Decision No. 54 of 28 December 2023 on the Candidacy of Mihail SORBALA, Candidate for the Superior Council of Prosecutors

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 20 December 2023 and 28 December 2023. The members participating were:

1. Herman von HEBEL
2. Victoria HENLEY
3. Nadejda HRIPTIEVSCHI
4. Tatiana RĂDUCANU
5. Nona TSOTSORIA

The Commission delivers the following decision which was adopted on that date:

I. The procedure

Mihail SORBALA, associate professor and Head of Department, Free International University of Moldova (ULIM) ("the candidate"), was on th list of candidates submitted by the Government of the Republic of Moldova to the Commission on 15 August 2023, for evaluation for the position of member of the Superior Council of Prosecutors.

The candidate graduated law school in 2007. He worked as police officer in Dondușeni Police Office between 2007 – 2008 and lawyer with different companies (S.R.L.) since 2010. Since 2017 the candidate worked as lecturer in various administrative and teaching positions, at ULIM. The candidate has been a licensed lawyer and member of the Moldovan Lawyer's Union since December 2018, with suspended license since February 2019. In 2018 the candidate obtained a PhD in Law.

On 13 September 2023, the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 20 September 2023. The candidate submitted the completed questionnaire to the Commission on 20 September 2023.

On 13 September 2023, the Commission sent a request to the candidate for completing and submitting by 20 September 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 20 September 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 collected information, those issues were raised in written questions with the c ndidate and during the public hearing.

Written communication with candidate:

On 16 October 2023 the Commission sent to the candidate a request for clarifying information, containing eight questions, including 19 sub-questions and 13 requests for further documentation. The candidate replied within the requested time period on 21 October 2023 to all questions and provided all of the requested documents.

On 1 November 2023, the Commission sent a second round of three questions, including seven sub-questions and five requests for further documentation, to clarify some issues that came out during the evaluation. The candidate eplied within the requested time period on 3 November 2023 to all questions and provided all of the requested documents.

On 14 November 2023, th Commission sent a third round of two questions, including six sub-questions and two requ sts for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 18 November 2023 to all questions nd provided all of the requested documents.

On 22 N vember 2023, the Commission sent a fourth round of one question and one request for further document tion, to clarify some issues that came out during the evaluation. The candidate replied wi hin the requested time period on 23 November 2023 to the question and provided the requested documentation.

On 7 December 2023, the Commission sent a fifth round of one question, including three sub-questions and two requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 9 December 2023 to all questions and provided all of the requested documents.

On 15 December 2023, the Commission sent a six round of three questions, including four sub-questions and two requests for further documentation, to clarify some issues that came out during

the evaluation. The candidate replied within the requested time period on 18 December 2023 to all questions and provided all of the requested documents.

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 20 December 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 e hical 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 o meet the criterion of ethical integrity if:

a) he/she has not seriously violated the rules of e hics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inact ons, which would be inexplicable from the point of view of a legal professional and an impartial observer;
b) there are no reasonable suspicions hat 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.

In the absence of rules of thics and conduct approved for the field in which the candidate works or has worked, it shall be verified whether or not the past conduct of the candidate gives rise to reasonable doubts as to his/her compliance with the ethical and conduct standards established for judges and prosecutors (art. 8 para. (3) of Law No. 26/2022).

A numbe 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 Magis racy 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 *C mmentary to the Code of Judges' Ethics and Professional Conduct*, approved by Superior Council of Magistracy's decision No. 230/12 of 8 May 2018. Since 2018, the *Guide for Judges' Integrity* approved by the Superior Council of Magistracy's decision No. 318/16 of 3 July 2018 is another relevant source for the purpose of assessing judicial integrity issues.

Also, the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on

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

Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality adopted on 19 November 2002 ("CCJE (2002) Op. N° 3") provides further guidance.

A number of versions of ethical codes applied to prosecutors over the period of time covered by the evaluation. The codes were *Prosecutor's Code of Ethics,* approved by he Prosecutor General order No. 303/35 of 27 December 2007, *Prosecutor's Code of Ethics,* approved by the Superior Council of Prosecutors' decision No. 12-3d-228/11 of 4 October 2011, *Prosecutor's Code of Ethics and Conduct*, approved by Superior Council of Prosecutors' decision No. 12-173/15 of 30 July 2015 and *Prosecutor's Code of Ethics*, approved by the General Assembly of Prosecutors' decision No. 4 of 27 May 2016, amended by General Assembly of Prosecutors' decision No. 1 of 22 February 2019.

Opinion No. 13 (2018) of the Consultative Council f European Prosecutors (CCPE) on the "Independence, accountability and ethics of prosecutors", adopted on 23 November 2018 ("CCPE (2018) Op. No. 13") provides further guidance.

