



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. 21 of 24 January 2023 on the Candidacy of Alexei PANIS,  
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 12 January 2023 and 24 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*

Alexei PANIȘ, judge at the Chișinău Court, Râșcani office ("the candidate"), is on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 6 April 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge for the initial five-year term on 15 March 2017 to serve in the Chisinau Court. On 1 January 2019 the candidate was appointed as judge with specialization in examining administrative cases in Chisinau Court, Râșcani office. On 8 November 2022 the President of the Republic of Moldova rejected the appointment of the candidate as a judge until the retirement age.

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 5 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 (hereinafter "5-year declaration") 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 15 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 24 August 2022, the Commission sent to the candidate a request for clarifying information, containing 15 questions, including 32 sub-questions and 13 requests for further documents. The candidate replied within the requested time period on 28 August 2022 to some of the questions and provided some of the documents. On 28 September and 28 October 2022, the candidate submitted to the Commission additional documents.

On 11 November 2022, the Commission sent the candidate the second round of 10 questions, including 23 sub-questions and 10 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 14 November 2022 to all the questions and provided some of the documents. On 18 November 2022 the candidate provided additional information.

On 24 November, the Commission sent the candidate the third round of 12 questions, including 28 sub-questions and 22 requests for additional documents. He replied within the requested time period on 28 November 2022 to all questions. He did not provide any of the requested documents.

On 2 December 2022, the Commission sent the candidate the fourth round of two questions, including two sub-questions. He replied within the requested period on 4 December 2022 to all questions.

Following the candidate's request, on 9 January 2023, the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022.

On 12 January 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 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 behaviour and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. N° 3") provides further guidance.

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

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

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

Art. 8 para. (5) of Law No. 26/2022 provides that in order to assess the applicant's financial

integrity, the Commission is required to verify the following:

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

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

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

Shifting the burden of proof to the candidate, once the evaluating body has identified integrity issues, has been found permissible by the European Court of Human Rights, even in the vetting of sitting judges who may lose their positions or otherwise be sanctioned as a consequence of the evaluation. In *Xhoxhaj v. Albania*, no. 15227/19, §352, 31 May 2021 the Court stated that "it is

not per se arbitrary, for the purposes of the “civil” limb of Article 6 § 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC [Independent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file.”

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

### *III. Evaluation of the candidate*

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

#### *1. Source of funds for a 300,000 MDL loan and money used from his father’s salary card*

##### *a. The facts*

In his annual declaration on assets and personal interests submitted to the National Integrity Authority (hereinafter “annual declaration”) for the year 2021, the candidate declared a loan of 300,000 MDL with no interest and no due date that was received from his father in 2021. The candidate’s father, who was required to file annual declarations as a public servant, also declared this loan in his annual declaration for 2021.

During 2022 the candidate was using his father’s salary card. According to the information available to the Commission, during the first six months of 2022 the candidate spent 58,927 MDL from that account. The candidate told the Commission that in 2021 his father received considerable income from leasing agricultural lands that he owned (around 1,000,000 MDL in 2021).

In 2021, the official registered income of the candidate’s father was 1,193,959 MDL, and his mother’s income was 662,043 MDL. Most of the income was earned from leasing agricultural lands the candidate’s parents had purchased between 2008-2020. These plots of lands were leased to companies in which the candidate’s father owned shares.

On 7 July 2020 the National Integrity Authority (hereinafter “NIA”) initiated verification proceedings concerning the assets and personal interests of the candidate’s father between 2012-2020. The candidate’s father was informed about the verification proceedings by letter dated 8 July 2020. On 8 September 2021, the NIA published a statement of findings following the verification (Act of finding No. 280/11). As a result of the verification, a discrepancy in the amount of 1,658,640 MDL was found between the wealth acquired by the candidate’s parents and the income earned by them during the period of 28 March 2012 – 1 August 2016. The NIA also established a discrepancy in the amount of 269,451 MDL between the acquired wealth and the income earned by the candidate’s parents during the period of 1 August 2016 – 7 July 2020.

In total, between 2012-2020, the discrepancy between the wealth acquired by the candidate's parents and their income amounted to 1,928,091 MDL. On 8 December 2021 the Chişinău Court, Râşcani office annulled the NIA Act of finding No. 280/11. The first instance court decision was appealed before the Chişinău Court of Appeal. On 6 December 2022, the NIA published a press-release stating that the Chisinau Court of Appeal upheld the Act of findings of the NIA<sup>1</sup>. The decision of the Court of Appeal is not final.

At the public hearing, the candidate confirmed that in 2021 he had received a 300 000 MDL loan from his father. The candidate explained that he had received this amount in cash, in instalments. The candidate specified that he had moved to a new house at the end of 2020, and throughout 2021, he had needed funds for expenses to furnish the house. The candidate had no confirmation documents for this loan as, in his view, it was unnecessary to use formal agreements. The candidate also confirmed that in 2022 he had used his father's salary card for approximately one year, except for the first two months of 2022.

