the candidate

with any financial benefit.

In light of above circumstances, the Commission does not have 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. (4) lit. a) and para. (5) lit. b) and c), and art. 8 para. (2) lit. a) with respect to the candidate's acquisition of an apartment at a different contractual price than the actual price agreed upon, as with this action neither the candidate herself, nor her mother or the seller have benefitted in a financial way or violated tax obligations towards Moldovan authori ies.

2. Purchase of two cars, right of use of another car and issues of value and source of funds for one of the cars.

a. The facts

According to the candidate's 2019 annual declaration, the candidate's husband purchased a Toyota Auris car (m./y. 2011) in that year for the declared price of 50,000 MDL (2,541 EUR). The candidate provided a copy of the sale-purchase ontract, which reflects the same price. However, according to the website www.999 md, pric s for such cars, even in 2023, are around 5,200 - 9,000 EUR. The declared price seems t be considerably lower than market value. At the hearing, the candidate confirmed the contractual price and explained that the price was lower than market value because, although the car w s drivable, it needed considerable repairs, including replacement of the batteries, because i was a hybrid car.

In the candidate's annual declara ions after 2019, she continued to declare the contractual price until 2022 when, after a change in the law, the candidate declared the value of the car as 115,000 MDL. At the hearing, he candidate clarified that the contractual price of the car was the price paid for the car, but that the value indicated in her 2022 annual declaration constituted the contractual price of 50,000 MDL plus the cost of the repairs and replacement of the batteries, approximately 65,0 0 MDL.

In her 2019 annual declaration, the candidate declared the purchase of another car, a Toyota Prius (m./y. 2016), for the price of 0 MDL. In her declaration, she refers to the acquisition of the car as "other transactions contracts of possession and use". According to the website www.999.md, prices for such cars – in 2023 – range from 12,300 to 13,500 EUR. According to the "ACCES-Web database, this car is registered in the name of the candidate's husband. The candidate informed the Commission that the car is owned by her father-in-law. The candidate provided a copy of the 2019 sale-purchase contract, which reflected the contractual price of 60,000 MDL (est. 3,000 EUR). The candidate also provided two copies of the registration certificates for the car, dated 19 November 2019, one of which lists the candidate's husband as usufructuary and the other indicates her father-in-law as owner.

At the hearing, the candidate explained that she had made an error filling out her annual declarations in relation to this car. She clarified that she and her husband had never been the owners of the car, as her father-in-law was the owner, but that her husband had been given the right of use of the car. In her annual declaration, she had therefore indicated that the value of the car was 0 MDL.

She also conceded that by omission she had not declared her husband's right of use of a Mitsubishi Lancer during the years 2014 – 2019. At the hearing, she informed the Commission that the Mitsubishi Lancer was leased in the name of her father-in-law, but both her fathe -in law and her husband had paid for the lease under this contract. The car was registered in her father-in-law's name since 2013 and her husband had paid for the insurance for this car sin e 2014. According to the candidate, neither of her parents-in-law drives. The arrangement was made that her husband was provided the right of use and that he would drive his parents whenever it was needed. In 2019, when the candidate and her husband bought the Toyota Auris, her father-in-law decided to sell the Mitsubishi Lancer and to buy the Toyota Prius. Her husband was again given the right of use to continue the arrangement that he would drive his paren s as needed.

When asked at the hearing why the sale price of the Mitsubishi Lancer (m./y. 2007) and the purchase price of the Toyota Prius (m./y 2016) were both declared as 60,000 MDL, notwithstanding the difference in the ages of the cars, he candidate admitted that, although she had been able to produce the sale-purchase contracts for these cars, the prices did not appear convincing, but she was not able to further explain how these prices had been agreed upon by her father-in-law. She did mention that she had had a few discussions with her family about the need to be transparent about such issues.

The Toyota Prius car was bought in 2019. The Commission asked the candidate to clarify the source of funds for the purchase of the car for the official price of 60,000 MDL. The candidate informed the Commission that her father-in-law had sold the Mitsubishi Lancer that year and that, in addition to the o ficial income of the candidate's parents-in-law, her father-in-law had obtained extra income from repair services and sanitary installations. According to information from the State Tax Service, in the period 2014 – 2019, the official income of her parents-in-law was 572,582 MDL. The candidate informed the Commission at the hearing that her parents-in-law have two daughters, both of whom live abroad and have regularly sent money to their parents. In re pon e to the question whether the candidate and her husband had contributed financially to the pur hase of the car, she declared they had not, as her parents-in-law had enough resources for this purchase.

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.).

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.

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).

Pursuant to art. 4 para. (1) lit. b) of Law No. 133/2016 on the declaration of assets and personal interests (in force in 2020), persons required to file declarations on assets and personal interest were required to declare movable and immovable goods, including any incomplete ones, owned with right of usufruct, of use, habitation, superficies by the subject of th declaration, or by his/her family members or by his/her cohabitant, including as beneficial owner, or in their possession based on mandate, commission or trust agreements, as well as based on translative agreements of possession and of use.

