Decision No. 17 of 18 January 2023 on the Candidacy of Stanislav SORBALO, Candidate for the Superior Council of Magistracy and the Disciplinary Board of Judges

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 30 November 2022 and 18 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

Stanislav SORBALO, judge at Bălți district court Central office, 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 membe of th Superior Council of Magistracy and Disciplinary Board of Judges.

The candidate was appointed as an investigative judge for five years on 17 June 2004 to serve in Bălți district court. The candidate was dismissed from the position of investigating judge at the Bălți district court by presidential decree No. 2290 of 31 July 2009. The judge was reinstated as a judge at the Bălți district court, Central office by Superior Council of Magistracy's decision No. 178/16 of 7 Ju y 2020. The presidential decree on the candidate's dismissal was annulled by the decree No. 1774 of 22 September 2020.

On 21 June 2022 the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 5 July 2022. The candidate submitted the complet d questionnaire to the Commission on 1 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 candidate submitted the completed declaration to the Commission on 13 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 the candidate and not all of the information produced by sources about the 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 du ing the public hearing.

Written communication with candidate:

On 15 August 2022, the Commission sent to the candidate a requ st for clarification of the submitted information, which contained seven questions, including 17 sub-questions and five requests for additional documentation. The candidate replied within the requested deadline on 18 August 2022 to all questions and provided most of the documents.

On 7 October 2022, the Commission sent a second round of ight questions, including 28 sub-questions and four requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 10 October 2022 to all questions and provided most of the r quested documents. The candidate indicated that additional information would be sen when available. On 13 October 2022, the candidate submitted an additional document.

On 2 November 2022, the Commission sent a third round of four questions, including 16 sub-questions and one reques for further documentation. The candidate replied within the requested time period on 4 November 2022 to all questions and provided the requested document.

On 16 November 2022 the Commission sent a fourth round of two questions, including two sub-questions and wo requests for further documentation. The candidate replied within the requested time period on 17 November 2022 to all questions and provided the requested documents.

Following the candidate's request, on 25 November 2022, the candidate was granted access to the ev luation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022.

On 30 November 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 *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 Eco omic Council, resolution 2006/ 23 ("Bangalore Principles of Judicial Conduct") provide rel van guidance.

Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Minister of the Council of Europe on the principles and rules governing judges' professional condu t, in particular ethics, incompatible behavior and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. N° 3") provides further guidance.

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

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

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

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

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

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

Shifting the burden of proof to the candidate, once the evaluating body has identified integrity issues, has been found permissible by the European Court of Human Rights, even in the vetting

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

Under art. 5 para. (1) of the Evaluation Rules of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administrative bodies of judges and prosecutors, approved on 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 ethical issue:

Failure to recuse himself in a decision that was related to a criminal case against his former lawyer

a. The facts

In 2008, the President of the Superior Council of Magistracy (hereinafter "SCM") initiated a disciplinary action against the candida e that resulted in a Disciplinary Board of Judges' decision of 23 December 2008 that sanctioned th appli ant with a "warning" for violating the obligation of impartiality and a seriou violation of judicial ethics. The decision was based on the fact that the candidate issued a decision on 15 August 2008 that declared illegal the conduct of searches at the office and home of a lawye that had represented the candidate in another criminal case in 2007.

The Disciplinary Board of Judges' decision was subject to appeal to the SCM within 10 days. On 13 January 2009, the author of the disciplinary procedure, the then President of the SCM, challenged the decision of the Disciplinary Board of Judges, arguing that the disciplinary sanction was too mild for the committed violations. The SCM established that the candidate examined and issued a decision on 15 August 2008 on the complaints regarding the searches of the office and home of a lawyer that represented the candidate as a victim in a criminal case based on a contract signed on 19 September 2007 (hereinafter "15 august 2008 decision"). The SCM referred to art. 33 para. (2) p. 6 of the Criminal Procedure Code that provided that a judge cannot participate in the examination of a case and shall be recused if there are reasons that cast doubt on his/her impartiality and to art. 34 para. (1) of the same Code that required the judge to submit a self-recusal motion in the circumstances provided by art. 33 of the same Code. The SCM also referred to art. 4 of the Code of Ethics of Judges that provided that a judge is obliged to refrain from examining any trial/case in which his/her impartiality could be questioned and will self-recuse in a trial/case when this is required by law. The SCM concluded that in this particular case, the