The candidate stated that he had been informed about the NIA verification procedures concerning his father's wealth and personal interests about a week or two after its initiation, more specifically, when his father had been officially notified about the ongoing checks, not later than August 2020. Answering the Commissions questions as to whether he would consider that, until there is a final court decision, the source of funds that were used to provide him with 300,000 MDL might be considered questionable, the candidate answered in the negative in view of his father's official registered income in 2021 in the amount of 1,193,959 MDL. He also noted that: "There is no doubt about it, it is not questionable" and invited the Commission to check the findings of the report. According to the candidate, the report contained erroneous calculations of his father's income which exceeds his expenses. He also considered that it was ethical for him to have continued receiving money from his parents while their wealth was under investigation to verify the legitimacy of its origins, because the source of the money was legal. In this regard the candidate inquired whether the Commission expected him to take bribes instead of accepting help from his parents. The candidate argued that the very purpose of his parents buying goods for him, which had started in 2011, had been to ensure that he resisted any temptation to engage in unlawful dealings. The candidate stated that: "there is just political retaliation against my father". The candidate was further asked whether, at least from 8 September 2021 when the NIA Act of finding was released, he should have displayed diligence concerning money received from his parents. To this he replied: "certainly not". The candidate also challenged that the NIA press release of 6 December 2022 had made a reference to a decision by the Chisinau Court of Appeal. The candidate supposed that a copy of the Appellate Court's decision was available to the Commission, but not to him. He further insisted that the Commission had waited for the Appellate Court decision to be published before scheduling the hearing date regarding his candidacy.

#### *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

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<sup>1</sup> <https://ani.md/ro/node/2713>

persons referred to in art. 2 para. (2). Pursuant to art. 8 para. (5) lit. e), the Commission is also required to verify the existence of loan agreements where the candidate is a contracting party. According to art. 8 para. 2 lit. a) of Law No. 26/2022, the candidate shall be deemed to meet the criterion of ethical integrity if he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

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 person referred to in art. 33(4) and (5) of Law No. 132/2016 on the National Integrity Authority.

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

According to the Bangalore Principles of Judicial Conduct, “A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer” (Principle 3.1). And Principle 3.2. states that “[t]he behavior and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done”.

The 2015 Judge’s Code of Ethics and Professional Conduct states in art. 5 para. (1) that the judge “shall respect the highest standards of integrity and responsibility, in order to ensure the society’s trust in the courts. He/she is aware of the risks of corruption and shall not admit or create the appearance of a corrupt behavior in his/her work; shall not ask for, accept or receive gifts, favors or benefits for the fulfillment or non-fulfillment of the service duties or by virtue of the position held”. In para. (5) of the same article it provides that the judge “shall conclude transactions regarding personal property in a way that does not cause doubt or does not affect his/her independence and impartiality or trigger conflict of interest.” Also, according to art. 6 para. (2) of the Code, a judge “must refrain from any behavior, action or manifestation that could prejudice the public’s trust in the judicial system”.

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

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

order arising from disregard for its rules and regulations.

*c. Reasoning*

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 Commission is also required to verify the existence of loans if the candidate is a contracting party.

In his 2021 annual declaration, the candidate declared a loan of 300,000 MDL received from his father in cash, in instalments. One aspect of the 300,000 MDL loan raised serious questions, namely, the source of the father's funds which enabled him to lend this amount to the candidate.

The candidate claimed that the source of funds for the loan was income from the business activities of his father who had been in the agricultural business for 30 years. In 2021, the official registered income of the candidate's father was 1,193,959 MDL, and his mother's income was 662,043 MDL. These amounts, as such, do not raise doubts about the ability of the candidate's father to make a loan for an amount of 300,000 MDL. The doubts are generated about the source of funds for the loan in view of the proceedings initiated by the NIA in June 2020, which aimed to verify the assets and personal interests of the candidate's father.

According to the NIA report issued on 8 September 2021, the verification procedure was instituted to check the legality of the fund from which "Mr. Panis Stefan, President of the Floresti district, during 2019, became a majority shareholder with 80% of the shares at "E.D. LLC, with the share capital of 26,845,365 MDL".

According to the results of the NIA verification procedure, between 2012 - 2020, the discrepancy between the wealth acquired by the candidate's parents and their income amounted to 1,928,091 MDL. Most of the income earned by the candidate's parents in 2021 was from the leasing of agricultural lands. These plots of land were leased to companies owned by the candidate's parents, among them the E.D. LLC, where the candidate's father's 80% interest served as a reason for the initiation of the proceedings by the NIA.

On 6 December 2022, the Court of Appeal upheld the NIA 8 September 2021 findings. While the case against the candidate's father is still pending, the Commission cannot ignore the findings of the NIA as to the alleged discrepancies between the income the candidate's father earned and acquired wealth between 2012 - 2020. These findings, upheld by a reviewing court, are sufficient for the Commission, in fulfilling its mandate, to conclude that there is a reasonable doubt concerning the candidate's father's source of funds that were used for the 300,000 MDL loan. There is also a reasonable doubt concerning the source of funds for the candidate's father's salary card, because, according to the candidate's statement these funds were also received from leasing the agricultural lands.

At the public hearing, the candidate stated that he learned about the NIA proceedings soon after his father was informed about them, but not later than August 2020. This is well before he accepted a loan from his father in 2021 and started using his father's salary card in 2022. The

candidate denied that the source of funds that were used to provide him with 300,000 MDL might be considered questionable in light of the NIA findings and he also denied that, starting at least from 8 September 2021 when the NIA Statement was released, he should have displayed diligence concerning money received from his parents. He insisted that there was no need to verify the source of funds received from his father, as he was confident that the funds were legal. The candidate also believed that accepting funds from his parents during the pendency of the verification proceedings was fully compliant with the judicial ethics criteria.

