Decision No. 22 of 27 January 2023 on the Candidacy of Marina RUSU,
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 14 December 2022, 24 January 2023 and 27 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

Marina RUSU, judge at Cahul district court, Taraclia office, ("the candidate"), was on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 6 April 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge for five years on 8 February 2012 to serve in Taraclia district court. The candidate was appointed as a judge at the Cahul district court, until the retirement age on 20 May 2017.

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 16 July 2022.

On 8 July 2022, the Commission sent a request to the candidate for completing and submitting by 15 July 2022, the Declaration of assets and personal interests for the past 5 years as required by art. 9 para. (2) of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter "Law No. 26/2022"). The declaration also includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. The candidate submitted a completed declaration to the Commission on 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, questionnaire and collected information, those issues were raised in written questions with the candidate and during the public hearing.

Written communication with candidate:

On 13 September 2022, the Commission sent to the candidate a request for clarifying information, containing six questions, including nine sub-questions and a request for further documentation. The candidate replied within the requested time period on 17 September 2022 to all questions and provided all of the requested documents.

On 9 November 2022, the Commission sent a second round of 12 questions, including 27 sub-questions and five requests for further documentation, to clarify some issues that came out during the evaluation. The deadline for sending the answers was until the end of 12 November 2022. The candidate replied later than the requested time period, on 14 November 2022, to all questions but did not provide some of the requested documents. The Commission accepted the delayed submission of the replies. The candidate sent additional information on 24 November 2022.

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

On 14 December 2022, the candidate took part in a public hearing of the Commission.

II. The law relating to the evaluation

The Commission's evaluation of candidates' integrity consists of verifying their ethical integrity and financial integrity (art. 8 para. (1) of Law No. 26/2022).

Art. 8 para. (2) of Law No. 26/2022 provides that a candidate is deemed to meet the criterion of *ethical integrity* if:

a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer;
b) there are no reasonable suspicions that the candidate has committed corruption acts, acts related to corruption or corruptible acts, within the meaning of the Law on Integrity No. 82/2017;
c) has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

A number of versions of ethical codes applied to judges over the period of time covered by the evaluation. The codes were *Judge's Code of Professional Ethics*, adopted at the Conference of

Judges on 4 February 2000, *Judge's Code of Ethics*, approved by the Superior Council of Magistracy Decision No. 366/15 on 29 November 2007, *Judge's Code of Ethics and Professional Conduct,* approved by Decision No. 8 of the General Assembly of Judges of 11 September 2015, amended by Decision No. 12 of the General Assembly of Judges of 11 March 2016, as well as the *Commentary to the Code of Judges' Ethics and Professional Conduct*, approved by Superior Council of Magistracy's Decision No. 230/12 of 8 May 2018. Since 2018, the *Guid 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 issue .

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 Europ on the principles and rules governing judges' professional conduct, in particular ethics incompatible behavior and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. N° ") provi es 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 asse s have b en 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 f the assets of persons close to candidates, as defined in Law No. 133/2016 on declarati n 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 he 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 he Commission. (art. 10 para. (9) of Law No. 26/2022).

A candidate shall be deemed not to meet the integrity c iteria 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 syst m 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 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 he 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

At the public hearing, the candidate was asked about the following financial and ethical issues

1. Failure to submit the declaration on assets and personal interests for the period of 2014 – 2016

a. The facts

According to the Superior Council of Magistracy (hereinafter "SCM") Decision No. 147/4 of 4 February 2014, the candidate was suspended from the position of judge during the period from 5 May 2014 to 2 October 2017, upon the candidate's request for childcare leave. The candidate's suspension ended on 2 October 2017, when the candidate resumed her activity as judge. On 30 March 2018, the candidate submitted her annual declaration on assets and personal interests (hereinafter "annual declaration") to the National Integrity Authority (hereinafter "NIA"), for 2017.

In written communication with the Commission, the candidate explained that she did not submit annual declarations for 2014 - 2016 because she did not know that she was required to submit them for the period of childcare leave and realized that this was an omission only when the Commission asked her about this in written questions. The candidate was first asked about this issue in questions sent to the candidate on 13 September 2022.

