Decision No. 11 of 5 January 2023 on the Candidacy of Vasile SCHIOPU,
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 1 December 2022 and 5 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

Vasile ȘCHIOPU, judge at the Ungheni Cou t ("the candidate"), was on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 6 April 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge on 17 December 2003 for five years to serve in the Ungheni Court. The candidate was appointed as a judge until the retirement age on 29 January 2009. By decisions of 14 June 2012 and 27 January 2017, the candidate was appointed as President of the Ungheni Court.

On 21 June 2022, the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 5 July 2022. The candidate submitted the completed questionnai e to the Commission on 27 June 2022.

On 8 July 2022 the Commission sent a request to the candidate for completing and submitting by 15 July 2022 he 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 jud ciary, prosecution and public service, as required by the same article. The candidate submitted a completed declaration to the Commission on 11 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 30 August 2022, the Commission sent to the candidate a request for clarifying information, containing 20 questions, including 47 sub-questions and 18 requests for further do umentation. The candidate replied later than the requested time period to all question and provided most of the requested documents.

On 2 November 2022, the Commission sent a second round of 6 questions, including 13 sub-questions and 6 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied later than the requested time period to all questions and provided most of the requested documents.

On 15 November 2022, the Commission sent a third round of 1 question, including 5 sub-questions, to clarify some issues that came out during th evaluation. The candidate replied within the requested time period on 16 November 2022 to all questions.

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

On 1 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 Ethics*, adopted at the Conference of Judges on 4 February 2000, *Judge's Code of Ethics*, approved by the Superior Council of Magistracy decision No. 366/15 on 29 November 2007, *Judge's Code of Ethics and Professional Conduct,* approved by decision No. 8 of the General Assembly of Judges of 11 September 2015, amended by decision no. 12 of the General Assembly of Judges of 11 March 2016, as well as the *Commentary to the Code of Judges' Ethics and Professional Conduct*, approved by Superior Council of Magistracy's decision No. 230/12 of 8 May 2018. Since 2018, the *Guide for Judges' Integrity* approved by the Superior Council of Magistracy's decision No. 318/16 of 3 July 2018 is another relevant source for the purpose of assessing judicial integrity issues.

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

Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. N° 3") pr vides fu ther 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 hav 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 he declared revenues.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of the ass ts of persons close to candidates, as defined in Law No. 133/2016 on declaration of asse and personal interests, as well as of the persons referred to in art. 33 para. (4) and (5) of L w 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 resul 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 riteria 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 as ess a current post holder should be linked to an indication of impropriety, for instance inexplicable weal h, even if it cannot be proven beyond doubt that this wealth does come from illegal so rces." 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 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 s 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 [In ependent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file."

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

III. Evaluation of the candidate

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

1. Purchase of an apartment at preferential price and the source of funds

a. The facts

On 7 June 2022, the candidate bought an apartment of 74.2 sq.m in Chisinau. This apartment was acquired at a preferential price as part of a program for the improvement of living ond tions for judges, implemented by the Superior Council of Magistracy (SCM). The candidate provided the Commission with a copy of the sale-purchase contract with construction company Basconslux, according to which the price for this apartment was 31,164 EUR (est. 636,668 MDL). The candidate also provided the Commission with a copy of his application to the SCM of 15 March 2018 for participation in the program for the improvement of living conditions. According to minutes of a meeting of the SCM on 30 June 2021 – Decision no. 18 – the application for the participation of the candidate in the program for the impr vement of living conditions was approved. The candidate explained to the Commission that he applied for the program as he intended to transfer to a higher court in Chisinau and he had no living space there. At the public hearing, the candidate informed the Commis ion that he had applied for and continued to be interested in becoming a judge at the Supreme Court f Justice and a member of the Superior Council of Magistracy. According to the candidate the SCM was aware of the fact that when he applied for the program for the improvement of living conditions, he had owned a house in Ungheni for around 30 years.