The Commission noted that the candidate was very firm in his position and tried to convince the Commission that he was fully respecting the applicable legal provisions, never conceding that he might have used funds, the sources of which might be doubtful, or that he had violated the ethical rules. The Commission finds the candidate's justification for accepting funds from his parents disturbing, specifically when he asked the Commission whether it expected him to take bribes instead of accepting help from his parents. Further, the candidate also stated that the very purpose of his parents purchasing goods for him had been to ensure that he, as a judge, resisted any temptation to engage in unlawful dealings. The Commission assesses the integrity of the candidates in compliance with the highest standards applicable to judges. It is guided by the internationally recognized ethical principles that judges should meet the highest expectations at all times, including in personal transactions, in a manner that is beyond reproach. The Commission expects judges, who play a key role in democratic society, to resist all temptations to engage in unlawful activities for their personal gains. The Commission found that the candidate's disavowal of any responsibility for verifying the lawfulness of financial sources was also troubling.

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 criteria of financial and ethical integrity as per art. 8 para. (2) lit. a), para. (4) lit. a) and b), para. (5) lit. c), d) and e) of Law No. 26/2022 with respect to the source of funds for the 300,000 MDL loan and the salary card of the candidate's father used by the candidate in 2022 while his father was the subject of the verification proceedings, which have not been mitigated by the candidate.

## *2. Sale of the Kia Sorento model car (2017) and cash investments in the house located in Chisinau municipality (2018)*

### *a. The facts*

(1) In 2012 the candidate purchased a new Kia Sorento, m.y. 2012 model car for 300,000 MDL (est. 19,300 EUR). According to his 2017 annual declaration, the candidate sold this car on 25 March 2017, five years later, for exactly the same amount - 300,000 MDL (est. 14,400 EUR) - as when he had bought it new in 2012. The candidate was asked to present copies of the sale-purchase contracts for his purchase of the car in 2012 and the sale of the car in 2017. In his written communication with the Commission, the candidate stated that he didn't have a copy of the sale-purchase contract of 2012 as he had not kept it. He also told the Commission that there was no contract for the sale of the car in 2017 as the agreement had been made orally. He further noted that, "the legislation does not impose the authentic form, it does not require the conclusion of a

contract in written form and that, according to art. 317 para. (1) of the Civil Code, the legal act, for which the law or the agreement of the parties does not establish written or authentic form, may be concluded verbally". In his answers to the Commission's question why the sales price in 2017 was the same as the purchase price of the car in 2012, the candidate stated that it was due to high inflation and that between 2012 and 2017 the value of the Moldovan Leu depreciated by 72% compared to the U.S. dollar.

At the public hearing, in response to the Commission's question as to whether art. 210 of the Civil Code specifically required legal acts to be concluded in writing if the value of the object of the legal act exceeds 1,000 MDL, the candidate stated that the provisions of the Civil Code did not oblige them to sign a written contract and that the code provided for the legal consequences of not having such a contract. He further stated that the parties had assumed the risk of concluding a verbal contract. The candidate was asked how the new owner of the car was able to register the ownership rights based on a verbal agreement in view of the requirement of Government decision no. 1047 of 8 November 1999 regarding the state transport register. One of the functions of that register, in accordance with art. 210 of the Civil Code was to register vehicles based on sales-purchase contracts that had been concluded in writing. The candidate replied that he and the new car owner had presented all the documents to the Agency of Public Service (hereinafter "APS") and had paid 400 MDL in tax. They had also filled in a blank document/template contract, and he pointed out that the Commission was able to obtain this document itself from the APS. The candidate was also asked how he could prove the sales price to the NIA or tax authorities without a written contract. The candidate noted that the authorities have means to verify the market price of assets.

(2) In his annual declaration for 2017 the candidate declared that at his wedding in 2016 he had received 45,000 EUR (est. 987,750 MDL<sup>2</sup>) in cash. The candidate also had 300,000 MDL in cash from the sale of the Kia Sorento, discussed above. The candidate also had 6,000 EUR (est. 119,040 MDL) and 6,000 USD (est. 100,800 MDL) in cash from the baptism event for his first child, which he declared in 2018. In 2018, the total amount of cash the candidate had was 1,507,590 MDL. Out of this amount, he paid 984,070 MDL (est. 50,000 EUR) for a house and a plot of land in Chisinau in October 2018. After the purchase of the house, the candidate had 523,590<sup>3</sup> MDL remaining in cash. The candidate did not declare any cash in his 2018 annual declaration. According to Law No. 133/2016 on declaration of assets and personal interests, art. 4 para. (1) lit. d), the candidate had to declare all cash amounts in MDL or foreign currency that exceeded 15 average salaries. Fifteen average monthly salaries per economy, forecasted for 2018, was 92,250 MDL.

In his written communication with the Commission, the candidate stated that he did not have cash to report when he filed his annual declaration because about 200,000 MDL had been used to cover consumption expenses in 2018 and up to 300,000 MDL had been spent at the beginning of 2019 (January - March) to pay for construction materials and repairs on the house. The candidate mentioned that he had paid about 60,000 MDL for the demolition of an old house. He also told

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<sup>2</sup> According to the exchange rate in October 2016 when the candidate married. In 2018, 45,000 EUR amounted to 892,800 MDL based on the average annual rate.

<sup>3</sup> According to the exchange rate in 2018

the Commission that he had incurred the following expenses: sand – 20 trucks x 2,000 lei/truck; reinforced iron – 5 tons x 13,000 lei/ton; cement – 20 tons x 1,300 lei/ton; limestone – 50 m<sup>3</sup> x 2,000 lei/m<sup>3</sup>. The materials listed by the candidate totalled 231,000 MDL.

