



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. 14 of 28 May 2024 on the Resumed Evaluation of Veronica CUPCEA,
Candidate for the Superior Council of Magistracy and
the Board for the selection and evaluation 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 14 March 2024 and 28 May 2024. The members participating were:

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

Tatiana RĂDUCANU resigned as member of the Commission on 14 May 2024 and did not participate in the adoption of the decision.

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

I. The procedure

Veronica CUPCEA, judge at Orhei Court (“the candidate”), was on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 6 April 2022 for evaluation for the positions of member of the Superior Council of Magistracy and the Board for the selection and evaluation of judges.

The candidate was appointed as a judge on 11 June 2007 to serve in Orhei Court. The candidate was appointed as a judge until the retirement age on 16 August 2012. On 24 December 2010, the candidate was appointed as president of Orhei Court for a four-year term. On 5 November 2015, the candidate was appointed for another term of four years as president of Orhei Court.

The candidate was initially evaluated by the Commission (hereinafter “initial evaluation”) starting on 8 July 2022. The candidate submitted the voluntary ethics questionnaire on 1 July 2022. On 13 July 2022, the candidate submitted a completed Declaration of assets and personal interests for the past five years (hereinafter „five-year declaration”) 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”), which includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. During the initial evaluation, the Commission collected

information from multiple sources.¹

The candidate also responded to written questions and requests for information from the Commission.² Following the candidate's request, on 13 December 2022, the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022. On 16 December 2022, the candidate participated in a public hearing before the Commission. The Commission issued its decision failing the candidate on 11 January 2023.

On 6 February 2023, the candidate appealed the Commission's decision to the Supreme Court of Justice (hereinafter "SCJ") pursuant to art. 14 para. (1) and (2) of Law No. 26/2022. On 1 August 2023, the SCJ special panel for examining the appeals against the decisions of the Commission (hereinafter "SCJ special panel") issued its decision accepting the candidate's appeal, annulling the decision of the Commission and ordering the re-evaluation of the candidate.

The Commission commenced the resumed evaluation of the candidate on 8 September 2023. The Commission collected additional information from various sources as needed to address the issues being considered in the resumed evaluation.

The candidate received a statement of facts and serious doubts from the Commission on 14 February 2024. Following the candidate's request, on 20 February 2024, the candidate was granted access to the resumed evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022. The candidate responded to the statement of facts and serious doubts on 21 February 2024. The candidate requested a public hearing. The candidate presented additional documentation on 23 February 2024. On 14 March 2024, the candidate appeared at a hearing before the Commission.

II. The law relating to the evaluation and resumed evaluation

Law No. 180/2023 for the interpretation of certain provisions of Law No. 26/2022 on some measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors and Law No. 65/2023 on external evaluation of judges and candidates for the position of judge at the Supreme Court of Justice of 7 July 2023 (hereinafter "Law No. 180/2023"), states that, for the purpose of art. 3 para. (2) and art. 4 para. (2) of Law No. 26/2022, the Commission is not a public authority under the Administrative Code.

¹ 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.

² The Commission sent 4 rounds of questions to the candidate, including 26 questions, 77 sub-questions and 41 requests for further documentation.

The SCJ special panel concluded that Law No. 180/2023 consolidated the understanding that the Evaluation Commission is a public authority specific in its way, i.e. is not a legal entity of public law. The SCJ special panel further stated that, pursuant to art. 72 para. (6) of Law No. 100/2017 regarding the normative acts, an interpretative normative act shall not have retroactive effects, except for cases when the interpretation of sanctioning provisions would create a more favorable situation. The SCJ special panel ordered a resumed evaluation, which took place after the entry into force of Law No. 180/2023; thus, Law No. 180/2023 applies to the resumed evaluation.