candidate was obliged to refrain from examining the complaints regarding the searches. The SCM further noted that the Disciplinary Board of Judges also found that the candidate committed imputable disciplinary violations (violation of the impartiality obligation and serious violation of judicial ethics, provided by art. 22 para. (1) lit. a) and k) of the Law No. 544/1995 on the status of judges) but applied a milder sanction in the form of a warning. The SCM considered that by failing to abstain from examining the searches related complaints, the judge seriously violated the principle of impartiality, raising doubts and suspicions in the society, affecting the respect toward the judiciary and causing serious damage to the prestige of justice. The SCM concluded that the candidate's behavior in the analyzed case was incompatible with the position of judge. By i s decision No. 14/1 of 22 January 2009, the SCM amended the decision of the Disciplinary Board of Judges of 23 December 2008, proposing to the President of the Republic of Moldova to dismiss the candidate from the position of investigating judge. On 31 July 2009, by the decree of the President of Moldova No. 2290/2009, the candidate was dismissed from his position of investigating judge.

The candidate challenged the SCM decision before the Chisinau Court of Appeal and the Supreme Court of Justice (hereinafter "SCJ"), but his challenges were dismissed by the Chisinau Court of Appeal decision of 21 April 2009 and the final SCJ decision of 7 uly 2009. The candidate mainly challenged the SCM decision on procedural grounds, in that the President of the SCM, as initiator of the disciplinary procedure, as well as the Prosecutor General that requested the SCM's consent to start a criminal investigation against the candidate, both participated in the deliberations and adoption of the SCM decision on candidate's ismissal.

In 2019, the European Court of Human Rights (ECtHR) informed the Moldovan government that it was examining a complaint by the candidate. The parties have not reached an amicable settlement yet, but the Governmental Agent n 24 December 2019 submitted a cassation request to the SCJ, requesting the SCJ to annul its decision of 7 July 2009 and expressly acknowledge the violation of the candidate's r ght guaranteed by art. 6 § 1 of the European Convention. On 5 February 2020, the SCJ annull d th SCJ decision of 7 July 2009 and acknowledged the violation of the candidate's right guaranteed by art. 6 § 1 of the European Convention. On 1 July 2020, the SCJ accepted the candid te's request, annulled the Chisinau Court of Appeal's decision of 21 April 2009 and issued a new decision by which the SCM decision No. 14/1 of 22 January 2009 that proposed he c ndidate's dismissal was annulled.

Following the last SCJ decision, the SCM reinstated the candidate on 7 July 2020. The candidate was paid a gross compensation of 1,883,000 MDL as salary for the entire period that he did not work as a judge (2009 - 2020). To date, the candidate has not been fully reinstated as judge. He does not have the right to examine cases. He has not yet passed an extraordinary evaluation in order to be appointed until the retirement age. On 2 October 2020, the candidate requested the SCM to undergo the extraordinary evaluation in order to be appointed until the retirement age but there was no follow up by SCM. Following the constitutional amendments of 23 September 2021 that abrogated the five-year appointment term for judges, in force since 1 April 2022, on 22 March 2022, the candidate requested the SCM to send the proposal for his appointment by the president until the retirement age. As of the date of this decision, he has not been appointed until the retirement age.

The candidate submitted to the Commission the 15 August 2008 decision by which he, then investigative judge at Bălţi district court, declared illegal the searches conducted on 3 April 2008 in the office and home (domicile) of a lawyer that represented the candidate in a traffic road accident case in 2007, where the candidate was a victim. Two legal entities located on the same address as the lawyer's office whose premises were searched challenged the searches on 23 May 2008 and the lawyer's former wife and two close relatives challenged the searches on the lawyer's home on 26 May 2008.