At the public hearing, the candidate noted that due to his heavy workload and family engagements, he had hired a special supervisor to take care of all the construction work on the house. The candidate also confirmed that he had not provided supportive documents concerning these expenses, noting that the Civil Code did not oblige a person to sign a service contract with service providers and, as a judge, he had no special responsibilities in that regard. All payments for the supervisor and the materials and other costs had been made in cash. Furthermore, the candidate noted that he was not interested in the paperwork (bills invoices, etc). When asked why he had not declared the 60,000 MDL expense for the demolition of the house or any of the other expenses included in the 300,000 MDL in his 5-year declaration to the Commission, the candidate stated that he had declared all the expenses related to the house in Chisinau in the total sum of 2,200,000 MDL invested in the house during the period of 2018-2021. The candidate declared 2,200,000 MDL in Section 10 ("Expenses" of the 5-year declaration as "costs for Construction/finishing work (the repair works were carried out by private persons, not companies, all payments paid in cash). Purchases of materials and furniture." No breakdown of costs was provided.

*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)).

Art. 8 para. (5), lit. b) of Law No. 26/2022 provides that the Commission is required to verify compliance of the candidate with the legal regime of declaring assets and personal interests.

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 Commission is required to verify the compliance of the candidate with the tax regime related to the payment of taxes on taxable income and the payment of import duty and export duty, the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2022. To satisfy the criterion of financial integrity, the Commission must find that the candidate's wealth acquired in the past 15 years corresponds with declared revenues.

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).

Art. 4 para. (1) lit. d) of Law No. 133/2016 on declaration assets and personal interests (in force in 2018) 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 how to complete the declaration of wealth and personal interests, approved by the Order No. 2 of the Chairman of the National Integrity Authority, of 13 January 2017, under the Law No. 133/2016 on declaration of 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 .54/2018, the average monthly salary per economy, forecasted for 2018, was 6,150 MDL. Fifteen average monthly salaries per economy, forecasted for 2018, was 92,250 MDL.

Art. 5 para. (4) of Law No. 133/2016 on declaration of assets and personal interests provides that the responsibility for the timely submission of the declaration, as well as for the truthfulness and completeness of the information lies with the person submitting it.

The Civil Code (in force at the time of selling the car in 2017), art. 210, para. (1) Written form of the legal act states: ”Legal acts must be concluded in writing between legal persons, between legal persons and natural persons and between natural persons if the value of the object of the legal act exceeds 1000 lei, and in the cases provided by law, regardless of the value of the object.

According to point. 40 lit. f) of Annex No.1 of the Regulation regarding the state transport register, approved by the Government Decision No. 1047 of 8 November 1999, in order to register vehicles, the sales-purchase contracts should be concluded in writing as per art. 210 of the Civil Code.

*c. Reasoning*

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) of Law No. 26/2022, as well as the expenses for the maintenance of such assets and sources of income. The Commission is also required to verify that the candidate has complied with the legal regime of declaring assets and personal interests.

The candidate did not provide the sale-purchase contract for the Kia Sorento car that he had sold in 2017 for 300,000 MDL as he claimed that there had not been any sales contract drawn up for the vehicle. The candidate declared this amount for the sale of the vehicle in his annual declaration for 2017. In the written communication to the Commission, the candidate claimed that the Civil Code did not require the conclusion of a contract in written form for the sale of a car. The 300,000 MDL proceeds from the car sale was part of the cash amount of 1,507,590 MDL that the candidate had in 2018. In 2018, after purchasing a house in Chisinau municipality, the candidate's remaining cash amounted to about 500,000 MDL. No cash was declared in his annual declaration for 2018, submitted on 29 March 2019. The candidate stated that 200,000 MDL had been spent on consumption expenses and the rest of the money, up to 300,000 MDL, had been used in the first months of 2019 as an investment in the Chisinau house. Therefore, the candidate claimed that when he submitted his 2018 annual declaration on 29 March 2019, he had no cash to declare.

In written communication with the Commission, the candidate was asked about confirmation documents in respect of 300,000 MDL, spent between January - March 2019. The candidate did not submit documentation regarding the spending of this amount. In response to written questions and at the hearing, the candidate identified materials costing 231,000 MDL and demolition costs in the amount of 60,000 MDL, again stating that he had no supportive documents regarding the costs of construction.

During the hearing, while unable to cite the exact provision of the Civil Code, the candidate maintained that no contract had been concluded when selling a car in 2017, as one was not required by law. The candidate was asked about art. 210 of the Civil Code, which required the use of contracts in writing for the sale of assets valued at more than 1,000 MDL and was asked whether, as per this provision, when selling the car for 300,000 MDL, he had been required to conclude the sales-purchase contract in written form. The candidate was evasive, insisting that the provisions of the Civil Code did not provide for an obligation to sign a contract, as the legal effects of signing contracts were provided for in the code and that the parties assumed the risk of not signing the contract. However, when addressing the issue as to how the new owner of the car had been able to register the ownership rights based on a verbal agreement, when Government Decision No. 1047 of 8 November 1999 had specifically required a written sales-purchase contract in accordance with art. 210 of the Civil Code for the registration purposes, the candidate noted that they had presented all the necessary documents to the registering authorities, and that

they had signed some type of a blank document/template contract and paid 400 MDL in taxes. The candidate argued that the Commission could obtain this “blank document/template contract” from the APS.