For lawyers, the *Code of Ethics of Lawyers from the Republic of Moldova*, adopted by Congress of Lawyers on 20 December 2002, with amendments adopted by Congress of Lawyers of 23 March 2007 and 1 July 2016, was applied 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 integri y if:

a) the cand date 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 corr sponds to the declared revenues.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a ve ificat on 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 per ons 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 pers ns referred to in art. 2 para. (2);
e) existence or not of loan, credit, leasing, insurance or other contra ts 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 f 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 nformation. 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 v tting in Kosovo, "In a system of prior integrity checks, the decision not to recruit a candid te can be justified in case of mere doubt, on the basis of a risk assessment. However, the dec sion to negatively assess a current post holder should be linked to an indication of improp iety, 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 ch cking 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. 2 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 (hereina ter "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 finan ial issue:

1. Method of acquisition and source of funds for an apartment in Chişinău

a. The facts

According to e-Cadastru information, on 18 July 2023, the candidate and his wife registered a 42.2 sq.m. apartment in Chișinău (hereinafter "the apartment"), acquired through a sales-purchase contract of 17 July 2023. The candid te pro ided a copy of the sales-purchase contract to the Commission. Points 3.1 and 3.2 of this contract provide the following: "3.1 The price is the amount of 410,000 MDL. 3.2 The price is established by the parties by mutual agreement and was paid starting on 13.10 2017 before signing this contract, in full, in cash, in MDL, to sellers."

In written communication with the Commission, the candidate was asked to provide details about the amount and date of each payment towards the purchase price of 410,000 MDL (est. 20,000 EUR), the candidate s relationship with the sellers of the apartment and why the candidate began paying for the apartment on 13 October 2017 instead of paying after concluding a sales-purchase contract. The candidate replied that he sent the first instalment for the apartment in the amount of 190,000 MDL to the seller of the apartment, on 13 October 2017, and the remaining amount of th apartment's purchase price was paid in equal payments, not less than 3,000 MDL/month or 9,000 MDL quarterly, until the total amount was paid. The final payment of 9,000 MDL was made on 15 July 2023.

The candidate further explained that he is not related to the sellers of the apartment, but he knew them before buying the apartment. He also explained that he chose to begin paying for the apartment starting on 13 October 2017, before concluding any contract, because he did not have the total amount to be paid for the apartment at that time and this was the most opportune payment option in order for him to be able to cover the total amount. The candidate presented a copy of a

receipt handwritten by him dated 13 October 2017, countersigned by the seller (also the owner) of the apartment. The receipt states that the owner received the amount of 190,000 MDL on 13 October 2017, the date of transferring the right to use over the property. It also states that the owner has the obligation to transfer full ownership rights to the candidate when the full amount of the apartment's price (indicated in the receipt) has been paid. The receipt further states that he candidate (the purchaser of the apartment) commits to make equal payments of at least 3,000 MDL per month or 9,000 MDL quarterly. In addition, the candidate presented the Commission a document containing a list of 25 rows of dates, amounts and signatures, appearing to reflect payments for the apartment, with the first entry on 13 October 2017 in th amount of 190,000 MDL and the final entry on 15 July 2023 in the amount of 9,000 MDL. As wi h the receipt, this document is handwritten.

Regarding the sources of payment for the apartment, the candidate expl ined that he used 100,000 MDL that his wife had received as a gift from her parents prior o h r marriage to the candidate in 2013. She had kept these funds in a bank for a while but withdrew them in 2015 because of rumors of possible bankruptcies for the banks. The candidate also indicated that he also used 120,000 MDL that he had received in connection with his and his wife's marriage and kept in cash. He explained that he and his wife kept both amounts, totaling 220,000 MDL, in cash with the intent to buy real estate. The candidate also indicated that the first instalment of 190,000 MDL for the apartment on 13 October 2017 was paid from these savings. He further explained that he paid two additional instalments totaling 20,000 MDL from these savings by the end of 2017 and used the remaining 10,000 MDL for current needs in October 2017. The candidate further explained that he paid the remainder of the apartment's purchase price in instalments during 2018 - 2023 from his and his wife's salaries and from a loan that he contracted in 2018. He also stated that he and his wife lived at his wife's parents' apartment between 2013 - 2017 and hence their living expenses were modest during that time.

At the hearing, the candidate confirmed the information that he provided during the written procedure to the Commission. The candidate confirmed that he and his family moved into the apartment on 13 October 2017, after the first instalment for the apartment was paid. The candidate also expl ined that he and his wife knew the apartment's owners prior to the purchase of the apartment becaus the candidate's wife and the owner's wife come from the same city outside Chisinau The candidate further stated that the manner in which they bought the apartment, specifically signing the contract only after the full purchase price was paid and making the instalment payments in cash, confirmed only in a handwritten receipt, was chosen by the owner. The candidate admitted that he and his wife were aware of the risk involved in such a transaction, but they accepted the risks because they knew the owners, trusted them and also because the price for the apartment was a good one. He explained that he suggested a different approach to the former owners, specifically to register the apartment at the Public Services Agency in the name of the buyer (the candidate) and also register the relevant restrictions on the apartment [until the full price was paid], but the owner did not accept this approach. The candidate also explained that

he and his wife considered taking a loan to buy the apartment, but they did not pursue this option in view of the high interest rates that they would have had to pay to the bank.