In written communication with the Commission, the candidate explained several details regarding the 15 August 2008 decision, which can be summarized as follows. The complaints about the searches conducted on 3 April 2008 were initially submitted to the Bălţi court. The complaints were then sent to the SCJ to determine jurisdiction. The SCJ decided that the Bălţi court was competent to examine the complaints. The complaints were resubmitted to the Bălţi court and then assigned by the president of the court to the candidate, who was according to him the only investigative judge at the court. Because he had not encountered similar situations before, the candidate informed the management of the court about the situation relating to his former lawyer. According to the candidate, both the court management and many other colleagues with more experience, including from the SCJ, convinced the candidate that if the complaint was not filed by his former lawyer, and the latter was not a party to the process, then there were no circumstances that would compel the candidate to self recuse from examining the complaints. Finally, the candidate examined in a closed session the complaints submitted on 23 and 26 May 2008 and issued the decision on 15 August 2008. In his answers to the Commission, the candidate emphasized that he was primarily guided by the fact that "no person can be searched without any legal basis and any documents or computers can be taken from him, for the simple reason that is in the same building as someone against whom a criminal case is pending, or because they once lived together, and on the basis of a search warrant issued by a person who does not have the legal authority to issue such procedural documents".

Asked about a potential conflict of interest between a judge and a lawyer that represented the judge, the candidate stated that "where one of the parties to the case before the judge is a lawyer who represented the judge in any type of case or procedure previously or in parallel with the case before the judge, he is certainly in conflict of interest and has the obligation to refrain from judging the case". In the situation described above, however, his former lawyer was not a party to the complaints examined by the candidate, because the complaints were submitted by third parties, and the complaints did not concern the lawyer.

At the public hearing, the candidate confirmed that he did not challenge the decision of the Disciplinary Board of Judges of 23 December 2008 that sanctioned him with a warning. He explained that because of the attitude of some persons, he did not see any reason for challenging the decision. The candidate also confirmed that during the examination of the complaints regarding the alleged illegal searches in 2008, he saw the name of the lawyer, who had represented him in 2007, on the file but did not consider it necessary to follow the legal procedure to submit a self-recusal motion. Instead, because he was at the start of his career as judge, he consulted with the court management and other colleagues with a richer experience on this issue. After studying the Criminal Procedure Code provisions, the commentary to this code and the feedback from his colleagues, the candidate was convinced that he did not need to submit a self-recusal motion

because the complaints were not submitted by his former lawyer, even though the complaints related to searches conducted in connection with a criminal case against his former lawyer.

At the public hearing, the candidate was asked whether he now considers that the examination of the complaints regarding the legality of the searches conducted on 3 April 2008 constituted a conflict of interest or not. The candidate emphasized that he only decided on the legality of two searches that were conducted illegally in his view regarding two legal entities and a family that had nothing to do with the candidate's former lawyer. Asked about the express references to his former lawyer in the multiple places in the decision, in particular several paragraphs on pag 5 of the 15 August 2008 decision and the conclusion on page 6 that the searches conducted on 3 April 2008 violated the professional activity of his former lawyer, the candidate stated that h lawyer is not referred to in the final / resolutory part of the 15 August 2008 decision as the reason for his opinion that the decision did not concern his former lawyer. During the hearing, the andidate asked permission from the Commission's Chair to make a phone call and "for all to hear some things that will help shed light in everything" [related to the two complaints]. He further stated that he wanted to call one of the persons that was searched back in 2008, in order to explain what was seized from him during the search, which was never returned to him. This information, in the candidate's view, should clarify for everyone what has happened in reality and how he could not close his eyes to the committed illegalities.

According to legal provisions in force at that time (art 313 para. (3) of the Criminal Procedure Code), the complaint against illegal searches should be submitted within 10 days of the searches. Asked about the legal basis for examining c mplaints submitted almost two months after the searches were conducted, the candidate stated tha he does not remember all the details about this case and namely how he could examine c mplaints submitted on 23 and 26 May 2008 regarding searches that took place on 3 April 2008. On 1 December 2022, after the hearing, the candidate wrote to the Commission explaining that he checked the archive of the Bălţi Court and found that the petitioners contested th sea ches a the Anti-corruption Prosecution Office according to the legal provisions of art. 298 of he Criminal Procedure Code (in force in 2008), when they found out about them, because the searches took place in their absence. After receiving an unsatisfactory answer, they challenged it in the Bălţi Court, according to legal provisions of art. 300 and 313 of the Criminal Procedure Code. However, the 15 August 2008 decision mentions expressly that two petitioners (relatives of the candidate's former lawyer) were present during the searches in the lawyer's former home.

b. The law

A t. 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.

According to art. 33 para. (2) lit. 6) of the Criminal Procedure Code (in force in 2008), the judge cannot participate in the trial of the case and is to be recused if there are circumstances that reasonably doubt his/her impartiality. According to art. 34 para. (1) of the Criminal Procedure

Code, in the circumstances provided for in art. 33, the judge is obliged to make a declaration of self-recusal from judging the case.