The Commission noted the inconsistency between the candidate’s initial statement that there was only a verbal agreement for the sale of the Kia Sorento car and his concession at the hearing that a template contract form had apparently been used. If some type of template contract existed, it was up to the candidate to provide a copy to the Commission in order to mitigate the Commission’s doubts as to the sales price of the vehicle (art. 13 para. (5) of Law No. 26/2022). Moreover, the explanations and interpretation of Civil Code law given by the candidate were not accepted by the Commission, as its art. 210 unequivocally provided for the obligation to conclude a written contract for the sale of this car, because its selling price, for the amount of 300,000 MDL, clearly exceeded the threshold (1,000 MDL) set by the law. Furthermore, a written contract is contemplated by the government regulations for car registration purposes. Therefore, the candidate’s arguments that a sales-purchase contract was not required for the sale of this car were unsubstantiated.

As noted, the candidate’s failure to submit a written sales-purchase contract for the car and the absence of any payment-related documents (the car was sold in cash according to the candidate) made it impossible for the Commission to verify the truthfulness of the declared sales price of the car in his declaration for 2017. The Commission asked the candidate to explain how he would prove to the respective authorities that the amount he had declared in his annual declaration was accurate. The Commission cannot accept the candidate’s submission that the tax or NIA authorities could use various tools to identify the market value of the car. The absence of documentation regarding the selling of this car rendered it impossible to verify that the candidate had complied with the tax regime regarding this transaction. According to art. 5 para. (4) of Law No. 133/2016 on the declaration of assets and personal interests, the responsibility for the truthfulness and completeness of the information included in the subjects of declarations lies with the persons submitting the declarations. Thus, the candidate could not mitigate the Commission’s doubts in respect of the sales price of the Kia Sorento in 2017 and his compliance with the tax obligations.

Doubts about the accuracy of the candidate’s declarations were also present because of the lack of documentation for cash payments in the amount of 300,000 MDL that the candidate claimed to have invested in his house during the first months of 2019. In his 5-year declaration submitted to the Commission in July 2022, the candidate was required to declare expenditures greater than 25,000 MDL incurred in the past five years (2017 - 2021). Answering the question as to why he had not declared any of the 300,000 MDL expenses in his 5-year declaration, the candidate referred to the lump sum of 2.2 million MDL that he had indicated in the 5-year declaration as an investment in a house in Chisinau over the period of 2018 - 2021. He did not provide any breakdown of the costs spent on the construction of the house to substantiate any of his cash expenses whether paid to a work supervisor or for construction materials for the house. In written communication with the Commission and at the public hearing the candidate submitted, without any supportive documents, that these expenses amounted to 291,000 MDL. The candidate further explained that he had been unable to supervise the construction of the house due to work and family engagements and that he was not interested in managing records and keeping receipts. The

candidate did not conclude a contract with the supervisor and paid for all those services in cash.

The candidate's failure to provide confirmatory documents made it impossible for the Commission to verify the truthfulness of the declared expenses up to 300,000 MDL and when these expenses were made. Thus, the Commission was unable to conclude whether 300,000 MDL was indeed spent between January - March 2019. The Commission did not accept the candidate's continued insistence that the listing of total 2.2 million MDL expenses between 2018 - 2021 in his 5-year declaration was proof of the payment of 300,000 MDL expenses in 2019. The candidate was not able to mitigate the reasonable doubt of the Commission regarding the cash expenses in the amount of 300,000 MDL and accuracy of the declared amounts in his 5-year declaration.

The Commission observed a pattern whereby the candidate engaged in transactions without concluding contracts. In addition to the absence of any records of payments, this made it impossible for the Commission to assess the accuracy of the candidate's statements. The Commission also took note of the candidate's statement that he had "no interest" in keeping receipts proving his expenses, demonstrating a lack of appreciation for the importance of accountability when spending substantial amounts especially in cash. The Commission notes that keeping records, particularly for large payments, are important for the observance of the legal regime of the declaration of personal assets and interests by judges, as it aims to prevent unjustified and illicit enrichment and to avoid conflicts of interest in their activity, as well as aiming to hold them accountable for such deeds.

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 criteria of financial and ethical integrity as per art. 8 para. (2) lit. c), para. (4) lit. a) and b), para (5) lit. b), c), d) and e) of Law No. 26/2022 with respect to the accuracy of the information and lack of documentation regarding the declared sales price of the car and cash expenditures in the amount of 300,000 MDL, which have not been mitigated by the candidate.

### *3. Public Statement of the Candidate on 19 January 2022*

#### *a. The Facts*

In 2021, the candidate examined the case filed by the former President of the Chisinau Court of Appeal (Vladislav Clima) against the Decree of the President of the Republic of Moldova annulling the president's decree appointing Vladislav Clima to the position of the President of the Chisinau Court of Appeal. In accordance with the candidate's decision of 31 December 2021, Vladislav Clima was reinstated as the President of the Chisinau Court of Appeal. On 16 January 2022 the reasoned Decision in this case was delivered. It could be appealed within 30 days.

The candidate's father had a long-standing business relationship with the uncle of judge Vladislav Clima. The candidate had worked as a lawyer in one of their companies for three months in 2011. The candidate did not recuse himself from examining the case of Vladislav Clima.