Asked about her sources of income for 2014 - 2016, the candidate explained that the income she received in the period of 2014 – 2016 was accumulated from two sources: (1) maternity and childcare allowances and (2) her former husband's income. In this regard, the candidate submitted documents confirming her husband's income for the period of 2014 to 2016 and provided the amounts of child allowances that she received during this period. In relation to monthly expenditures that the Commission had calculated according to population consumption expenditure (CEP)[1] indicator, based on the methodology of the National Bureau of Statistics, the candidate stated that she did not spend such large amounts of money on monthly expenditures, but the candidate did not provide any documentation or calculations regarding her real expenditures incurred in the period of 2014 – 2016. Also, the candidate explained that between 2014 and 2017 she lived in her parents-in-laws' house and the living expenses were mostly paid by them. The candidate did not provide any confirmation documents about her parents-in-laws' expenditures, acquisitions or / and assets for the period for which she did not submit annual declarations.

At the public hearing, the candidate confirmed that she did not submit annual declarations for

[1] The CEP for any year between 2007-2018 is calculated based on National Bureau of Statistics (NBS) methodology applied for the period of 2006-2018 (on the basis of the resident population in the Republic of Moldova, in „discontinued series") and the method available on the NBS site. In this case, the indicator of Consumption expenditures by population according by purpose of expenditures, number of children and area, 2006-2018, is chosen with the following variables: Year - Consumption expenditures total – Area (Urban/Rural) – Number of children (if no children, Without children is chosen) – MDL, average monthly per capita for one person. The generated result is multiplied by the number of family members and 12 calendar months.

2014 - 2016 because she did not know that she was supposed to do this for the period of her absence due to childcare leave. The candidate stated that she contacted NIA to clarify this issue after receiving the second round of written questions from the Commission (9 November 2022). The candidate claimed that the NIA inspector told her that the procedures on submitting the declaration changed and there was no need to submit them now. The candidate explained that she had not yet decided if she would submit declarations for the period of 2014 - 20 6 r not.

b. The law

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

According to art. 8 para. (4) lit. b) of Law No. 26/2022 a c ndidate shall be deemed to meet the criterion of financial integrity if the Evaluation Commission finds that his/her wealth acquired in the past 15 years corresponds to the declared revenues

The Evaluation Rules state that undeclared income or expenditures are relevant for financial integrity, insofar items have not been declared truthfully, and for ethical integrity, including but not limited to insofar they relate to prohibited econdary 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)).

According to art. 6 para. (5) of Law No. 133/2016 on declaration of assets and personal interests, the subject of the declarati n who, in accordance with the legislation in force, has suspended work or service reports is obliged to submit the declaration within 30 days after reinstatement, indicating in the declaration the income obtained together with family members, his/her cohabitant during the entire undeclared period, also the owned assets and personal interests mentioned in art 4 para. (1) lit. b) – m) on the date of submission of the declaration.

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

According to art. 330^2 para. (2) of Contravention Code No. 218/2008, the failure to submit the declaration of assets and personal interests by a person that was obliged to submit it, is sanctioned with a fine of 60 to 90 conventional units.

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 candidate, family members and close persons to the candidate. The Commission must also find that his/her wealth acquired in the past 15 years corresponds to the declared revenues.

The candidate was obliged to submit a declaration on assets and personal interests not later than 30 days after the date of reinstatement from her childcare leave (2 October 2017), meaning no later than 1 November 2017. The candidate did not comply with this obligation. In Mar h 2018, she submitted only her 2017 annual declaration, with no information on her income or other financial information for the leave period of 2014 - 2016.

Both in response to written questions and at the public hearing, the candidate confirmed that she did not submit the declaration for the period of 2014 - 2016, because she did not know she was supposed to declare her assets and personal interests for the period of absence from office due to the childcare leave.

The Commission noted the candidate's attempt to clarify this iss e, by her reported phone call to NIA. The Commission also noted, however, that the NIA inspector's reported statement that the procedures for submission had changed and hence there is no need for submission was only cited by the candidate without any proof such as the nam of the NIA inspector, the date of the conversation and any written record of what the candidate asked and what the NIA inspector reportedly replied. Moreover, the Commission notes tha failure to submit a declaration on assets and personal interests by a person obliged to submit it constitutes a contravention as per art. 330^2 para. (2) of the Contravention Code.

The Commission also noted the candidate's argument that her omission to submit the declarations for the three years she was on leave was not an intentional one and that „judges are humans too and can make mistakes, as well".