In order to pay for the apartment, the candidate signed a loan agreement with a long-term acquaintance on 6 June 2022 for he amount of 635,000 MDL. According to this agreement, the loan was to be paid back y 1 October 2022. The candidate informed the Commission that the construction of the apartment was completed at the beginning of 2022 but that the final registration with the Land Registry had not yet taken place due to some issues between the construction company and the local authorities. Without such a registration, the candidate was not able to take a mortgage from a bank. He explained that as soon as the apartment was fully registered, he would take a long-term credit from a bank and mortgage the apartment, and then pay back the loan from the acquaintance. As the registration had still not taken place, the candidate had in the meantime verbally agreed that the loan would be extended until the end of this year. When asked at the public hearing about the relationship with and background of this acquaintance, the candidate informed the Commission that although he could have taken a loan from someone in Ungheni, he had decided not to do so, to avoid rumors or a potential conflict of interest. Instead, he had deliberately taken a loan from this acquaintance, who is a businessman in Chisinau and has a good reputation. The candidate also confirmed that this acquaintance had never been involved in any legal proceedings as a party or representative of a party over which the candidate presided as a judge.

b. The law

Art. 8 para. (2) lit. a) of Law No. 26/2022 provides that the candidate shall be deemed to meet

the criterion of ethical integrity if s/he 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. 8 para. (5) lit. e) of Law No. 26/2022 provides that in order to assess the applicant's financial integrity, the Commission is required to verify the existence or not of loan, credit leasing, insurance or other contracts capable of providing financial benefits, in which the candidate is a contracting party.

The 2015 Judge's Code of Ethics and Professional Conduct states in art. 5:

> 1. The judge shall respect the highest standards of integrity and esponsibility, 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 positi n held.
> 5. 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.

And art. 6 para. (2) of this Code states:

> The judge must refrain from any behavior, action or manifestation that could prejudice the public's trust in the judicial ystem.

According to Principle 3.1 of the Bangalore Principles of 2002, "A judge shall ensure that his or her conduct is above reproach in the view of the reasonable observer". And Principle 3.2. states that "[t]he behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. (…).

c. Reasoning

According to decision no. 5/4 of 12 December 2017 of the Working Group for the identification of the construction company that will be contracted for the building of residential blocks for employees of the judicial system and the assessment of the need to improve living conditions for the selection of employees of the judicial system who will benefit from apartments at a pre erential price, employees of the judicial system must meet a number of conditions in order to be eligible for participation in the program for the improvement of housing conditions and to benefit from apartments at a preferential price. These conditions include that an employee must work, at the time of application, in the judicial system; does not have housing space in mun. Chisinau; has not previously benefited from apartments at a preferential price for employees of the judicial system- and meets other conditions considered relevant by the members of the SCM working group implementing this program.

The apartment, the candidate bought on 7 June 2022 in Chisinau, is an apartment at a preferential

price as part of the program for the improvement of living conditions for judges. The candidate has provided the Commission with all relevant documentation and information relating to his application to participate in this program and his reasons for seeking an apartment in Chisinau. Based on this information, the Commission recognizes that the candidate was eligible to participate in this program.

The candidate also provided the Commission with detailed information relating to the financial arrangements he had made for the purchase of the apartment. At the public hearing, the candidate explained why he had entered into a loan agreement with an acquaintance who has a good reputation and who lives in Chisinau rather than his hometown Ungheni, so tha any rumors or potential conflict of interest could be avoided as much as possible.

In light of above circumstances, the Commission did not find serious dou ts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of ethical or financial integrity as per art. 8 para. (2) lit. a), (4) lit. b) and (5) lit. c) and e) of Law No. 26/2022 with respect to the application for an apartment against a preferential price and the financing of this apartment, because the candidate provided full and detail d inf rmation that mitigated the Commission's concerns regarding this issue.

2. Donations to candidate's son

a. The facts

Both in 2018 and in 2021, the candidate provided financial support to his son.

On 16 March 2018, the candidate donated 5 000 EUR (est. 102,095 MDL) to his son to reserve funds for the son's wedding, which was planned for October 2018. The candidate did not declare this donation in his declarat on of assets and personal interests submitted to the National Integrity Authority for 2018 (her inafter "annual declaration"). However, in his 5-year declaration to the Commission, the candidate listed this donation and informed the Commission that the wedding had taken pla e in O tober 2019. At the public hearing, the candidate clarified that he had not declared this amoun in his annual declaration for 2018 as he did not consider this a donation but rather, as he sta ed is the tradition in Moldova, as wedding expenses. He explained that he had given the 5,000 EUR to his son in cash and that his son had put this amount on a bank account. Expenses elating to the wedding were taken from this account. For example, the candidate himself had paid the restaurant where the wedding had taken place from the funds in this account.