On 19 January 2022, the candidate commented on requests to the National Anti-Corruption

Center (hereinafter "NAC"), the General Prosecutor's Office (hereinafter "GPO") and the Superior Council of Magistracy (hereinafter "SCM") to examine his actions related to the Decision of 31 December 2021 to reinstate Vladislav Clima as the President of the Chisinau Court of Appeal. The requests signed by Eugeniu Rurac, Head of the General Direction of the Information and Security Service (hereinafter "ISS") dated 14 January 2022 and 17 January 2022 had been obtained by media sources.<sup>4</sup> One letter apprised the SCM that the NAC and GPO had been asked to investigate potential crimes of exceeding the duties of the service (art. 328 para. (3) Criminal Code) by the candidate and usurpation of the position of the President of the Chisinau Court of Appeal, based on the candidate's 31 December 2021 Decision. The letter referred to "actions contrary to the legal provisions in order to keep illegally in power in violation of the provisions of the Constitution, in complicity with some judges through usurpation the official capacity of President of the Chisinau Court of Appeal". The second letter addressed business relationships between the candidate's father and Vladislav Clima's uncle and the candidate's work as a lawyer in one of their companies. The candidate's comments about the letters were published by the web portal *Ziarul de Gardă*<sup>5</sup>. The candidate made the following statement:

*"I read Mr. Rurac's complaint. In fact, I regarded this complaint as intimidation, and I have already highlighted that Rurac has rich experience in intimidating judges. Rurac worked as a prosecutor during the 'captured state' period and it was him who made accusations against a judge who is currently a judge at the Constitutional Court – it was him who then boasted, during the 'captured state' period, that he had evidence proving she was guilty. We all know how that case ended. Therefore, who Mr. Rurac worked for back then and who he works for at present – is not up for discussion now. There is no conflict of interest because the law is very clear. I am sorry that Rurac does not know, because guys from the ISS come to court hearings prepared and they know the legal provisions. Mr. Rurac has a personal interest, I have emphasized this previously. The decision is reasoned and I have not seen anyone read it in order to verify the aberrations of Mr. Rurac and Mr. Musteață. I worked as a lawyer because that was my father's company, so what's the conflict of interest? The law sets a very clear definition of what a conflict of interest is, or should we presume that my father started to work 40 years ago so that 40 years later I would admit Clima's action, or what is the logic of Mr. Rurac here? If he wants to talk about usurpation of power, he should check how Dorel Musteață appointed presidents of the Court of Appeal by decree and not by an SCM Decision, and if that is not abuse of power, then I don't know what is".*

The Disciplinary Board of Judges within the SCM examined a complaint against the candidate concerning his above-mentioned public statement. On 22 April 2022, by Decision No. 16/4, the Disciplinary Board of Judges decided that the candidate, as a judge, had acted in a way that

<sup>4</sup> Available at: <https://tv8.md/2022/14/01/doc-sis-a-sesizat-cna-si-pg-pe-actiunile-judecatorului-care-l-a-restabilit-pe-clima-in-functie-reactia-magistratului-panis/190573> and <https://www.zdg.md/stiri/stiri-justitie/doc-sis-vine-cu-o-noua-sesizare-in-care-invoca-faptul-ca-magistratul-alexei-panis-care-a-dispus-repunerea-lui-vladislav-clima-in-functia-de-presedinte-al-ca-chisinau-s-ar-afla-in-conflict-de-intere/>; <https://www.zdg.md/stiri/stiri-justitie/doc-sis-vine-cu-o-noua-sesizare-in-care-invoca-faptul-ca-magistratul-alexei-panis-care-a-dispus-repunerea-lui-vladislav-clima-in-functia-de-presedinte-al-ca-chisinau-s-ar-afla-in-conflict-de-intere/>

<sup>5</sup> Available at: <https://www.zdg.md/stiri/stiri-justitie/magistratul-panis-despre-sesizarea-sis-in-care-se-spune-ca-ar-fi-in-conflict-de-interese-cu-clima-calific-sesizarea-aceasta-ca-o-intimidare-rurac-a-activat-in-perioada-statului-capturat-c/>

affected the “honour, professional probity and prestige of justice that affect trust in justice, committed in the exercise of their duties or outside them, which, according to their seriousness, cannot be qualified only as violations of the Code of Ethics and Professional Conduct of judges”, but amount to a disciplinary offense provided for under art. 4 para. (1) lit. p) of Law No. 178/2014 on the disciplinary responsibility of judges. The Plenary of the Disciplinary Board of Judges decided to give the candidate a warning as a disciplinary sanction. The candidate contested the Decision of the Disciplinary Board of Judges, the outcome of which is still pending.

In his written answers to the Commission, the candidate stated that, in making his statement, he had acted in defense of the entire judiciary and in full compliance with ethical rules. The candidate also stated that he did not file a complaint with the SCM concerning the “intimidation of judges” because, from his point of view, SCM’s constitutional mandate had expired and “its activity is contrary to the interests of justice.” The candidate also noted that he had lodged a complaint with the ISS against Eugeniu Rurac who had requested the initiation of the criminal case against him.

At the public hearing, as to his public statement of 19 January 2022, the candidate explained that he had not commented on the request of the ISS but on the request that was signed by Eugeniu Rurac, who had a personal interest in the case and who was not authorized to sign the request on behalf of the ISS. It should have been signed by the head of the ISS. The candidate further noted that this request, which was made public, contained severe accusations against him. The candidate appealed against the ISS report. That appeal is still pending.

