



Independent Evaluation Commission for assessing the integrity of candidates
for the position of member in the self-administration bodies of judges and prosecutors

Comisia independentă de evaluare a integrității candidaților la funcția
de membru în organele de autoadministrare ale judecătorilor și procurorilor

*Decision No. 48 of 31 July 2023 on the Candidacy of Vitalie SILI,
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 19 July 2023 and 31 July 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

Vitalie SILI, Dean of the National Institute of Intelligence and Security “Bogdan, the Founder of Moldova” („Bogdan Întemeietorul Moldovei”) of the Security and Intelligence Service of the Republic of Moldova, (“the candidate”) was on the list of candidates submitted by the Parliament to the Commission on 5 May 2023 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate has held various positions at the National Institute of Intelligence and Security of the Security and Intelligence Service (hereinafter “SIS”) of the Republic of Moldova since 2000 and has been an Associate Professor since 2015. Since 2019, the candidate has served as Dean of the National Institute of Intelligence and Security and since 2020 has been the chief editor of the journal “National Security Studies”.

On 12 May 2023, the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 1 June 2023. The candidate submitted the completed questionnaire to the Commission on 25 May 2023.

On 18 May 2023, the Commission sent a request to the candidate for completing and submitting by 25 May 2023 the Declaration of assets and personal interests for the past five years as required by art. 9 para. (2) of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter “Law No. 26/2022”). The declaration also includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. The candidate

submitted a completed declaration to the Commission on 25 May 2023.

The Commission obtained information from numerous sources in order to assess the candidate's financial and ethical integrity. The sources from which information was obtained concerning evaluated candidates generally included the National Integrity Authority, State Fiscal 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 the information collected, those issues were raised in written questions with the candidate and during the public hearing.

Written communication with candidate:

On 16 June 2023 the Commission sent to the candidate a request for clarifying information, containing 10 questions, including 30 sub-questions and 17 requests for further documentation. The candidate replied within the requested time period on 21 June 2023 to all questions and provided most of the requested documents.

On 23 June 2023, the Commission sent a second round of eight questions, including 20 sub-questions and 10 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 28 June 2023 to all questions and provided most of the requested documents. The candidate sent additional information on 3 July 2023.

On 4 July 2023, the Commission sent a third round of one question, including one sub-question, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 6 July 2023 to the question.

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

On 19 July 2023, the candidate took part in a public hearing of the Commission.

II. The law relating to the evaluation

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

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

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

Law No. 170/2007 regarding the status of intelligence and security officers (in force since 1 January 2008) was applicable over the period of time covered by the evaluation.

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

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

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

Art. 8 para. (5) of Law No. 26/2022 provides that in order to assess the applicant's financial integrity, the Commission is required to verify the following:

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

- f) whether or not donations exist, in which the candidate or the person established in art. 2 para. (2) has the status of donor or recipient of donation;
- g) other relevant aspects to clarify the origin and justification of the candidate's wealth.

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

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

Shifting the burden of proof to the candidate, once the evaluating body has identified integrity issues, has been found permissible by the European Court of Human Rights, even in the vetting of sitting judges who may lose their positions or otherwise be sanctioned as a consequence of the evaluation. In *Xhoxha v Albania*, no. 15227/19, §352, 31 May 2021 the Court stated that "it is not per se arbitrary, for the purposes of the "civil" limb of Article 6 § 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC [Independent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file".

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

III. Evaluation of the candidate

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

1. Loan of 12,000 EUR received from a close family member, purchase of apartment by candidate and use of apartment by close family member

a. The facts

In his 2019 declaration of assets and personal interests (hereinafter “annual declaration”), submitted to the National Integrity Authority according to Law No. 133/2016 on declaration of assets and personal interests, the candidate declared that he received a loan of 12,000 EUR (est. 236,040 MDL) that year from a close family member at 0% interest rate for the period of 2019 – 2021. In response to written questions from the Commission, the candidate explained that because of the family relationship and mutual trust, he did not enter into a loan contract with the close family member. Instead, the candidate signed a receipt for the funds and received a receipt for the repayment of the loan. The candidate provided to the Commission a copy of a receipt signed by him on 14 December 2019, acknowledging receipt on that day of 12,000 EUR from the close family member as loan for a period of two years. The candidate also provided a copy of a declaration dated 20 February 2021, signed by the close family member, acknowledging the family member’s receipt of 12,000 EUR from the candidate. He also informed the Commission that the loan was given to him in cash and that he repaid it in three installments: 50,000 MDL and 90,000 MDL were repaid in 2020 and 97,000 MDL was repaid in 2021. The 90,000 MDL payment was made from the proceeds of the sale of a car in 2020.