However, the Commission notes that the lack of information about the income and assets acquired by the candidate between 2014 and 2016 prevented the Commission from fulfilling its obligation to thouroughly verify the candidate's income received and the expenses incurred in this periods. In the absence of all the financial elements, the Commission couldn't create an accurate picture of the financial situation of candidate in this period, and thus was not able to assess if the incomes received were legit mate and assets were acquired in the legal manner, as prescribed in the art. 8 of Law No 26/2022.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criterion of financial and ethical integrity as per art. 8 para. (2) lit. c), para. (4) lit. a) and para (5) lit. b) of Law No. 26/2022 with respect to failure to submit a declaration on assets and personal interests for the period of 2014 - 2016, which have not been mitigated by the candidate.

2. Delays in examining 16 requests regarding the conditions of detention

a. The facts

In October 2017, the candidate was temporarily transferred by the SCM from Cahul district court, Taraclia office (hereinafter "Cahul Court") to Criuleni district court, Dubăsari office (hereinafter "Criuleni Court") for a period of six months. In April 2018, the SCM extended the temporary transfer period for another six months until October 2018.

In January 2019, the candidate was appointed to exercise the duties of investigating judge at the Cahul Court, Taraclia office. At the same time, according to SCM Decision No. 444/ 1 of 6 October 2018, the candidate retained the authority as a judge to finalize the examination of certain cases pending at Criuleni Court. Annexed to SCM Decision No. 444/21 was a list of 56 cases to be finalized by the candidate.

According to SCM Disciplinary Board of Judges (hereinafter "Disciplinary Board) Decision No. 5/2 of 21 February 2020, between 24 September and 7 November 2019, the SCM received 16 complaints from convicts detained in a penitentiary in Taraclia against the candidate in her capacity as investigating judge. The complainants alleged that the candidate had failed to meet the three months' deadline for examining their complaints. According t art. 473^3 para. (4) of the Criminal Procedure Code, a complaint regarding conditions of detention that seriously affect the rights of the convicted or detained complainant is to be decided within three months. The disciplinary procedure against the candidate was terminated on 21 February 2020 because the Disciplinary Board did not find a disciplinary offense in the candidate's actions. One member of the Disciplinary Board issued a dissenting opinion, reasoning that the candidate is liable for a disciplinary offence because "the judge did not ensure the prompt examination of this case, which indicates the failure to properly fulfil th service obligations, without a reasonable justification, by which it directly affected the rights of the participants in the trial, in this case of the author of the complaint. The judge was supposed to inform the management of the Court of the situation created in order to find the respective ways of examining the case given in the established terms and observing the legal framework". The dissenting member of the Disciplinary Board believed that the candidate violated the p ovisions of art. 12 para. (1) and art. 15 para. (1) lit. b), c) and d) of Law No. 444/1995 on the status of the judge, which, in light of art. 473^3 para. (4) of the Criminal Procedure Cod expressly regulates the three-month deadline for examining the complaints and, which, according to the case-law of the European Court of Human Rights, affects the rights of the convicted person or of the accused, guaranteed by art. 3 of the European Convention of Human Rights.

Following a challenge by the SCM's Judicial Inspection to the Disciplinary Board's decision, the SCM adop ed decision No. 227/24 on 6 October 2020, by which a disciplinary sanction of „warning" was imposed on the candidate based on art. 4 para. (1) lit. i) and j) of Law No. 178/2014 on the disciplinary liability of judges. The SCM reasoned that the judge's defence to the allegations, such as that she worked for a period of time without a clerk or was on annual leave and then on medical leave cannot be taken into consideration, because the judge's departure on annual leave, knowing with certainty about the existence in her caseload of complaints to be examined within three months, denotes irresponsibility and does not absolve her of responsibility. The SCM also noted that information from the President of the Cahul district court attested that during that period, a clerk was assigned to the judge, or, that the judge had not presented any request to court administration to solve this impediment in the exercise of her duties.

The candidate appealed the SCM's decision and by Decision No. 3-202/21 of 29 November 2021, the Chisinau Court of Appeal annulled the SCM's Decision. The appellate court concluded that the disciplinary sanction imposed on the candidate was applied in an arbitrary manner, without

ascertaining with certainty one of the legally required levels of guilt, that is, whether the candidate's acts were committed with intent or gross negligence.

On 4 February 2022, the SCM filed an appeal, requesting the reinstatement of the appeal to the Supreme Court of Justice. By Decision No. 3ra-271/22 of 6 July 2022, the Supreme Court of Justice declared the SCM's appeal inadmissible.