Regarding “Mr. Rurac’s persona intesta,” the candidate explained that when the Presidential Decree on annulling the appointment of Vladislav Clima to the position of the President of the Chisinau Court of Appeal was issued, Eugeniu Rurac was working as an adviser at the President’s Office. At the time of the examination by the court, Eugeniu Rurac was working at the ISS. He was the one who had applied to the prosecutor’s office with the request to initiate a criminal case against the candidate. Thus, Eugeniu Rurac had had a conflict of interest. When asked about the evidence confirming Eugeniu Rurac’s involvement in drafting the presidential decree, the candidate referred to statements made during a television program by then-chairperson of the Legal, Appointments and Immunities Committee, who, at the time of the decree, was an adviser to the President. According to the candidate, the chairperson of the Legal, Appointments and Immunities Committee mentioned that several people had worked on that Decree. When asked specifically whether Eugeniu Rurac had been involved in drafting the decree, the candidate explained that there was no need to specify that, because, according to public information confirmed during the TV program, the entire legal department had been working on the document. The interview of Olesia Stamate on the TV8 program “Cutia Neagră” was aired on January 20, 2022.<sup>6</sup>

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<sup>6</sup> Asked if she participated in the drafting of the decree signed by the president of the country, Olesia Stamate answered that “to some extent, but the idea came after some discussions between colleagues.” According to the Olesia Stamate, the Supreme Court of Justice will further establish the competence of the Court of Appeal. “It was a discussion between colleagues where they discussed the way he was appointed, the conflicts of interest, certain

In answering the Commission's questions concerning the allegations against Dorel Musteata, the candidate stated that perhaps at the time of his statements on 19 January 2022 Dorel Musteata was a judge. As to the status of Dorel Musteata as an acting Head of the SCM, the candidate answered that the mandate of the SCM had already expired.

The candidate also told the Commission that his comments in the statement did not concern the case involving judge Vladislav Clima and that they did not refer to persons who were participants in the case, and that his comments had come as an answer to unfounded allegations of a criminal nature. The candidate noted that: "If I am not mistaken, it was insinuating that there was the creation of a criminal group or something I don't remember in that note of information, but there was something worthy of an action movie." The candidate told the Commission that he did not believe that his comment whether he had or not a conflict of interest in that case was a comment on the case for the purpose of ethical standards. The candidate noted that commenting on the conflict of interest did not amount to comment on the substance of the case. The candidate further argued that: "I highlight that that note was speaking about the existence of a criminal group and that aspect about the conflict of interest was the key to the reasoning. I was obliged to make that comment and that was strictly about those criminal-nature accusations." He added that: "I made comment with regards to an accusation, an allegation of a criminal nature that was purposefully launched in the public space by people who had a direct interest in the fate of that case".

The candidate claimed that his statements were ethical because they did not refer to the work of other judges. On the contrary, through them he defended "the independence of the judicial authority from the illegal pressures coming from the representative of the secret security service". The candidate also stated that judges can make public statements to inform on any false allegations that are published against them in the mass-media. The candidate stated that his actions fully complied with the Code of Ethics and Professional Conduct of Judges, and specifically art 9. para. (5).

The candidate was asked about his statement, "*Rurac worked as a prosecutor during the 'captured state' period and it was him who made accusations against a judge who is currently a judge at the Constitutional Court, it was him who then boasted, during the 'captured state' period, that he had evidence proving she was guilty. We all know how that case ended.*" and how that statement was relevant to the facts and merits of the complaint against him. The candidate stated that the SCM member Dorel Musteata had issued the decision No. 367 on 31 May allowing the initiation of the criminal prosecution against the then judge Dominica Manole (currently President of the Constitutional Court). This decision had been criticized by the NGO community. After the political changes, Eugeniu Rurac dropped the charges against this judge. This was publicly available information. The candidate further stated that he had not referred to any personal matters.

The candidate emphasized that all his declarations and comments were made in line with the provisions of the Ethics Code. He referred to the statements of the Association of Judges of

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elements that were not known and that were known later. And the question was asked, is it good to go this way, is it correct?"

Moldova and the Magistrates Association of Romania criticizing the alleged involvement of the intelligence services in the case of judge Vladislav Clima.

The candidate was also asked about how the following statement was related to the facts and merits of the complaint against him: *“If he wants to talk about usurpation of power, he should check how Dorel Musteață appointed presidents of the Court of Appeal by decree and not by an SCM Decision, and if that is not abuse of power, then I don’t know what is”*. The candidate explained that the allegations of a criminal nature had been made against him. He further noted that, he had been accused of usurpation of power, and as such, the above statement was relevant to the facts and merits of the complaint against him.

*b. The Law*

Art. 4 para. (1) of Law No. 178/2014 on the disciplinary liability of judges lists what constitutes a disciplinary offence, and lit. p) states “other acts that affect the honour or professional probity or prestige of justice to such an extent that the trust in the justice is affected, committed in the exercise of their duties or outside of them which, according to their seriousness, cannot be qualified only as violations of the Judge’s Code of Ethics and Professional Conduct”.

Art. 9 para. (4) of the 2015 Judge’s Code of Ethics and Professional Conduct 2015 provides that judges shall not make public comments, including in the media, on cases then pending in court until the entry in force of the decisions adopted.

Art. 9 para. (5) of the 2015 Judge’s Code of Ethics and Professional Conduct provides that judges may express their opinions through public statements, fulfilling their right to reply, in order to refute any false or defamatory statement, including published in the media, at their address. While making public statements, a judge should be guided by the criteria of reasonableness and measure.

Art 8 para. (2) and (3) of the 2015 Judge’s Code of Ethics and Professional Conduct provides that a judge may not disparage in public the professional and moral integrity of his colleagues and shall refrain from public comments about the work of other judges.