The candidate informed the Commission that part of the loan was used to purchase a Lexus RX450 model car, m/y 2014 and to pay the import taxes and the costs of some necessary repairs. According to information available to the Commission, on 4 December 2019, the candidate deposited 13,577 USD in cash in a bank account recorded as “payment in advance for purchase of a car”. The candidate informed the Commission that the funds for this deposit came from personal savings including some from a deposit account. The candidate purchased the car from an auction in late 2019 for the price of 12,300 USD and registered the car in the Republic of Moldova on 14 February 2020. The candidate confirmed that he paid the import tax on the car in the amount of 147,392 MDL. In his 2020 annual declaration, the candidate declared the purchase costs of the car as 13,565 USD (est. 237,647 MDL) and the market value as 24,000 EUR (est. 480,000 MDL). He explained the difference between these two prices by the fact that the car was damaged when purchased and was repaired thereafter. The candidate provided the Commission with documents demonstrating the payments for the purchase of the car and for the import tax. The candidate also provided the Commission with further information about some of the repair costs.

According to information from the State Tax Service, the candidate's close family member had total gross income of 838,303 MDL (est.41,000 EUR) for the period 2008 – 2019. In addition, the close family member's spouse had gross income during this period of 547,894 MDL (est.28,300 EUR). The combined income of the family member and the family member's spouse was 1,386,197 MDL (est. 69,300 EUR). In response to questions from the Commission, the candidate stated that this family member was receiving salary payments long before 2008 and was able to provide this loan to him in addition to paying living expenses.

The candidate also provided the Commission detailed information about his own income, cash savings and deposits made over the years.

Asked by the Commission at the hearing why the candidate took a loan from the family member for the purchase of a car, the candidate confirmed that he had purchased the car at an auction abroad in December 2019 with funds from personal savings. However, towards the end of that year, the Moldovan government decided to abolish the system of 50% preferential import duties for hybrid cars and full import duties were to apply as of January 2020. As the car purchased by the candidate was a hybrid car and he was not able to import the car before January 2020, the candidate was obliged to pay full customs duties rather than preferential duties. Consequently, the candidate decided to take a loan from his close family member and use part of the loan to pay custom duties and to make some repairs to the car. The candidate clarified that the loan represented a considerable part of the savings of the close family member and that therefore, he repaid the loan as quickly as possible during 2020 and 2021.

On 21 November 2016, the candidate donated an apartment of 43.1 sq.m. to the same family member that loaned him 12,000 EUR in 2019. This apartment had been acquired by the candidate in 2006 through a contract of investment in construction dated 24 August 2006 as part of a program for improvement of living conditions of SIS employees. In response to written questions from the Commission the candidate explained that his parents helped him financially in 2006 to purchase the apartment. He also explained that he "did not have any economic reasons or some benefits" from donating the apartment to his family member in 2016. Rather, that family member and that individual's partner and two children had a right of property over a one-room 33.4 sq.m. apartment located in Chisinau municipality. The candidate decided to donate his apartment to that family member and family as they needed this apartment more than the candidate.

At the hearing, the candidate confirmed that in 2006, the apartment, which was not yet constructed, was purchased by him with the financial assistance of his parents. At that time, the candidate was still living with his parents. The candidate also confirmed that he was eligible for the program for the improvement of living conditions, because of his position as an SIS employee. In 2008, the apartment was placed in operation. At the suggestion of the candidate's mother, it was then agreed that the candidate would not live in the apartment but that his close family member, the family member's spouse and two children would live there as they needed such a space more than the candidate. The candidate never lived in the apartment and did not invest in

any of the finalization and repair works to the apartment that were necessary after the apartment was placed in operation. These were paid for by the close family member. By the end of 2009, members of the close family member's family started living in the apartment as it was located close to the children's school. In 2016, the apartment was officially donated to this family.