In response to written questions from the Commission during the evaluation the candidate stated that hearings in the cases that were the subject of the 16 complaints were postponed for several reasons not attributable to her, as follows:

- the reports from the penitentiary relating to the detention conditions were not produced, absence of the lawyer representing the complainants, medical leave of the candidate, and absence of the clerk;
- the candidate examined the cases in two courts that are at an approximate distance of 230 km, and she did not have the physical possibility to set hearings in both courts on the same day;
- the candidate was on annual leave for a total of 45 days in 2019;
- the candidate had worked 51 day in the Cahul Court in 2019;
- the candidate scheduled the hearings f r these days as effectively as possible, having 8-10 hearings daily;
- the candidate still had 56 cases in the Criuleni Court and, between November 2018 and January 2019, she wa assigned c mmon law cases, criminal and civil cases, which often require more hearings than the cases that are within the competence of the investigative judge.

At the public hear ng, the candidate confirmed that she had received 16 complaints in 2019 and that the court he rings in these cases had been postponed due to delays in the presentation of the reports from the penitentiary, the medical leave of the judge, the absence of a clerk and other circumstances Regarding the declaration of the President of the Cahul Court referred to in the SCM decision stating that the candidate was assigned a clerk during that period, the candidate believes tha these were not verified statements, because her clerk was in fact on extended medical leave and had had surgery. The candidate also stated that she informed the President of the Cahul district court several times about her inability to work because of her health condition and that she had requested that files to be examined within time limits be taken from her caseload, because he would not be able to resume her activity until the beginning of 2020. The candidate claimed that, after several oral discussions, she informed the court's management in writing.

The candidate also mentioned that in the Taraclia office there is only one clerk who is able to work in the Romanian language, and that the clerk was assigned to all of the case files in the Romanian language. The candidate also confirmed that in May 2019 she took a 3-day trip to Switzerland and Italy. On 17-27 October 2019, the candidate was on a professional trip to the USA. According to the candidate, during this period, only one court hearing was postponed in the cases related to the conditions of detention due to her absence.

After the public hearing, the Commission asked the candidate to explain what measures she undertook before she left the office for the two trips in May and October 2019 to ensure that the files on the conditions of detention that were assigned to her would be examined within he legal deadline and to provide all relevant confirmation documents. The candidate responded th t with respect to the trip of 24 - 27 May 2019, it was not necessary to take any measures to ensure the examination of the cases, as on Friday, 24 May 2019, she was at work and he d the cheduled hearings, 25 and 26 May were weekend days, and for 27 May no hearings were scheduled. The candidate explained that the 17 – 27 October 2019 trip was a professional trip for a program in which she was included by the National Institute of Justice. According to he candidate, only one hearing was postponed in the cases of conditions of detention during thi period.

Based on information included in the Disciplinary Board Decision No. 5/2 of 21 February 2020, the SCM Decision No. 227/24 of 6 October 2020, the documents submitted by the candidate (in particular certificates regarding the candidate's leaves of absence), and the information from national web-portal about the hearings agenda in the Cahul Court, the following table reflects an overview of the dates on which complaints were filed, dates of planned hearings, the date of deadline expired and the reasons for postponement and he judge's absence from the court:

Tabl No. 1. Complaints examined by the candidate

Date of complaint	Compl ainant	Date of hearing	Reasons for delay	Dates of absence of candidate
29 January 2019	C 1	11 March 2019	hearing postponed due to absence of report from penitentiary institution	
		15 April 2019	hearing postponed due to absence of clerk	
		30 April 2019 – 3 months deadline expires		
		23 September 2019	both hearings postponed due to sick leave of candidate	Medical leave 1 - 23.09.2019-16.10.2019
		8 November 2019		Medical leave 2 - 31.10.2019-14.11.2019
	C 2	14 March 2019	hearing postponed due to absence of clerk	
		30 April 2019 – 3 months deadline expires		
		21 May 2019	hearing postponed due to absence counsel for complainant	
		26 August 2019	hearing postponed as day was declared public holiday	
		25 October 2019	hearing was postponed due to unpaid leave of candidate	SCM Decision of 17.10.2019 on unpaid leave (17 to 27 October 2019) for professional trip to USA
	Next hearing set for 20 February 2020; case finalized by another judge; Term of			