Guided by the aim of upholding the fundamental principles of the rule of law (art.1 para. (3) of Constitution), sovereignty and state power (art. 2 of Constitution), the Commission's decisions are adopted in accordance with the law, pursue the legitimate aims listed in Law No. 26/2022, and the outcome is necessary for a democratic society to achieve the aim or aims concerned.³ 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) in order to increase the integrity of future members of the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and prosecutors and in the justice system overall (preamble to Law No. 26/2022). Increasing the confidence of society in the judicial system and the proper functioning of these institutions concern matters of great public interest.⁴ The Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe (hereinafter "Venice Commission and the DGI") observed that the integrity evaluation is not being applied to judges or prosecutors with respect to their roles as such judges or prosecutors and is thus not engaging the independence of their role. However, it is a crucial part of the Moldovan structure of governing the justice system that judges and prosecutors serve from time to time on the self-administration bodies and noted that these are more than administrative positions; they are crucial roles in ensuring the good governance of these bodies in the justice system. Accordingly, the Venice Commission and the DGI further observed that the personal integrity of the members that constitute the Superior Councils (of judges and prosecutors) is an essential element to the nature of such bodies; it ensures the confidence of citizens in justice institutions – trust in magistrates and their integrity. In a society that respects the fundamental values of democracy, citizens' trust in the action of the Superior Councils depends very much, or essentially, on the personal integrity, competence, and credibility of its membership.⁵ Venice Commission Opinion No. 1069/2022 specifically noted that the creation of ad hoc bodies to assess the integrity of judges and

³ *Mutatis mutandis, Xhoxhaj v. Albania*, no. 15227/19, para. 378, 31 May 2021; *Nikëhasani v. Albania*, no. 58997/18, para. 93, 13 December 2022.

⁴ *Baka v. Hungary* [GC], no. 20261/12, para. 171, 23 June 2016; *Morice v. France* [GC], no. 29369/10, para. 125, ECHR 2015.

⁵ Joint opinion No. 1069/2021 of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts, 13 December 2021 (hereinafter "Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022"), para. 15 and 11.

prosecutors is based on the assumption that the justice system has extremely serious deficiencies and that there are systemic doubts about the integrity of magistrates.⁶

Regarding the justification for vetting procedures, both in the Albanian and Ukrainian contexts, the Venice Commission repeatedly commented that the extraordinary measures to vet judges and prosecutors were “not only justified” but were “necessary for Albania to protect itself from the scourge of corruption which, if not addressed, could completely destroy its judicial system”.⁷ In those contexts, the Venice Commission also took into account existing major problems with corruption and incompetence in the judiciary, political influence on judges’ appointments in the previous period, and the almost complete lack of public confidence in either the honesty or the competence of the judiciary.⁸ In a 2019 opinion on a draft law in Moldova that included vetting of SCJ judges, the Venice Commission and the DGI took note of the assessment made by the authorities, in particular, two resolutions of the European Parliament⁹ that “*in the last years the justice system has shown an unprecedented lack of independence and submission to oligarchic interests*” and that “*national and international institutions have declared the Republic of Moldova a captured state.*”¹⁰ The Venice Commission and the DGI also noted that it ultimately fell within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary creates sufficient basis for subjecting all judges and prosecutors, as well as members of the Superior Council of Magistracy and Superior Council of Prosecutors, to extraordinary integrity assessments.¹¹ As the European Court of Human Rights (hereinafter “ECtHR”) has held on many occasions, national authorities, in principle, are better placed than an international court to evaluate local needs and conditions.¹² A recent opinion of the Venice Commission in relation to Georgia reached similar conclusions about the need for an inclusive national consultative process to address possible reform measures including evaluating the integrity of members of that nation’s High Council of Judges in light of persistent allegations of lack of integrity in the High Council. The opinion expressly noted the temporary option of using mixed national/international advisory boards to facilitate that procedure.¹³

⁶ Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, paras. 11-12.

⁷ Venice Commission Final Opinion No. 824/2015 on the revised draft constitutional amendments on the judiciary of Albania, 15 January 2016, para. 52.

⁸ Joint opinion No. 801/2015 of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) on the Law on the Judicial System and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine, 23 March 2015, paras. 72-74.

⁹ Resolution of 5 July 2018 on the political crisis in Moldova following the invalidation of the mayoral elections in Chişinău (2018/2783(RSP) and the Resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova (2017/2281(INI)).

¹⁰ Interim Joint Opinion No. 966/2019 of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the reform of the Supreme Court of Justice and the Prosecutor’s Office, 14 October 2019, para. 46.

¹¹ Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 42.