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.

In addition, art. 8 para. (4) lit. b) and para. (5) lit. a), c), e) and f) of Law No. 26/2022 provides that the Commission is required to verify that a candidate's wealth acquired in the past 15 years corresponds to the declared revenues, to verify compliance with the tax regime related to the payment of taxes and the payment of import duty, to verify the method of acquiring the assets owned or possessed by the candidate or the persons referred to in art. 2 para. (2), to verify the existence of loans, credits or other agreements, where the candidate or the persons referred to in art. 2 para. (2) is a contracting party, and to verify the existence of donations, where the candidate or the persons referred to in art. 2 para. (2) have the status of donee or donor.

Pursuant to art. 8 para. (2) lit. a), a candidate shall be deemed to meet the criterion of ethical integrity if 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 activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

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

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

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

Art. 40 para. (2) lit. e) of Law No. 170/2007 regarding the status of information and security officers (in force in 2008 - 2009), provides that an intelligence officer is prohibited from the use of his position or his professional activity to obtain advantages for himself or for other people.

Annex No. 1 on "Deontological rules of the intelligence and security officer" to Law No. 170/2007 regarding the status of intelligence and security officers (in force in 2008 – 2009) provides under lit. c) that an intelligence and security officer will act in accordance with the legal provisions and the demands of the profession. Annex No. 1 lit. d) provides that an intelligence and security officer will not take part in any illegal activity and will not engage in acts that discredit the title of intelligence and security officer or the authority of the Security and Intelligence Service.

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

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

c. Reasoning

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 and that his wealth acquired in the past 15 years corresponds to the declared revenues as per art. 8 para. (4) lit. a) and b) of Law No. 26/2022.

In late 2019 the candidate received a loan of 12,000 EUR (est. 236,040 MDL) from a close family member at 0% interest rate for the period of 2019 - 2021 for the purchase, import and repair of a car. The candidate and his close family member did not use a written loan agreement but instead signed documents demonstrating the receipt of the loan by the candidate on 14 December 2019 and the full repayment of the loan to the close family member on 20 February 2021. The loan was made in cash and the candidate repaid the loan in three installments over the course of 2020 and the beginning of 2021. Both in response to written questions and at the hearing, the candidate provided detailed information about the purchase of the car and its import to the Republic of Moldova in February 2020. The candidate also explained why he needed the loan for the import and repairs of the car, in addition to his own savings. The Commission was able to identify the sources of funds for both the candidate and his close family member for the purchase of the car, the loan to the candidate and the repayment of the loan. The candidate also declared the loan in

his 2019 annual declaration. Any doubts the Commission could have had in relation to the purchase, import and repairs of the car and the source of funds for the purchase by the candidate and the loan by his close family member were fully mitigated by the candidate.

On 24 August 2006, the candidate purchased an apartment of 43.1 sq.m. through a contract of investment in construction as part of a program for improvement of living conditions for SIS employees. According to the candidate, his parents contributed financially to the purchase of the apartment. On 21 November 2016, the candidate donated the apartment to the same family member that gave him the loan of 12,000 EUR in 2019. In response to written questions by the Commission, the candidate explained that he donated the apartment to his close family member because this family member, together with partner and two children, had only the right of property over a small one-room 33.4 sq.m. apartment located in Chisinau municipality and they needed a bigger apartment.

At the hearing, the candidate confirmed that he bought the apartment in 2006, with the financial assistance of his parents, through a program for improvement of living conditions for SIS employees. At the time, the candidate was living with his parents and the apartment was under construction and was placed in operation in 2008. Originally, it was the intention that the candidate himself would move into the apartment once the construction was completed and the apartment was placed in operation. However, in 2008, at the instigation of the candidate's mother, it was agreed that the candidate's close family member, together with the family member's spouse and two children, would move into the apartment as they needed more living space than the candidate. At the hearing, the candidate informed the Commission that he never lived in the apartment and never invested in any of the finalization and repair works to the apartment that were necessary after the building was placed in operation in 2008. These investments were undertaken by his close family member and the family member's spouse. By the end of 2009, members of his close family member's family started to live in the apartment. In 2016, the apartment was officially donated to this family.