In his annual declaration for 2021, the candidate declared a loan of 122,000 MDL from a Moldovan bank for the period 2021-2023 at 11.8% interest rate. In this declaration, the candidate indicated that the loan was contracted in order to contribute to the purchase of an apartment by his son. His son, because of his employment, is also required to submit an annual declaration, declared this amount as a donation from his father in his annual declaration for 2021. The candidate himself did not declare this amount as a donation to his son. At the public hearing, the candidate confirmed that this was a donation and that, when the loan was taken at the bank on 15 December 2021, the amount was directly transferred to the bank account of the construction

company towards the purchase price of the apartment. At the public hearing, the candidate also indicated that he had explicitly informed his son that the latter should declare this amount in his annual declaration. The candidate had included it in his own annual declaration as a loan but by mistake had not referred to it explicitly as a donation. He confirmed at the public hearing that he had the obligation to declare it also as a donation and that it was an omission not to have done o.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring ass ts and personal interests and must verify the existence of donations, as per art. 8 para. (4) lit. a) and para.(5) lit. b) and f) of Law No. 26/2022.

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

According to the provisions of art. 4 para. (1) lit c) of Law No. 133/2016 on declaration of assets and personal interests, and the Instruction on the mode of completing the declaration of assets and personal interests approved by Decision of Chairman of National Integrity Authority No. 2/2017, the subject of declaration is obliged to decla e in his/her annual declaration the goods transmitted by the subject of the declaration for a fee or free of charge, personally or by family members, concubine, to any individual or l gal entity during the declaration period, if the value of each good exceeds the amount of 10 averag salaries per economy.

According to art. 15 para. (1) lit. g) of Law No. 544/1995 on the status of judges as well as art.13 para. (1) of Law No. 82/2017 on integrity, judges are obliged to submit their declaration of assets and personal interests in accordance with the provisions of Law No. 133/2016 on declaration of assets and personal interests.

According to Gov nment Decision No. 54/2018, the average monthly salary per economy, forecasted for 2018, was 6,150 MDL. According to Government Decision No. 923/2020, the average monthly salaries per economy forecasted for 2021, was 8,716 MDL.

According to art. 288 para. (5) of the Civil code (then in force), the goods that are not related to the category of immovable goods, including money (cash) and securities, are considered movable goods.

c. Reasoning

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests and also to verify the existence of donations. The observance of the legal regime of the declaration of personal assets and interests by judges aims to prevent unjustified and illicit enrichment and to avoid conflicts of interest in their activity, as well as aiming to hold them accountable.

The average monthly salary for 2018 was 6,150 MDL. So in that year, any donation higher than 61,500 MDL should have been declared by the candidate in his annual declaration. The average monthly salary for 2021 was 8,716 MDL. In 2021, any donation higher than 87,160 MDL should have been declared in the annual declaration. The amounts of money provided by the candid te to his son in both years exceed the amount of 10 average monthly salaries per economy.

In both instances, the candidate failed to declare the donations. At the public h aring, the candidate presented the argument that the amount of money given to his son in 2018 was not to be considered as a donation, but rather as wedding expenses. The candidate argued tha this was in line with a long-standing tradition in Moldova. The Commission, based on th language of art. 4 para. (1) lit. c) of Law No.133/2016 on declaration of assets and personal interests, cannot subscribe to this interpretation and considers that giving such an amount of money in cash to his son amounts to "goods sent by the subject of the declaration (…) free of charge, personally (…) to any natural or legal person during the declaration period" and therefore amounts to a donation. In relation to the 2021 loan, the candidate agreed that this was a donation to his son and that it was an omission not to declare it as such in his annual declaration for that year.

The Commission considers that certain circumstances relating to the donations are relevant for the candidate's evaluation. Although the candidate should have declared the 2018 donation in his annual declaration, the Commission took note of the fa t that this is the only donation he did not declare at all (as the 2021 donation was declared as a loan and by mistake not also as a donation). The Commission also took into consideration the amount of the donation, and the fact that no concerns exist in relation to the sourc of the donated funds. Lastly, the Commission took into consideration that although the 2018 donation was not included in the candidate's 2018 annual declaration, the candidate did include hese expenses in his 5-year declaration to the Commission. Against this background, the Commission concludes that the candidate had no intention to hide this donation to his son.

Regarding the 2021 contribution to the purchase of the apartment by his son, the candidate did declare the loan he to k in order to make the contribution in his 2021 annual declaration but recognized tha he hould also have declared it as a donation in the same annual declaration. The candidate admit ed at the public hearing that this was an omission. Also here, the Commission is able to conclude that the candidate had no intention or reason to hide this donation and that his failure to declare was likely, at most, inadvertant.

In light of the above circumstances, the Commission determined that its concerns regarding the non declarations of the donations in 2018 and 2021 were mitigated by the candidate and that the Commission did not have serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of ethical or financial integrity as per art. 8 para. (2) lit. c), (4) lit. a) and (5) lit. b) and f) of Law No. 26/2022 with respect to the issue of the non-declaration of these two donations to his son.