¹² See, *inter alia*, *M.A. v. Denmark* [GC], no. 6697/18, para. 147, 9 July 2021; *THÖRN v. SWEDEN*, 24547/18, para. 48, 1 September 2022; see also Protocol No. 15, which entered into force on 1 August 2021.

¹³ Venice Commission Follow-up Opinion No. CDL-AD(2023)033 to Previous Opinions Concerning the Organic Law on Common Courts, Georgia, 9 October 2023, paras. 10, 11, 24.

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 assets and personal 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 to assess 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.

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 the

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 shall not 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).

The Evaluation Commission has functional independence and decision-making autonomy from any individual or legal entity, irrespective of their legal form, as well as from political fractions and development partners that participated in appointing its members (art. 4 para. (1) 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 requirements of art. 8 of Law No. 26/2022 which have not been mitigated by the evaluated person (art. 13 para. (5) of Law No. 26/2022). In this regard, a distinction should be made between the "*vetting of serving members*" and the "*pre-vetting of candidates*" to a position on these bodies. Integrity checks targeted at the candidates for the position of Superior Council of Magistracy, Superior Council of Prosecutors and their specialized

bodies (as per Law No. 26/2022) represent a filtering process and not a judicial vetting process. As such they may be considered, if implemented properly, as striking a balance between the benefits of the measure, in terms of contributing to the confidence of judiciary, and its possible negative effects.¹⁴ This important distinction between vetting and pre-vetting processes was highlighted in another recent Venice Commission Report on vetting in Kosovo, which stated that “[i]n 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]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability”.¹⁵ In the case of Law No. 26/2022, art. 13 para. (6) makes clear that the results of the assessment by the Commission, set forth in the evaluation decision, constitute legal grounds for not admitting the respective candidate to the elections or competition. The law provides no other legal consequences of the evaluation decision; the negative decision of the Evaluation Commission does not affect in any way the judge or prosecutor’s career, but only prevents him or her from running for office as a member of the Council.¹⁶

According to well-established ECtHR case law, there is no right to a favorable outcome¹⁷ and there is, in principle, no right under the Convention to hold a public post related to the administration of justice.¹⁸ As a matter of principle, States have a legitimate interest in regulating public service positions.¹⁹ In adopting Law No. 26/2022, the Moldovan Parliament required candidates for membership on the Superior Council of Magistracy and the Superior Council of Prosecutors to undergo the extraordinary assessment by the Commission as a part of the election/appointment process.

In the vetting context, once the evaluating body has identified integrity issues, the burden of proof shifts to the candidate. This approach has been found permissible by the ECtHR, even in the vetting of sitting judges who may lose their positions or otherwise be sanctioned as a consequence

¹⁴ Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 14 and para. 43.

¹⁵ 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), para. 10 and para. 9.

¹⁶ Section 115 of the Constitutional Court Decision Concerning Exceptions of Unconstitutionality of some provisions of Law No. 26 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 42/2023, 6 April 2023; see also Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 15 and 39.

¹⁷ See, *Kudła v. Poland* [GC], no. 30210/96, para. 157, ECHR 2000-XI, *Hilal v. the United Kingdom*, no. 45276/99, para. 78, ECHR 2001-II, *Andronicou and Constantinou v. Cyprus*, 9 October 1997, para. 201, *Reports of Judgments and Decisions* 1997-VI.

¹⁸ See, *Grzęda v. Poland* [GC], no. 43572/18, para. 270, 15 March 2022, *Denisov v. Ukraine* [GC], no. 76639/11, para. 46, 25 September 2018 and *Dzhidzheva-Trendafilova v. Bulgaria* (dec.), no. 12628/09, para. 38, 9 October 2012.

¹⁹ See, *Naidin v. Romania*, no. 38162/07, §49, 21 October 2014, and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, para. 52, ECtHR 2004-VIII.

of the evaluation. In *Xhoxhaj v. Albania*,²⁰ the ECtHR stated that “it is not per se arbitrary, for the purposes of the ‘civil’ limb of Article 6 para. 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”. Interpreting doubts to the detriment of the person who has not provided the required information has been a standard in national integrity-related legislation in the Republic of Moldova.²¹ Art. 13 para. (5) of Law No. 26/2022 expressly requires the Commission to adhere to this approach since the law states that “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 requirements laid down in art. 8, which the evaluated person has not mitigated”.