According to the European Court of Human Rights standards, public officials serving in the judiciary should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called into question. (*Wille v. Liechtenstein* [GC], no. 28396/95, § 64, 28 October 1999). The dissemination of even accurate information must be carried out with moderation and propriety (*Kudeshkina v. Russia*, no. 29492/05, § 93, 26 February 2009). Judicial authorities, in the exercise of their adjudicatory function, are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges. That discretion should dissuade them from making use of the press, even when provoked (*Olujic v. Croatia*, no. 22330/05, § 59, 5 May 2009), but also in expressing criticism towards fellow public officers and, in particular, other judges (*Di Giovanni v. Italy*, no. 51160/06, 09 July 2013).

According to the Consultative Council of European judges (CCJE) Opinion No. 25 (2022) of 2 December 2022 §52: “Statements are permissible if they do not go beyond mere criticism from a

strictly professional perspective, if they are part of a debate on matters of great public interest and if they are based on substantiated allegations. Moderation and propriety must guide the judge even in the dissemination of accurate information. When criticising other actors in the justice system, a judge must maintain respect. Criticism should not be motivated by personal grievance or hostility or the expectation of personal gain. Generally, judges should avoid expressing themselves in an impulsive, irresponsible and offensive manner". In §53, the Opinion further states, that "[...] judges should avail themselves first of any existing remedial measures, before going public".

### *c. Reasoning*

The candidate made a broad attack on Eugeniu Rurac and his submission of requests on behalf of the ISS to the NAC, the GPO and the SCM to examine the candidate's actions related to his decision of 31 December 2021 to reinstate Vladislav Clima as the President of the Chisinau Court of Appeal.

The candidate's statement was made in response to a news article that repeated the content of the ISS request. The candidate contends that he had the right to respond to the allegations in the request and that he did so in compliance with the 2015 Code of Ethics and Professional Conduct of Judges. The candidate did not apply to the SCM to avail himself of the existing legal remedy for efforts to intimidate a judge. The candidate did register a complaint against Eugeniu Rurac with ISS but after he made his public remarks about Eugeniu Rurac.

The candidate disputes that his comment on whether he had a conflict of interest presiding over the Clima case were improper comment on a pending case claiming that they did not concern the merits of the case but rather the allegations of criminal conduct being made about him. While his comments did not address the merits of the case, they did concern his relationship or lack of relationship with Clima, the litigant who had initiated the case, and whether there was a conflict of interest with respect to the candidate presiding over the case. The issue of a potential conflict of interest and the propriety of a judge presiding over the case is an integral aspect of a legal proceeding that can be raised in the proceeding and, if raised, will require a judicial determination on the issue which could have been subject to appellate review. The Commission does not accept that comments on the presence or absence of a conflict of interest on the part of the candidate and whether it was proper for him to examine the case were not comments on an aspect of the case for purposes of the prohibition on judges making comments on pending cases.

Even if the candidate's remarks did not constitute comments on a pending case, the scope, tenor and basis for the remarks about individuals were problematic from an ethics standpoint. Even when freedom of expression is permitted to respond to slanderous allegations, such expression is to be measured and reasonable, as the 2015 Code of Ethics and Professional Conduct of Judges requires. The candidate cited an interview with the chairperson of the Legal, Appointments and Immunities Committee as the basis for his allegations that Eugeniu Rurac had been involved in the Decree that was the subject of the Clima case. Eugeniu Rurac is not named in the chairperson's comments and there are only references to discussions among unidentified colleagues. More troubling is that the interview he identified as the basis for his remarks was broadcast one day after his own public comment. To the extent that the candidate accused Eugeniu Rurac of a

conflict of interest without direct knowledge of the facts could be deemed reckless conduct on his part, not consistent with the requirement of reasonableness, measure and respect expected of judges.

The candidate's remarks about Eugeniu Rurac's handling of the case involving another judge when Eugeniu Rurac was a prosecutor and his remarks about usurpation of power on the part of judge Musteata likewise lacked reasonableness and measure. The candidate was not able to explain how those remarks were relevant to the facts or merits of the request for an investigation of him, only that the allegation of usurpation of authority against him justified him accusing judge Musteata of usurpation of power. The Commission disagreed. The comments were gratuitous and disparaging, in violation of the 2015 Code of Ethics and Professional Conduct of Judges. His remarks about judge Musteata's purported handling of judicial appointments at the SCM were also in conflict with the ethical provisions prohibiting judges from commenting on the work of other judges and from disparaging the professional and moral integrity of colleagues. Although the candidate's appeal of the disciplinary decision imposing the sanction of "warning" on the candidate for this conduct is still pending, the findings made by the Disciplinary Board of Judges contribute to the Commission's serious doubts on this issue.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criterion of ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to his public statement on 19 January 2022, which have not been mitigated by the candidate.

#### *IV. Decision*

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

#### *V. Appeal and publication of the decision*

Pursuant to art. 14 para. (1) of Law No. 26/2022, the candidate is entitled to appeal this decision within 5 days from receiving the decision.

Pursuant to art. 13 para. (7) of Law No. 26/2022, this decision is sent by email to the candidate and to the institution responsible for organizing the election or competition, which in the present case is the Superior Council of Magistracy. If within 48 hours of sending the decision, the candidate does not notify the Commission of his or her refusal to publish the decision, the decision shall be published on the website of the Superior Council of Magistracy in a depersonalized form, except for the surname and first name of the candidate that remain public. The Commission will also publish the decision on its website if the candidate does not object to publication.

This decision was adopted by a majority of five participating members of the Commission.

The dissenting opinion of Vitalie MIRON is attached to this decision.

Done in English and translated into Romanian.

Signature:



Herman von HEBEL  
Chairman, Commission