	punishment reduced			
	C 3	11 March 2019	hearing postponed due to absence of report from penitentiary institution	
		16 April 2019	hearing postponed due to absence of clerk	
		30 April 2019 – 3 months deadline expires		
		24 September 2019	hearing postponed due to sick leave candidate	Medical leave 23.09.2019 - 16.10.2019
		Next hearing scheduled for 19 December 2019 – no further information available		
	C 4	14 March 2019	hearing postponed du to absence of clerk	
		30 April 2019 – 3 months deadline expires		
		21 May 2019	hearing postponed due to absence of report from penitentiary institution	
		12 August 2019	hearing postponed due to absence of report from p nitentiary institution	
		10 Septembe 2019	hearing postponed due to lack of time	
		16 Sept mber 2019	h aring postponed due to lack of time	
		24 September 2019	hearing postponed due to sick leave of candidate	Medical leave Certificate 23.09.2019 - 16.10.2019
	Next hearing scheduled for 10 December 2019 - no further information available			
13 March 2019	C 5	13 May 2019	the hearing was postponed due to absence of lawyer for complainant	
		14 June 2019 – 3 months deadline expires		
		7 October 2019	hearing postponed due to sick leave of candidate	Medical leave Certificate 23.09.2019 - 16.10.2019
		Next hearing scheduled for 13 January 2020; case finalized by another judge; term of punishment reduced		
	C 6	13 May 2019	hearing postponed due to absence of lawyer for complainant	
		14 June 2019 – 3 months deadline expires		
		7 October 2019	hearing postponed due to sick leave of candidate	Medical leave Certificate 23.09.2019 - 16.10.2019
	Next hearing set for 16 January 2020; case finalized by another judge; term of punishment reduced			
14 March	C 7	20 May 2019	hearing postponed due to an	

2019			unclear reason	
		14 June 2019 – 3 months deadline expires		
		29 August 2019	hearing postponed due to annual leave	Order on granting of annual leave 28.08.2019 - 05.09.2019 M dical leave 23.09.2019 - 16.10.2019
		30 September 2019	hearing postponed due to sick leave of candidate	
		Next hearing scheduled for 30 January 2020 no further information available		
20 March 2019	C 8	21 June 2019 – 3 months deadline expires		
		20 august 2019	hearing postponed due to annual leave of candidate	Order on granting of annual leave 20.08.2019 - 23.08.2019
		11 October 2019	hearing postponed due to sick leave candidate	• Medical leave 23.09.2019 - 16.10.2019 • Medical leave 31.10.2019 - 14.11.2019
		04 November 2019	hearing postponed due to sick leave of candidate	
	C 9	30 May 2019	hearing postponed due to absence of candidate to attend seminar in Chisinau	
		21 June 2019 – 3 months deadline expires		
		23 September 2019	hearing postponed due to sick leave of candidate	Medical leave Certificate (23.09.2019 - 16.10.2019);
		Next hearing on 21 July 2020; case finalized by another judge; term of punishment reduced		
21 March 2019	C 10	14 May 2019	hearing postponed due to absence of report from penitentiary institution	
		04 June 2019	hearing postponed due to sick leave of candidate	Medical leave 04.06.2019 - 07.06.2019
		22 June 2019 – 3 months deadline expires		
		23 August 2019	hearing postponed due to annual leave of candidate	Order on granting of annual leave 20.08.2019 - 23.08.2019
		10 October 2019	hearing postponed due to sick leave of candidate	Medical leave 23.09.2019 - 16.10.2019

		Next hearing scheduled for 17 February 2020 – no further information availabl		
28 March 2019	C 11	29 June 2019 – 3 months deadline expires		
		20 august 2019	hearing postponed due to annual leave of candidate	Annual leave 20.08 2019 - 23.08.2019
		11 October 2019	hearing postponed due to sick leave of candidate	M dical leave 23.09 2019 - 16.10.201
		Next hearing scheduled for 15 January 2020; case f nalized by another judge; term of punishment reduced		
	C 12	29 June 2019 – 3 months deadline expires		
		19 august 2019	hearing postponed -unknown reason	---
		1 November 2019	hearing postponed due to sick leave of candidate	Medical leave 31.10.2019 - 02.11.2019
	C 13	29 June 2019 – 3 months deadline expires		
		19 August 2019	hearing postponed for reasons unknown	---
		1 November 2019	hearing postponed due to sick leave of candidate	Medical leave 31.10.2019-02.11.2019
	C 14	29 June 2019 – 3 months deadline expires		
		19 August 2019	hearing postponed due to participation of judge in other court hearings	
		1 November 2019	hearing postponed due to participation of judge in other court hearings	Medical leave 31.10.2019-02.11.2019
		7 November	hearing postponed due to sick leave of candidate	No documents provided
		Next hearing 15.01.2020: case finalized by another judge; term of punishment reduced		
3 May 2019	C 15	4 August 2019 – 3 months deadline expires		
		30 September 2019	hearing postponed due to sick leave of candidate	Medical leave 23.09.2019-16.10.2019
		Next hearing scheduled for 30 January 2020 – no further information available		
8 May 2019	C 16	9 August 2019 – 3 months deadline expires		
		3 October 2019	hearing postponed due to sick leave of candidate	Medical leave 23.09.2019-16.10.2019
		Next hearing scheduled for 4 February 2020 – no further information available		