Venice Commission Opinion No. 1069/2022 observed that “(i)n a normally functioning regime, the integrity of magistrates to be elected by their peers should, by nature, result from the qualities, personal conditions, integrity and professional competence that allowed for the appointment as judges or prosecutors. Once the status of magistrate has been acquired, the qualities of integrity and competence must be presumed until proven otherwise, which can only result from disciplinary or functional performance assessment through appropriate legal procedures” (emphasis added). The Strategy of Ensuring the Independence and Integrity of the Judiciary for 2022 - 2025, approved by the Law No. 211/2021, acknowledged the public perception of lack of integrity of the actors of the judiciary (Objective 1.1) and stated that ensuring the integrity of actors in the judiciary has been declared as a national objective through various international commitments and national documents (Objective 1.2). The Strategy further stated that, “(i)n the current conditions of the Republic of Moldova, in order to achieve this objective, it is necessary to ensure an effective verification of judges and prosecutors in terms of integrity, interests, but also professionalism, which will be carried out through an extraordinary (external) evaluation mechanism, similar to the practices of other states in Europe that started this exercise following the approval of the mechanism by the international competent forums” (same Objective 1.2).

In this context, for example, one cannot conclude from the fact that a candidate never received a disciplinary sanction or has not received a decision of the National Integrity Authority regarding his/her wealth or annual assets declarations that the candidate has complied with the integrity criteria. Disciplinary enforcement in the justice system has been weak in the Republic of Moldova. The Group of States against Corruption (GRECO) noted “the view that the SCM did not react to reported misconduct of judges in a sufficiently determined manner. Numerous cases are reported in the media and are allegedly not acted upon by the SCM. Decisions are reportedly not well explained, available sanctions are not used to their full extent and the GET [GRECO Evaluation Team] was given examples of judges being allowed to resign at their own request instead of being dismissed, in order to be entitled to legal allowances and social benefits. This sends out unfortunate messages that misconduct and lack of diligence are tolerated with no

²⁰ *Xhoxhaj v. Albania*, no. 15227/19, para. 352, 31 May 2021.

²¹ See, for example, art. 33 para. (9) and (10) of Law No. 132/2016 on the National Integrity Authority.

effective deterrents”.²² A joint report of four Moldovan CSOs mirrors these findings and documents cases where disciplinary liability of judges failed.²³ As of March 2023 – seven years later – GRECO found some of its recommendations on the disciplinary liability of judges to be still only “partly implemented”.²⁴ The Organization for Economic Co-operation and Development (OECD) concluded as well that “some grounds for disciplinary liability were found to be vague [...]. Overall application of disciplinary and dismissal procedures is not perceived as impartial by non-governmental stakeholders and routine application of proportionate and dissuasive sanctions is lacking”.²⁵ Regarding “criminal investigations of judges” the International Commission of Jurists observed in 2019 that “some criminal investigations of judges, including for corruption, have been undertaken since 2013, but still with few final results”.²⁶ Concerns about the lack of accountability arise as early as when judges start their career: In 2016, GRECO was “deeply concerned by indications that candidates presenting integrity risks are appointed as judges”.²⁷

The Informative Note accompanying the draft Law No. 26/2022 stated that, “The current legal framework that regulates the procedure for verifying candidates for membership positions in the Superior Council of Magistracy and the Superior Council of Prosecutors and in their specialized bodies is insufficient, because currently the persons who are candidates for the respective positions are not subject to verification from the point of view of integrity. [...] The identified problems may be resolved by instituting an integrity filter”. The core pillars of the integrity filter created by Law No. 26/2022 (exhaustive financial and ethical integrity criteria, the right of the candidate to bring evidence and dismiss the serious doubts of the Commission, the Commission’s functional independence) were aimed to ensure that the presumption of integrity may be overturned based on evidence.

It has thus become a key element of the functional independence of the Commission that it “shall not depend on the findings of other bodies competent in the field concerned” (art. 8 para. (6) of Law No. 26/2022). This approach requires the Commission to make its own evaluation, based on the documents and information collected from the candidates and third parties (including public and private persons – art. 10 paras. (2) and (3) of Law No. 26/2022) and not merely rely on the previous facts, including disciplinary proceedings or the absence thereof. The Venice Commission did not raise a concern about this approach in connection with Law No. 26/2022.²⁸ For comparison, a similar provision is included in item 1.5.3 in the Methodology (2021) of the

²² GRECO’s Fourth Evaluation Report, Republic of Moldova, 1 July 2016, para. 135.