The Commission has addressed programs for the improvement of living conditions in other instances involving the use of such programs by judges and prosecutors. As the Commission observed in those cases, the very purpose of preferential housing programs is to use public means to improve living conditions for employees in the judicial or prosecutorial system. The Commission has consistently held that judges and prosecutors are obliged to refrain from any act or deed that may prejudice the image, prestige or legal interests of the public authority. Using one's position as a judge or prosecutor to take advantage of a program of improving living conditions intended to assist judges or prosecutors to instead benefit a family member is inconsistent with the standard of impeccable behavior expected of judges and prosecutors in their non-work related activities, as well as in their work-related duties. Although recognizing some differences in the ethical standards that apply to judges, prosecutors and intelligence employees, like the candidate, taking advantage of a such a program to benefit a close family member would be inexplicable from the point of view of a legal professional and an impartial observer, as per

art. 8 para. (2) lit. a) of Law No. 26/2022.

The Commission first notes that the candidate purchased the apartment in 2006. This falls outside the scope of the evaluation period of 15 years, as prescribed by art. 8, para. (4) lit. b) of Law No. 26/2022. The Commission is able, however, to assess the decision in 2008 by the candidate and his family that it would be the candidate's close family member that would move in and live in the apartment and the donation of the apartment in 2016 to this family member.

At the hearing, the candidate confirmed that he, and not his close family member, was eligible for the improvement of living conditions program. In principle, that circumstance raises concerns with the Commission. In order to determine whether the candidate was able to mitigate such concerns or engaged in a conduct that would be inexplicable from the point of view of a legal professional and an impartial observer, the Commission had to assess all relevant factors.

The candidate explained that he purchased the apartment in 2006, with the financial assistance of his parents, and that at the time of purchase, it was the intention that the candidate himself would move into the apartment, once the construction was completed and the apartment was placed in operation. This plan, according to the candidate, changed in 2008, two years after the purchase. At the instigation of the candidate's mother, it was then agreed that the close family member with the family member's spouse and two children would move into the apartment rather than the candidate, who lived with his parents.

The candidate never considered the apartment to be an investment and he never received any financial benefits from the apartment. The candidate never rented out the apartment once it was placed in operation in 2008. The candidate never lived in the apartment. He donated the apartment in 2016 to his close family member, rather than selling it at a profit. The candidate only made use of such a program for the improvement of living conditions on this occasion. In 2015, he bought an apartment for himself at a normal market price. Both in written responses to questions and at the hearing, the candidate provided detailed and consistent information to the Commission. The Commission was therefore able to conclude that in light of the specific circumstances in this case, the purchase of the apartment through a program of improvement of living conditions for which he was eligible and the decision not to have himself but his close family member and family live there and subsequent donation of the apartment to that family member does not rise to a level amounting to a failure of the ethical integrity criteria. The candidate has mitigated any concerns by the Commission in relation to the 2006 purchase, use and 2016 donation of the apartment.

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 integrity as per art. 8 para. (2) lit. a) and c) and the criterion of financial integrity as per art. 8 para. (4) lit. a) and b) and para. (5) lit. c), d), e) and f) of Law No. 26/2022 with respect to the loan from a close family member and donation of an apartment to the same family member because the candidate mitigated the Commission's concerns regarding this issue.

IV. Decision

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

V. Appeal and publication of the decision

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

Pursuant to art. 13 para. (7) of Law No. 26/2022, this decision is sent by email to the candidate and to the institution responsible for organizing the election or competition, which in the present case is the Parliament. 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 Parliament in a depersonalized form except for the surname and first name of the candidate that remain public. The Commission will also publish the decision on its website if the candidate does not object to publication.

This decision was adopted unanimously participating members of the Commission.

Done in English and translated into Romanian

Signature:



Herman von HEBEL
Chairman, Commission