b. The law

According to art. 8 para. (2) of Law No. 26/2022, a candidate shall be 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 Int grity No. 82/2017;
c. has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

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, th 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 ordina y traffic violation;
c) or not being perceived by an obj ctive ob erver as an attitude of disrespect for the social order arising from disregard for its ules and regulations.

According to Principle 6 of Bangalore Principles of Judicial Conduct (2002), competence and diligence are prerequisites to the due performance of judicial office.

Principle 6.1 of Bangalore Principles of Judicial Conduct (2002) states that the judicial duties of a judge take precedence over all other activities.

Principle 6.2 of Bangalore Principles of Judicial Conduct (2002) also emphasizes that a judge shall devote the judge s professional activity to judicial duties, which include not only the performance f judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

According to principle 6.4 of Bangalore Principles of Judicial Conduct (2002) a judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

Principle 6.5 of Bangalore Principles of Judicial Conduct (2002) states that a judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

Art. 6 para. (1) of the Judge's Code of Ethics and Professional Conduct (2015) provides that the judge is obligated to respect the equality of persons before the law, ensuring them a fair treatment by defending their dignity and honor, as well as the physical and moral integrity of all participants in judicial proceedings. The correct, impartial attitude towards human being as the supreme value, the observance of fundamental rights and freedoms in accordance with national and international norms of law and with generally recognized moral principles are mandatory requirements towards

the judge.

According to art. 6 para. (3) of the Judge's Code of Ethics and Professional Conduct (2015), the duties of the judge include: (a) obligation to fulfill the duties and obligations in a professional, competent manner including all administrative tasks according to the law; (c) obligation to decide promptly, efficiently and objectively in all judicial cases, acting diligently and in due time, to respect the legal deadlines, and in case the law does not provide such deadlines, to fulfill his/her duties within reasonable period of time; (f) obligation to carry out the legal esponsibilities incumbent on him/her insofar as it ensures the correct application of the law and the investigation of cases in a fair, efficient manner and without delay.

According to art. 6 para (4) of the Judge's Code of Ethics and P ofessional Conduct (2015), the judge shall use the available resources in an optimal and re ponsible way. He/she will maintain a high level of professional knowledge and skills, especially in terms of management, communication and cooperation.

According to art. 8 para. (6) of Law No. 26/2022, in assessing the criteria set out in para. (2) - (5) and in making decisions on them, the evaluation Commission does not depend on the findings of other bodies with competence in the respective fi ld.

According to art. 15 para. (1) lit. b), c) and d) of Law No. 544/1995 on status of judge, judges are obliged to: (b) to ensure the protection of the rights and freedoms of persons, their honor and dignity, (c) to comply exactly wi h the requirements of the law in the performance of justice and to ensure the uniform interpretation and application of the legislation; (d) to refrain from acts that harm the interests of the service and the prestige of justice, which compromise the honesty and dignity of a judge, c use doub s about their objectivity;

According to art. 4 para. (1) lit. i) and j) of Law No. 178/2014 on disciplinary liability of judges, are to be considered disciplinary offences (i) violation of the mandatory norms of the legislation in the process of br nging justice; (j) failure or late or improper performance of a duty of service, without reasonable justification, if it directly affected the rights of the participants in the trial or of other persons.

c Reasoning

The European Court of Human Rights (hereinafter "ECtHR"), in the case of *Shishanov v. the Republic of Moldova, no. 11353/06, 15 September 2015*, found a violation of art. 3 of the European Convention of Human Rights (Convention) and made several recommendations for the Republic of Moldova in its decision. Under art. 46 of the Convention the ECtHR indicated that the authorities should, without delay, put in place an effective preventive and compensatory remedy, or a combination of remedies, related to inadequate conditions of detention. With regard to procedural guarantees, the ECtHR stated that a detainee's complaint must be decided within a reasonable time and the rules governing this procedure must comply with the principle of fairness provided by art. 6 §1 of the Convention.