²³ Transparency International, and others, *State Capture: the Case of the Republic of Moldova*, 2017, p. 21.

²⁴ GRECO’s Fourth Evaluation Report, Second Interim Compliance Report, Republic of Moldova, 24 March 2023, para. 43, 49, 60.

²⁵ OECD, *Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, Moldova*, 2022, p. 51

²⁶ International Commission of Jurists, *The Undelivered Promise of an Independent Judiciary in Moldova*, 2019, p. 35.

²⁷ GRECO’s Fourth Evaluation Report, Republic of Moldova, 1 July 2016, para. 101.

²⁸ See Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022 and Joint Opinion of the Venice Commission and DGI on the Draft law on the external assessment of judges and prosecutors, 14 March 2023, para. 49-50.

Ukrainian Ethics Council, referred to by the Venice Commission as an example regulating the evaluation of candidates.²⁹ The Constitutional Court has also referred to this approach, as follows: The Court notes that the provision containing the contested text established that upon evaluation of the ethical and financial integrity of candidates for membership of the Superior Council of Magistracy, the Evaluation Commission “shall not depend on the findings of other bodies with competences in the field concerned”.³⁰ The legislator allowed the Commission to make its own conclusions while assessing the integrity criteria and rendering decisions and that has been upheld by the Constitutional Court.

In assessing and deciding upon the criteria related to financial and ethical integrity in accordance with the provisions of Law No. 26/2022 (in particular, art. 10 para. (9)), the Commission is guided and bound by the principles of non-discrimination and equal treatment, which implies that the Commission will treat equally persons in analogous or relatively similar situations.³¹ It also means that the Commission will treat differently persons whose situations are significantly different.³² According to art. 19 of Law No. 121/2012 on ensuring equality, a person that submits a complaint to court must present facts that allow the presumption of a discrimination act, after which the burden to prove that the alleged facts do not constitute discrimination shifts to the defendant, except for facts that are subject to criminal responsibility. In discrimination cases, the ECtHR has established that, once the applicant has shown a difference in treatment, it is for the Government to show that it was justified.³³ The ECtHR has clarified that the elements which characterize different situations, and determine their comparability, must be assessed in light of the subject-matter, objective of the impugned provision and the context in which the alleged discrimination is occurring. The assessment of the question of whether or not two persons or groups are in a comparable situation for the purposes of an analysis of differential treatment and discrimination is both specific and contextual; it can only be based on objective and verifiable elements, and the comparable situations must be considered in their totality, avoiding singling out marginal aspects which would lead to an artificial analysis.³⁴

One crucial component in the evaluation process is asset declarations. The main objectives of asset declarations include monitoring wealth variations of individual politicians and civil

²⁹ See Venice Commission Opinion No. 1109/2022 on the draft law on amending some legislative acts of Ukraine regarding improving procedure for selecting candidate judges for the Constitutional Court of Ukraine on a competitive basis, 19 December 2022, para. 54.

³⁰ See Section 128 of the Constitutional Court Decision Concerning Exceptions of Unconstitutionality of some provisions of Law No. 26 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 42/2023, 6 April 2023. See also the Constitutional Court Judgment No. 9 of 7 April 2022 on the constitutional control of Law No. 26/2022.

³¹ *Biao v. Denmark* [GC], no. 38590/10, para. 89, 24 May 2016; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, para. 61, ECHR 2010; *Burden v. the United Kingdom* [GC], no. 13378/05, para. 60, ECHR 2008

³² *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, para. 81, ECHR 2013 (extracts), *Thlimmenos v. Greece* [GC], no. 34369/97, para. 44, ECHR 2000-IV.

³³ *Timishev v. Russia*, nos. 55762/00 and 55974/00, para. 57, 13 December 2005.