According to art. 15 para. (2) of the Law No. 544/1995 on the status of judges (in force in 2008), judges in exercising their functions, as well as outside of working relations, are obliged to refrain from acts that could discredit the judiciary, to compromise the honor and dignity of judges or to provoke doubts regarding their objectivity.

According to art. 313 para. (1) of the Criminal Procedure Code (in force in 2008), complain s against illegal actions and acts of the criminal investigation body and of the bodies exercising operative investigative activity may be submitted to the investigating judge by the suspect, accused, defender, aggrieved party, other participants in the trial or by other persons the legitimate rights and interests of which these bodies have violated, if the person does not agree with the result of the examination of his complaint by the prosecutor or has not received a response to his complaint from the prosecutor within the time limit provided by law.

According to art. 313 para. (3) of the Criminal Procedure Code (in force in 2008), the complaint may be submitted, within 10 days, to the investigating judge t the location of the body that admitted the violation.

According to art. 3 para. (3) of Judge's Code of Ethics approved by Decision No. 366/15 of the Superior Council of Magistracy on 29 November 2007, "a judge must refrain from any behavior, action or manifestation that could prejudice the public' trust in the judicial system". According to art. 4 of the same Code, "a judge is obligated t refrain from any proceedings in which his/her impartiality could be questioned and shall call for self-recusal in any proceedings in which this is required by law, including in cases when: (a) he/she has his/her own bias or prejudice towards one of the parties, or personally has information on the disputed evidence relating to the proceedings; (b) he/she is aware that he or she, personally or as a custodian, or his/her spouse or other close relatives have a financial interest in the subject matter of the dispute or any other interest that could sub tantially affect the outcome of the proceedings".

The Constitutional Court of Moldova in its Decision No. 18/2017 referenced the aspect of impartiality of judg s, stating that when examining the guarantees of a fair trial, the European Court established that the judge's impartiality is assessed both according to a subjective approach, which takes into account the judge's personal beliefs or interests in a case, and according to an objective test, which determines whether the judge has offered guarantees sufficient to exclude any reasoned doubt from this point of view *(Demicoli v. Malta, 27 August 1991, Series A no. 210)*

According to the Bangalore Principles of Judicial Conduct, Principle 2 "Impartiality" states in Principle 2.5: "A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially".

As per the Commentary on the Bangalore Principles of Judicial Conduct (2007), "among others, a reasonable apprehension of bias might be thought to arise in the following circumstances: "if

there is personal friendship […] between the judge and any member of the public involved in the case or if the judge is closely acquainted with any member of the public involved in the case". (para. 90).

According to 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 pub i trust) – such as the occasion of an ordinary traffic violation;
c) or not being perceived by an objective observer as an attitude of disrespect for the social order arising from disregard for its rules and regulations.

c. Reasoning

The Commission noted that on 15 August 2008, the candidate issued a decision that declared illegal searches conducted on 3 April 2008 in the office and former home of a lawyer who represented the candidate in a traffic road accident case in 2007, in which the candidate was a victim. The lawyer's representation of the candidate in the traffic case was initiated less than a year prior to the candidate's decision in the case challenging the legality of the searches (legal representation contract signed on 19 Septembe 2007 and the decision issued on 15 August 2008). The candidate's decision was issued in response to complaints submitted by two legal entities (located at the same address as the lawy r's office whose premises were searched) and by the lawyer's former wife and two close re atives

On these facts, the Disciplinary Board of Judges sanctioned the candidate with a warning for violating the obligation of impartiality and seriously violating the judicial ethics, a sanction that the candidate never challenged. The Disciplinary Board of Judges' sanction was modified later by the SCM to propose th candidate's dismissal, which the President of the Republic of Moldova implemented by decre . The candidate challenged the SCM decision primarily on procedural grounds and the ca didate's case before the ECtHR in that regard remains pending.