Articles 473^2 – 473^4 of the Criminal Procedure Code, in force since 1 January 2019, introduced a

mechanism for examining complaints concerning detention conditions that seriously affect the rights of the convicted or detained. The maximum time limit for examining this type of complaints was set at three months.

The disciplinary case of the candidate was started by the Judicial Inspection on the basis of claims of alleged delays in the examination of 16 complaints filed by detainees from Taraclia Penitentiary about conditions of detention. None of the 16 cases were decided by the candidate within a three-month deadline set by law. The claimed delays in the examinati n of the files, admitted by the candidate, ranged from 8 to 11 months. In addition to the unavailability of her clerk, the judge attributed delays in her handling of the matters to several periods of absence from Cahul Court (Taraclia office) due to annual paid leaves, medical leav s, professional trips, unpaid leaves for childcare and delegation to Criuleni Court (Dubasari office) for finalizing the examination of 56 cases assigned to her in the period of 2017 – 2018.

Of the candidate's 56 assigned cases in Criuleni Court, 36 matters were decided by the candidate in 2018, before the complaints about circumstances of d tention were filed or assigned to the candidate. The analysis of the hearing agenda and the digital portal of decisions in Criuleni Court revealed that in 2019 (the year when the 16 complaints were received for examination in Cahul Court), the candidate issued decisions in 11 out o 20 remaining cases pending at Criuleni Court. Nine Criuleni matters were reassigned to ther judges for examination. Thus, only 11 Criuleni matters were decided by the candidate in 2019. From the analysis of the number of re-distributed cases at Criuleni Court, the Commission notes that the court administration tried to reduce the number of cases pending before he candidate, which should have given her the opportunity to focus on the examination of the ases in due course at the main workplace - Cahul Court, Taraclia office.

According to the Order of the Ministry of Health, Labor and Social Protection No. 1432 of 07 December 2018 on pproval of the working time balance in 2019, the total number or working days in 2019 for the 5-day work week was set at 251. From calculations of the effective days worked in 2019 by the candidate, it appears that of the total of 251 working days, 51 days were spent by the candidate working in Cahul Court, 137 days were spent on different type of leaves and the remaining 63 days it is presumed that the candidate was working in Criuleni Court to finalize pending cases. The candidate's main workplace in 2019 was Cahul Court, and her appointment was made to streamline the court's workload and, in particular, to ensure the timely examination of cases with very limited procedural terms. An analysis of the number of days spent by the candidate in each of the courts and the number of days of absence from work due to medical, annual, unpaid leaves and professional trips raised concerns about the candidate's effective use of working time in performing her work duties in Cahul Court, Taraclia office.

The complaints about conditions of incarceration were assigned to the candidate in Cahul Court starting in January 2019. Based on the dates on which the 16 cases were filed, all had to be decided upon by 9 August or before, according to the deadline set by law.

In relation to the hearing agenda set for the examination of the 16 cases in Cahul Court (Taraclia office), the Commission is concerned about the fact that the candidate admitted violation of the deadlines provided by the Criminal Procedure Code from the start, by setting the court hearings

at a 2-3-month interval from receiving them in procedure. In seven of the 16 cases, the first hearings *(see the Table No. 1 above regarding complaint 8 and 11 to 16)* were set *after* the expiration of the three-month deadline set by law. This approach made it impossible for the three-month time limit for decisions to be met. In six other cases, the candidate had only one hearing scheduled prior to the deadline and, in only three cases, there were two hearings scheduled before the deadline expired. Between 4 June and 12 August, the candidate did not schedule any hearings in any of the cases. During this period, according to the law, 12 of the 16 cases had to be decided.

Therefore, the Commission was concerned about insufficient diligence on the part of the candidate in organizing her work schedule and her failure to prioritize cas s of importance in accordance with the ECtHR standards that require a judge to deliver decisions within the reasonable time considering the rights involved.