³⁴ *Fábián v. Hungary* [GC], no. 78117/13, para. 121, 5 September 2017; *Advisory opinion on the difference in treatment between landowner associations “having a recognized existence on the date of the creation of an approved municipal hunters’ association” and those set up after that date*, 13 July 2022, para. 69.

servants, in order to dissuade them from misconduct and protect them from false accusations, and to help clarify the full scope of illicit enrichment or other illegal activity by providing additional evidence.³⁵ To determine a candidate's integrity, Law No. 26/2022 requires the Commission to verify what a candidate has disclosed in terms of the acquisition of assets, sources of income, the existence of loans and other agreements that can generate financial benefits, donations and other aspects of the candidate's wealth (art. 8 para. (5)). Loans, for example, have been recognized as a means to cover up a declarant's incoming cash flow from undeclared sources.³⁶ The Commission is also required to scrutinize assets held in the name of a candidate's close persons (Law No. 26/2022 art. 2 para. (2)). This is because, "(i)t should be recognized that corrupt officials often hide their assets under the names of their relatives, their spouses and other individuals. Therefore, it should be possible to monitor the wealth not only of a public official, but that of close relatives and household members."³⁷ Law No. 26/2022 also requires the Commission to scrutinize what a candidate did not disclose in asset declarations: "the Evaluation Commission shall verify compliance by the candidate with the legal regime of declaring assets and personal interests" (art. 8 para. (5) lit. b)). Undeclared income or expenditures are relevant for financial integrity, insofar items have not been declared truthfully, and for ethical integrity, including but not limited to insofar they relate to prohibited secondary incomes, tax evasion, or violation of anti-money-laundering provisions.

When the Commission resumes the evaluation of a candidate after the SCJ has accepted the candidate's appeal and ordered the Commission to re-evaluate the candidate, art. 14 para. (10) of Law No. 26/2022 provides that the provisions regarding the evaluation procedure are applied accordingly.

Art. 19 of the Rules of Procedure 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, as amended 6 September 2023 (hereinafter "Rules of Procedure") sets forth the procedures for the resumed evaluation of candidates. The rules permit the candidate to present new evidence regarding the issues that were addressed by the SCJ and referred to the Commission for re-evaluation and only if the candidate was in the impossibility to present previously at the evaluation stage and before the SCJ and the candidate provides sufficient justification to the Commission. The Commission may send questions and requests for documents and information to the candidate to the extent necessary to clarify the issues derived from the SCJ decision. Unless the Commission has issued a decision passing the candidate, it will present a statement of facts and serious doubts to the candidate and a request for the candidate to indicate whether the candidate wishes to participate in a public hearing. Access to the materials collected during the resumed evaluation will be given to the candidate. The Commission may also determine, in accordance with a SCJ decision, either at the

³⁵ OECD (2011), *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, p. 12.

³⁶ Eastern Partnership-Council of Europe Facility Project on "Good Governance and Fight against Corruption", Practitioner manual on processing and analyzing income and asset declarations of public officials, Tilman Hoppe with input from Valts Kalniņš, January 2014, section 7.5.1.3.

³⁷ OECD (2011), *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, p. 14.

request of a candidate or *proprio motu*, to hear a person in a public session to address an issue about which the Commission has indicated it has serious doubts. If at any point during the resumed evaluation the serious doubts about a candidate's ethical or financial integrity have been removed, the Commission shall issue a decision passing the candidate. During the resumed evaluation, the Commission shall not be obliged to examine circumstances other than those that led to upholding the candidate's appeal to the SCJ.

Once the resumed evaluation procedure is completed, the Commission shall issue a reasoned decision on passing or failing the resumed evaluation (art. 13 para. (1) of Law No. 26/2022).

III. Resumed Evaluation of the candidate

Pursuant to art. 10 para. (1) of Law No. 26/2022 that was in force until 26 December 2022, the Commission was to gather and verify information collected about a candidate no later than 30 days from the receipt of the five-year declaration submitted by the candidate. Art. 10 para. (8) of Law No. 26/2022 provided that this time limit could be extended by another 15 days if the information to be analyzed was complex or due to delayed submission of the requested information. On 9 August 2022, the Commission determined that the criteria set forth in art. 10 para. (8) of Law No. 26/2022 were satisfied with respect to the candidate's evaluation and extended the time for gathering and verifying information by 15 days. As the candidate had submitted a completed five-year declaration to the Commission on 13 July 2022, the 45-day period for the Commission's collection of information ended on 12 August 2022. Thus, after 12 August 2022, the Commission had no legal mandate to request additional data and information from public and private entities, in order to clarify any uncertainties found during the evaluation, while the candidate's ability to collect additional information and submit it to the Commission continued. An amendment to Law No. 26/2022 in force since 27 December 2022 deleted art. 10 para. (1) and (8) and consequently, the time restrictions on the Commission's collection of information have been removed.