3. Declaration of the value of a car

a. The facts

In 2016, the son of the candidate, while working in Germany at the time, bought a Honda CRV car, m/y 2012. The candidate informed the Commission that although he formally has the right of usufruct of the car, it *de facto* is his property and was purchased with his money. His son purchased, later imported the car to the Republic of Moldova and registered it in his name (son) at the Public Services Agency. Based on information from the customs services, the value of the car assigned by customs, when the son imported it on 7 January 2017, was 270,000 MDL and custom taxes of 71,030 MDL were assessed.

The Commission requested the candidate to provide a copy of the sale-purchase contract for the car. The candidate informed the Commission that he is no longer able to do so as he presented it to the Public Services Agency, Ungheni Transport Registration Section. The timeline for keeping such contracts is 5 years, after which the documents are destroyed. Also, the candidate had not retained a copy. The candidate declared however that he was convinced that the car in question was purchased for 12,000 EUR, excluding the value added tax that the seller collected, after removing the car from Germany. In his annual declarations submitted for the years 2017-2021, the candidate indicated the value of this car to be 180,000 MDL.

At the public hearing, the candidate confirmed that the purchase price was12,000 EUR and that he had therefore declared the value of the car in his annual declarations in subsequent years to be 180,000 MDL. The candidate said that he did not know the customs value of the car and the customs duties paid for its import, as he was not involved in importing the car into Moldova, which was handled by his son.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets and personal interests, as per art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022.).

Pursuant to art. 8 para (2) lit. c) and (4) lit. a) 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 Principle 3.1 of the Bangalore Principles of Judicial Conduct of 2002, "A judge shall ensure that his or her conduct is above reproach in the view of the reasonable observer". And Principle 3.2. states that "[t]he behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. (…).

c. Reasoning

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests. The candidate is the owner of a car model Honda CRV m/y 2012, which was imported in January 2017 by the son of the candidate into Moldova. The declared price paid for the car was 12,000 EUR. In subsequent annual declarations the candidate declared the value of the car to be 180,000 MDL. The candidate considers this to be the equivalent

of the purchase price of 12,000 EUR. However, based on the medium exchange rate between MDL and EUR at the beginning of 2017, 12,000 EUR would have amounted to around 250,000 MDL. The latter amount is also closer to the customs value of the car which according to the customs authorities was 270,000 MDL.

The Commission observes that in his annual declarations for the years 2017-2021, the candidate has declared a lower value of the car (180,000 MDL) than either the alleged purchase price of 12,000 EUR (est. 250,000 MDL) or the customs price (270,000 MDL).

The Commission considers that the circumstances relating to the import and declaration of the car are relevant for the candidate's evaluation. The import of the car from Germany was an isolated event and was facilitated by the fact that at that time the candidate's son worked in Germany. The candidate has for more than 5 years been making private use of the car. The candidate did not make any economic profit as a result of the import of the car or as a result of the declaration of an incorrect value of the car. Also, the candidate did not obtain any financial benefit from not having declared the actual value of the car in question.

Although the Commission does express concern about the candidate providing incorrect information in his annual declarations about the value of the car, it is not able to conclude that the provision of such incorrect information, without any economic profit for the candidate and without an indication of an intent to misrepresent the value of the car, amounted to a violation of the candidate's ethical or financial integrity.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of ethical or financial integrity as per art. 8 para. (2) lit. c), (4) lit. a) and (5) lit. b) of Law No. 26/2022 with respect to the asset declaration relating to the value of the imported car.

4. Failure to declare the bank accounts in the manner prescribed by law

a. The facts

On 7 May 2013, the candidate opened a bank account at a Moldovan bank which allowed for the management of financial means in three different currencies (MDL/USD/EUR), each in a separate sub account. The bank account was used for receiving and paying back a loan of 16,200 USD. The MDL sub account was used in the period 2013 – 2015 for in- and outgoing transfers. The USD sub account was used in the same period for receiving the loan and for subsequent purchases of currency to pay off the loan. The EUR sub account was used only twice and these two transactions also related to this loan. The candidate did not declare this bank account in his annual declarations for 2013, 2014 and 2015.

On 13 February 2012, the candidate's wife opened a bank account at another Moldovan bank. This was an active bank account, on which his wife received only salary and pension payments between 2012-2014. All cash outflows were done by ATM withdrawals. In his answers to the Commission, the candidate declared that he had not included this account in his annual declarations as the balance in it did not exceed the threshold of 15 average salaries per economy.