The legal framework on impartiality of judges and refraining from any acts that cast doubt on it are clear and foreseeable. These standards require from a judge to seek to recuse himself/herself when there are circumstances that reasonably doubt his/her impartiality (art. 33 para. (2) p. 6) and ar 34 para. (1) of the Criminal Procedure Code). The Judge's Code of Ethics of 2007 imposes simil r obligations on the judges. According to the well-established case-law of the ECtHR, even appearances may be of a certain importance, and that justice must not only be done, it must also be seen to be done. Judges should comply with both subjective and objective tests of impartiality. Appearance of partiality under the objective test is to be measured by the standard of an objective observer. It is considered that the personal friendship between a judge and any member of the public involved in the case or close acquaintance of a judge with any member of the public involved in the case might give rise a reasonable apprehension of bias. The above standards serve to promote the confidence which the courts in a democratic society must inspire within the public

(See, *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII)". A judge who was represented less than a year before by a lawyer cannot but cast doubts regarding his/her impartiality when examining any cases related to that lawyer. The Commission raised this issue with the candidate in written communication and during the public hearing.

In written communication with the Commission and during the public hearing, the candidate maintained that there were no grounds for him to submit a self-recusal motion and therefore examined the two complaints that led to his decision of 15 August 2008. He explained that he came to that conclusion after studying the Criminal Procedure Code provisions, the commentary to this code and the feedback from the court management and more experienced colleagues, who advised the candidate that he did not need to submit a self-recusal motion because the complaints were not submitted by his former lawyer. The Commission cannot accept this line of argumentation by the candidate. The mere fact that the candidate raised the issue of his participation in the examination of the two complaints with the court management and more experience colleagues, as the candidate informed the Commission confirms that even the candidate had some doubts about his participation. The fact that the candidate, instead of following the well-established legal framework requiring judg s with doubts about potential conflicts of interest to submit self-recusal motions, chose the path of informal consultations with the court management and more senior colleagues, shows h sitation of the candidate regarding how to follow the rules, which is a negative indicator for a judge The Commission noted that the candidate was very firm in his position and tried to convince the Commission that he was fully respecting the legal provisions, never conceding that he might have misinterpreted the relevant legal requirements.

In addition, the candidate insisted that his decision of 15 August 2008 did not relate to his lawyer because he did not refer to him in the fi al/resolutory part of the decision. The Commission cannot accept this argument either factually or l gally. The Commission noted that the decision contains references to the candidate's former lawyer throughout the decision. Moreover, on page 6 of the 15 August 2008 decision the andidate concluded that the searches conducted on 3 April 2008 violated this lawyer's professional activity. Even if the candidate's decision had no legal effect on the criminal case involving his former lawyer, the reference to the lawyer and conclusion that the lawyer's professional activity was violated would cause a reasonable observer to believe that the candidate was ot impartial and had not refrained from presiding over a matter involving a person closely associated with the candidate. The references to the lawyer evidence the need for the candidate to have had recused himself from examining the complaints and not to preside in circumstances that would give rise to doubts about his impartiality.

The Commission noted the candidate's attempt during the hearing to call a person who the candidate said was affected by the searches of 3 April 2008. In the Commission's view, this attempt shows the candidate's total lack of understanding of his obligations when it comes to impartiality. No matter how compelling the claimants' challenges or how illegal the search, the case should have been decided by an impartial magistrate. The righteousness of a party's claims do not permit judges to preside over cases where they have a conflict of interest or where their impartiality can reasonably be questioned.

Moreover, the Commission noted that the candidate could not explain at the public hearing why

he accepted to examine the complaints on illegal searches submitted almost two months after the searches, while the legal provisions clearly provided a timeframe of 10 days for challenges the searches (art 313 para. (3) of the Criminal Procedure Code, in force in 2008). The candidate provided further explanation in writing after the hearing. However, in his explanations the candidate contradicted what was stated in the decision. Namely, he told the Commission that the petitioners were not present during the searches whereas the 15 August 2008 decision clearly indicates at least regarding two petitioners that they were present. The lack of a clear explanation of the reasons why the candidate accepted the examination of the complaints beyond the framework provided by law and contradictory explanations provided by the candidate contributes to the serious doubts about the candidate's lack of impartiality in examining these complaints. At a minimum, the candidate upholding challenges to a search of his former lawyer's premises hat might have been time-barred contributes to an appearance of bias and impropriety.

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 the candidate's fai ure t recuse himself in a decision that was related to a criminal case against his former lawye which have not been mitigated by the candidate.

IV. Decision

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

V. Appeal and publication of the decision

Pursuant to art. 14 para. (1) of L w 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 re ponsible for organizing the election or competition, which in the present case is the Superi r 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 p blish 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