1. Source of funds for financing two properties purchased by candidate's family in 2012; the repayment of a loan contracted in 2012 and paid off in 2014

a. The facts

In 2012, the candidate and her husband acquired two properties for a total of 902,338 MDL: (1) a 92 sq.m. apartment in Chisinau municipality purchased for 602,338 MDL and (2) a land plot of 0.0799 ha, auxiliary construction of 22.3 sq.m., and an unfinished house of 149.1 sq.m. in Criuleni district purchased for 300,000 MDL. The property in Criuleni district was paid for in two instalments: 30,000 MDL at the signing of the sales-purchase contract and 270,000 MDL one month later from a loan from one of the national commercial banks. When asked at the hearing during the initial evaluation why she and her husband took the loan in 2012, the candidate stated

that they did not have enough funds to buy the property without the loan.

During the initial evaluation, the candidate stated that the funds used to purchase the apartment in Chisinau municipality and to pay the first instalment on the Criuleni property were cash savings from her husband's and her salaries and funds received from their relatives. The candidate stated that she and her husband had saved between 20% and 40% of their monthly income since the early 1990's to purchase the properties in 2012. The candidate also mentioned the proceeds from the sale of a studio-apartment in Chisinau municipality for 174,812 MDL in 2011 as a source of funds for the 2012 purchases.

To make the second instalment payment for the properties in Criuleni district in October 2012, the candidate and her husband contracted a loan from a bank in Moldova in the amount of 270,000 MDL for the period of 2012 - 2030, at 13% interest rate. The candidate explained that she and her husband had not planned to buy a house in 2012 but because it was a good offer at that time, they decided to take the 270,000 MDL loan. During the period of 2012 to June 2014, the candidate's family repaid a part of the loan in equal monthly instalments, totaling 82,885 MDL. The loan was paid off in full in June 2014 with a final payment of 246,250 MDL.

The candidate informed the Commission during the initial evaluation that the loan was paid off in 2014 with funds received from relatives and also from savings that she and her husband were able to accumulate following the judges' salary increase in 2014. According to the candidate, her relatives' contributions to the repayment of the loan included: (1) proceeds from the sale of four land plots by the candidate's mother; (2) the pension of the candidate's father-in-law, which was turned over to her family as a financial contribution; (3) financial contributions from her parents and (4) the contribution of a close relative of her husband's, whose child the candidate took care of from 2003 to 2008. Asked during the initial evaluation to provide further information about the sources of funds of her relatives to make the donations and provide financial support to her family, the candidate provided the following details: (1) the cadastral numbers of the four land plots sold by her mother; (2) the amount of her father-in-law's pension -- approximately 5,000 MDL per month - all of which he gave to her family for two to three years prior to his death in 2013; (3) explanations about her mother's income from the sale of birds, eggs, fruits and vegetables, without an estimate of the amount of these contributions; (4) explanations about the financial contribution of a close relative of her husband's during the period of 2003 to 2008 while they were caring for the close relative's child - the candidate did not estimate the amount of financial contributions her family received from the close relative of her husband and did not provide any explanation how this contribution was related to the purchase of properties in 2012 and to pay off the loan in 2014.

The only documentation provided during the initial evaluation by the candidate related to the loan payoff with a final payment of 246,250 MDL in 2014 was (1) the loan agreement and (2) a bank statement confirming the payments made to close the loan. At the hearing during the initial evaluation, the candidate conceded that the financial contributions received from relatives to

repay the 270,000 MDL loan were not all received in 2014, but also in earlier years.

The Commission issued the decision failing the candidate on 11 January 2023. On 6 February 2023, the candidate appealed the Commission's Decision No. 14 of 11 January 2023 to the SCJ.