The candidate had not included this bank account in his annual declaration for the years 2012-2015.

On 12 June 2014, the candidate's wife opened another bank account at a Moldovan bank. This was also an active bank account, in which from 2014 to the present his wife received only salary and pension payments. Also in this account, all cash outflows were ATM withdrawals. In his answers to the Commission, the candidate declared that he had not included this account in his annual declarations as the account balance did not exceed the threshold of 15 average sala ies per economy. The candidate did not include this bank account in his annual declarations for 2014 and 2015.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets and personal interests, as per art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022.

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

According to art. 4 para. (1) lit. d) of Law No. 1264/2002 (in force until 1 August 2016), the subject of declaration was obliged to declare financial assets, i.e. bank accounts, investment funds, equivalent forms of saving and invest ng, investments, bonds, cheques, bills of exchange, certificates of exchange, other documents incorporating property rights of the declarant or their family members, direct investments in national currency or foreign currency made by them or by their family members, as well a other financial assets.

Instruction of the mode of completing the declaration of income and property approved by Ordinance of the P esident of National Integrity Commission No. 5 of 8 February 2013 states that the subject of the decla ation was obliged to declare as financial assets under "Column IV. Financial Asset " of the declaration all bank accounts, investment funds, equivalent forms of saving and inves ing, investments, bonds, cheques, bills of exchange, certificates of exchange, other documents incorporating property rights of the declarant or their family members, direct investments in national currency or foreign currency made by them or by their family members, as well as other financial assets.

c. Reasoning

The Commission finds that the candidate provided all necessary information regarding his own and his wife's bank accounts. The Commission was able to establish both the nature and level of activity in all bank accounts. The first bank account, opened in May 2013, was primarily used by the candidate to receive the loan of 16,200 USD, and for subsequent purchases of currency to pay off the loan. Practically all inflows and outflows were related to the loan payment. At the public hearing, the candidate informed the Commission that his bank account was occasionally used to

transfer small amounts of money to one of his children who at the time was studying abroad. The two bank accounts opened and used by the candidate's wife were used exclusively as a salary account. From these accounts, on a regular basis, ATM withdrawals took place. Both the loan of 16,200 USD on his account and the salary payments of the candidate's wife received on her accounts were declared in his annual declarations.

The Commission noted that the candidate's initial explanation for not declaring his wife's bank accounts was that, at the time when he filled in the annual declarations, the funds on these accounts were not above 15 average salaries and therefore, were not to be declared. This explanation misstates the law. The requirement for declaring bank accounts only wh n the amount of the funds in the account exceeded 15 average salaries was not introduced into the law until 2016 (Law No.133/2016, art. 4 para. (1) lit. d), effective 1 August 2016).

At the public hearing, the candidate declared that a practice had been created by several judges according to which bank accounts that were used purely for salary paym nts were not declared, as the salary itself was already declared and included in the annual declarations. The candidate acknowledged that this practice was contrary to the law in force at the time.

The Commission found that the circumstances relating o the andidate and his wife and the non-declaration of three bank accounts were relevant for the evaluation of the candidate. The candidate declared the loan on his account and the sal ry and pension payments received on his wife's accounts. No suspicious transactions took place via any of the three accounts.The Commission also takes into account that the candidate acknowledged that the non-declaration of these bank accounts was an omission on his part and a violation of the law. The Commission furthermore did not find any benefit for the candid te not o disclose this bank account and did not find any other sources of income of the candid te or his wife, besides the ones declared by him. Although the bank accounts should have been disclosed, the candidate's failure to do so under the circumstances does not amount to a erious doubt about the candidate's financial integrity.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial 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 the non-declaration of three bank accounts, because the Commission did not establish an intention to hide any sources of income and the candidate mitigated the Commission's concerns regarding this issue.

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), e) and f) art. 13 para (5) of Law No. 26/2022, the Commission decided that the candidate is compliant with the ethical and financial integrity criteria and thus passes the evaluation.

V. Appeal and publication of the decision

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

within 5 days from receiving the decision.

Pursuant to art. 13 para. (7) of Law No. 26/2022, this decision is sent by email to the candidate and to the institution responsible for organizing the election or competition, which in the present case is the Superior Council of 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 de ision 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 Comm ssion will also publish the decision on its website if the candidate does not object to publication.

This decision was adopted unanimously by all participating members of the Commission.

Done in English and translated into Romanian.

Signature: 

Herman von HEBEL
Chairman, Commission