The Commission analysed the main reasons for re-scheduling of hearings as follows:

- Absence of clerk— four continuances (two on March 14 that were continued for two months each), one on April 15 and April 16 that were both continued for five months. In all cases, the deadline ran during th ontinuanc ;
- Absence of lawyer - three continuances (one for three months; two for five months);
- Absence of report from penitent ary - three continuances that were before the 3-month deadline (each was continued for on m nth) and one continuance after 3-month deadline had already expired (continued for 3 months)
- The candidate's sick leav - 17 ontinuances: one in June, six in September, six in October and four in November 2019;
- Annual leave of the candidate – total five continuances (one in October and four between August 20-29).

According to the nformation available to the Commission, at least four hearings were postponed due to the absence of the clerk, which cannot be imputed to the candidate. However, two of the continuances because of the absence of a clerk occurred on March 14, one on April 15 and one on April 16, which suggests the clerk's absence was a more isolated issue and not continuing thr ughou the period that the cases were before the candidate.

In addition to the candidate's argument about the lack of a clerk, the Commission took note of the candidate's claims of a lack of cooperation of the management of the court to resolve the sit ation with the clerk's extended sick leave. However, the Commission did not receive confirmative documents from the candidate about any requests addressed to the court administration to address any issue with the lack of a clerk during the March-April time frame, or any other. The candidate furnished only a copy of her electronic mail of 31 October 2019 to the President of the court, informing him to interrupt the random distribution of cases to her, regarding her medical leave and a planned period of rehabilitation up to one month. The Commission observed that the October email was a technical request due to her upcoming leave, not a request to assign a clerk or to document her inability to examine cases because of her clerk's sick leave.

The Commission has further analysed the periods of time for which the hearings were postponed.

In seven out of sixteen of the cases, hearings were rescheduled for three up to five months, as follows:

- File of complainant 1 – hearing in April postponed to September (five months);
- File of complainant 5 – hearing in May postponed to October (five months);
- File of complainant 6 – hearing in May postponed to October (five months);
- File of complainant 7 – hearing in September postponed to January (four months);
- File of complainant 9 – hearing in May postponed to September (four months);
- File of complainant 13 – first hearing set in August and the second postponed to November (3 months);
- File of complainant 14 – first hearing set in August and the second postponed to November (3 months).

In other words, in almost half of the cases, hearings were set or rescheduled for periods of time that exceeded the three-month time deadline for deciding the cases. The length of these postponements, as with the setting of the initial hearing in the majority of cases for 2-3 months after the complaint was submitted, demonstrate disregard for the legislative purpose of ensuring prompt handling of complaints involving conditio s of detention.

With respect to the delays and continuances that the candidate attributed to annual, sick and parental leaves that she took, the Commission acknowledges the importance of guarantee of free time of judges and the right to be efit from medical and/or unpaid leaves. According to the Commentary on the Bangalore Princ ples of Judicial Conduct, the importance of a judge's responsibility to his or her family has to be recognized. A judge should have sufficient time to permit the maintenance of physical and mental well-being and reasonable opportunities to enhance the skill and knowl dge necessary for the effective performance of judicial functions. However, in this instance, he candidate's leaves did not appear to prevent her from deciding the complaints within the st tutory deadline as the candidate had only 4 days of medical leave (4-7 June 2019) before the expiration of the latest of the deadlines on 9 August 2019.

The Commission also emphasizes and takes into account that the amount of workload per judge in the judiciary of Republic of Moldova indeed was, and still is, high. Therefore, the Commission considers that all national courts are dealing with the same problem, but some judges manage in reasonable terms to successfully fulfill their duties by organizing their work. In disposing of matters efficiently, fairly and promptly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.

In summary, the candidate admitted delays in 16 cases. Both the number of cases and the length of delays were significant. None of the cases were decided within the three-month limit set by law and some cases were not decided for up to 11 months. After the candidate left office in November 2019 for childcare leave, the 16 cases were reassigned to other judges. In six out of 16 complaints, the cases were finalized, and decisions pronounced in the next hearing. In those cases, each of the requests was admitted and the terms of punishment reduced.

In addition to the number of delayed cases, the delays occurred in cases in which a legislative imperative has been given to decide the cases without delay because the conditions of detention

could create a substantial risk of harm to incarcerated individuals. While delays in judicial decision making are regrettable in all cases, when the delay subverts a legislative guarantee to protect the rights and safety of individuals with limited protections, the delay is especially egregious.

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 admission of delays n examination of 16 requests about detention conditions in 2019, 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.) and para. (5) lit. b) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that he 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 criterion and thus fails the evaluation

V. Appeal and publication of the decision

Pursuant to art. 14 para. (1) of Law N 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 esp nsible 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 publi h 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