At the hearing, the candidate also confirmed the sources of funds for the apartment, namely a gift of 100,000 MDL received by his wife from her parents prior to her marriage to the candidate, an amount of 120,000 MDL collected at the candidate's and his wife's marriage and the salari s of the candidate and his wife. The candidate confirmed that all payments for the apartment were made in cash, as reflected in the handwritten information and signatures in the document attached to the receipt of 13 October 2017. The total amount of the instalments indicated n th document attached to the receipt of 13 October 2017 is the amount of the purchase price indicated in the sales-purchase contract of 17 July 2023. According to information available o th Commission, the price indicated in the sales-purchase contract of 17 July 2023 correspond to the average market price for similar apartments in 2017.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate's wealth acquired in th past 15 years corresponds to declared revenues, pursuant to art. 8 para. (4) lit. b) of Law No. 26/2022. Pursuant to art. 8 para. (5) lit. c) and d) of Law No. 26/2022, in order to assess the candidate's financial integrity, the Commission is also required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2022 and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

Art. 2 para. (2) of Law No 26/2022 provides that the evaluation of candidates includes a verification of assets of close p rsons, 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/w fe, 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) ".

c. Reasoning

The Commission is required to verify sources of income and the method of acquiring assets owned or possessed by the candidate, family members and close persons to the candidate. The Commission must also verify that the candidate's wealth acquired in the past 15 years corresponds to declared revenues.

The Commission had concerns regarding the candidate's method of acquisition of the apartment, specifically the fact that the candidate paid for the apartment in instalments, over five years, prior to concluding a sales-purchase contract. When asked about this, the candidate presented a copy of a receipt handwritten dated 13 October 2017, signed by him and the owner of the apartment. The receipt states that the owner received the amount of 190,000 MDL on 13 October 2017, the date of transferring of the right to use over the property. It also states that the owner has the obligation to transfer full ownership rights to the candidate when the full amount of the apartment's price (indicated in the receipt) was paid. The receipt further state that the buyer commits to make uniform payments of at least 3,000 MDL per month or 9,000 MDL per trimester. In addition, the candidate attached a handwritten document that contained a li t of dates, amounts and signatures. The list was comprised of a total of 25 rows, which seem o refl ct payments for the apartment, with the first entry on 13 October 2017 in the amount of 190,000 MDL and the final one on 15 July 2023 in the amount of 9,000 MDL. The candidate admitted that he and his wife were aware of the risks involved with the lack of a sales-purchase contract for the apartment, but they accepted these risks in view of the fact that they wanted to buy the apartment, the price was a good one and they knew and trusted the owners.

The Commission found the candidate's explanations r garding the manner of acquisition of the apartment credible because the candidate provid d consistent explanations in written communication and during the hearing and provided supporting documentation. The Commission also noted that the total amount of the inst lments listed in the document attached to the receipt of 13 October 2017 coincided with the amount indicated in the sales-purchase contract for the apartment, which was registered according to the procedures required by law. The price did not raise any concerns as it was comparable to the average market prices for similar apartments at that time.

The Commission had also concerns regarding the sources of funds used to purchase the apartment. The candidate provided clear and consistent explanations regarding the sources of funds for the apartment in written communication and at the hearing. In particular, the Commission notes that the source of 100,000 MDL indicated by the candidate as a gift received by his wife prior t their marriage was traceable as it was kept for a while in a bank and withdrawn in 2015. The Commission was able to assess the income of the wife's parents, which allowed th m to make such a gift. The candidate further explained that he and his wife also collected 120,000 MDL at their wedding (2014) and kept this money in cash. The Commission took into account the fact that the candidate and his wife lived with the candidate's wife's parents between 2013 - 2017, which allowed them to spend less on living expenses. The first three instalments for the apartment, totaling 210,000 MDL, were paid from these two sources (100,000 MDL gift and 120,000 MDL wedding collection). All further payments for the apartments were made in amounts ranging from 3,000 MDL to 9,000 MDL from the candidate and his wife's salaries and from a loan contracted in 2018. The candidate's and his wife's salaries were sufficient to make such payments.

In summary, the Commission noted that the candidate's explanations, both in writing and at the hearing, established the authenticity of the method in which he and his wife bought their apartment. Due to consistent and sufficient explanations and the documentation presented, the Commission's doubts regarding the source of funds for buying the apartment were mitigated by the candidate.

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 integrity as per art. 8 para. (4) lit. b) and para. (5) lit. c) and d) of Law No. 26/2022 with respect to the manner of acquisition and sources of funds for buying an apartment because the candidate's detailed and consistent explanations and documentation provided 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 Government of the Republic of Moldova. 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 Government of the Republic of Moldova 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 by all participating members of the Commission.

Done in English and Romanian.

Signature: 

Herman von HEBEL,
Chairman, Commission