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

a) whether the incident was a s ngle e ent;
b) causing no or insignificant damage to private or public interests (including public trust) – such as the occasion of an ordinary traffic violation;
c) or not being perceiv d by an objective observer as an attitude of disrespect for the social order a ising from disregard for its rules and regulations.

c. Reasoning

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests, as per art. 8 para. (2) lit. c) and para. (5) lit. b) of Law No. 26/2022.

In 2019, the candidate's husband purchased a car, a Toyota Auris (m./y. 2011) for the declared price of 50,000 MDL (2,541 EUR). This price is lower than prices for such cars for sale on the w bsite www.999.md in 2023. According to the candidate, the contractual price was lower because the car needed considerable repairs, including replacement of the batteries as it was a hybrid car. In her 2019 – 2021 annual declarations, the candidate declared the contractual price of the car. In her 2022 annual declaration, as a result of a change in Law No. 133/2016 on the declaration of assets and personal interests, the candidate declared the value of the car, based on the purchase price plus the costs of the repairs. The Commission notes that the obligation to

declare the real value rather than the contractual value was already in force since 2021, but the Commission considers this to be a technical violation of her obligations which does not amount to a failure of the ethical integrity criteria. Based on the information provided by the candidate, the Commission considers that she has mitigated any concerns of the Commission in relation to the purchase of the car and the way that the candidate indicated the ownership and value of he car in her annual declarations.

In 2013, the candidate's father-in-law entered into a lease contract for a Mitsubishi Lancer (m./y. 2007). Both her father-in-law and her husband had contributed to pay the l ase. Sin e 2014, the candidate's husband had paid for the insurance for the car. This arrangement w s made as neither of the candidate's parents-in-law drives, but her husband used the car to drive them whenever needed. In her annual declarations since 2014, the candidate had not declared her husband's right of use of this car.

In 2019, her father-in-law sold the Mitsubishi Lancer and bought Toyota Prius (m./y. 2016) and her husband was again given the right of use to continue the arrangement that he would drive his parents as needed. In her annual declarations since 2019, the candidate has declared the right of use of this car but declared the value as 0 MDL. Although the andidate presented a sale-purchase contract for this car indicating the price as 6 ,000 MDL (est. 3,000 EUR), similar cars are for sale, in 2023, for much higher prices, approximately 12,300 – 13,500 EUR. At the hearing, the candidate explained that when filling in her annual declarations in relation to this car she had erroneously filled in the value of 0 MDL. She had done so, because her husband was not the owner of the car, but only held the right of u e of the car.

As the candidate was on childcare leave from January 2015 to November 2017, she filed the required declaration for the years 2015 - 2017 at the beginning of 2018. In that declaration and in her 2018 and 2019 annual declarations, the candidate did not declare her husband's right of use of the Mitsubishi Lancer that belongs to her father-in-law. The candidate admitted this omission and agreed that she was obliged to declare the right of use of this car in these three annual declarations. The candidate did declare the right of use of the Toyota Prius, bought by her father-in-law in 2019, in all of her annual declarations since 2019, but declared the value of the car as 0 MDL. At the hea ing, the candidate indicated that she had been unclear about how to fill in the value of the car, as it was not purchased and owned by her, but only in use by her husband. At th hearing, the candidate was not able to clarify the purchase price of the Toyota Prius car, as it was purchased by her father-in-law, and she was not involved. As to the source of funds for her parents-in-law to purchase this car in 2019, the candidate explained that her parents-in-law had enough resources to purchase the car from the proceeds of the sale of the Mitsubishi Lancer in 2019, the official salaries over the years of her parents-in-law and her father-in-law's unofficial income. The candidate stated that she had not financially contributed to the purchase of this car.

Although the candidate – as she herself admitted – did not correctly fill in her annual declarations in relation to the right of use of the Mitsubishi Lancer and the value of the Toyota Prius, for which

the right of use was declared, the Commission considers that these are omissions of a more technical nature, that they do not demonstrate any intention to hide a financial benefit and do not amount to a serious doubt. Although the Commission has doubts about the veracity of the purchase price of the Toyota Prius, this transaction was undertaken by her father-in-law, the candidate was not involved in the transaction and the candidate and her husband did not contribute financially to the purchase of the car and thus, would not be considered its *de facto* owners. As to the source of funds for her parents-in-law to finance the purchase of this car, the candidate provided sufficient explanations about the different sources used for this purchase and thereby mitigated any concerns the Commission might have had.

In light of above circumstances, the Commission does not have serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criteria of financial and ethical integrity as per art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) with respect to the candidate's declarations relating to the purchase of one car and the right of use of two cars by her husband belonging to her parents-in-law.

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

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 Prosecutors. 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 Prosecutors 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