During the resumed evaluation, the Commission sought to clarify the specifics of all four sources of income claimed by the candidate for the purchase of properties in 2012 and early repayment of the loan in 2014, as well as for a possible fifth source claimed by the candidate for the first time at the hearing during the initial evaluation, specifically savings accrued due to salary increases for judges in 2014, that allowed her family to make additional savings to payoff the loan earlier.

Source 1: Sale of four land plots by candidate's mother

The Commission received information confirming that the candidate's mother owned four land plots, with a total surface of 0.4015 ha used as a garden, that were acquired in 2005. The Commission requested information from the Public Service Agency (hereinafter "PSA") about the sale of those plots by the candidate's mother, including copies of the sales-purchase contracts. The Commission was provided with copies of two sales-purchase contracts in the name of the candidate's mother. Through a contract of 5 April 2016, the candidate's mother sold two garden plots with a total surface of 0.1563 ha to a natural person for the total price of 7,815 MDL. The other two land plots were sold on 27 March 2015 to a legal entity for the price of 2,623.64 MDL. The total income received by the candidate's mother from those two transactions was approximately 10,438 MDL (est. 500 EUR).

Source 2: Father-in-law's pension

During the resumed evaluation, the Commission requested information about the candidate's father-in-law's pension, which the candidate claimed was donated in its entirety to her family for two to three years prior to his death in 2013, during which period "they (father and mother-in-law) lived on mother-in-law pension". According to the information obtained from the Ministry of Internal Affairs (hereinafter "MIA"), as well as documentation provided by the candidate for the first time during the resumed evaluation, the candidate's father-in-law issued a power of attorney in 2009 in the name of the candidate's husband in order for the candidate's husband to receive his father's pension. The information from MIA reflected the amount of the father-in-law's pension payments for the period of 1991 to 2013, specifically 125,377 MDL for the period of 2009 – 2012 and 17,804 MDL for 2013.

Because the candidate claimed that her father-in-law's pension was donated to them and that her parents-in-law were able to live solely on the mother-in-law's pension, the Commission collected information about the income of the candidate's mother-in-law to determine the financial feasibility of the arrangement. During the resumed evaluation, the Commission assessed the

pension of the candidate's mother-in-law as varying from 491 MDL in 2007 to 1,094 in 2013.

Table No. 1 Income for candidate's mother-in-law and the Consumption Expenditures for Population (CEP)³⁸

Year	Monthly pension of candidate's mother-in-law	Monthly CEP for two persons
2007	491 MDL	1,890 MDL
2008	693 MDL	1,940 MDL
2009	823 MDL	1,934 MDL
2010	867 MDL	2,194 MDL
2011	935 MDL	2,444 MDL
2012	1,025 MDL	2,542 MDL
2013	1,094 MDL	2,987 MDL
Totals (2007 - 2013)	71,136 MDL	191,172 MDL

As noted in the above table, the total income of the candidate's mother-in-law during the period of 2007 to 2013 amounted to 71,136 MDL and the CEP³⁹ for two persons for the same period was 191,172 MDL.

During the resumed evaluation, in response to the Commission's statement of facts and serious doubts, the candidate stated that she had expressed herself incorrectly by saying that her husband's parents lived on her mother-in-law's pension and that her father-in-law's pension was given to them, because they, like her mother, had other sources of income besides pensions. The candidate provided documents about potential additional sources of income for her parents-in-law that had never been identified before, specifically: salary received by her mother-in-law as a teacher, sale of agricultural products, ownership of a horse and cart, three agricultural lands planted with walnut orchards and 0.045 ha land plot planted with a vineyard that was sold in 2009. While the certifications from the village provided descriptions of the parents-in-law's employment and activities, no amounts of income earned by them were provided.

³⁸ The Consumption Expenditures for Population (CEP) are determined and published on an annual basis by the National Bureau of Statistics (NBS).

³⁹ The Consumption Expenditure of the Population (CEP) for any year in the period 2007 - 2018 is calculated based on the methodology of the National Bureau of Statistics applied for the period 2006 - 2018 (based on the resident population of the Republic of Moldova, in "interrupted series") and the available method on the NBS website. In this case, the consumption expenditure indicator per population depending on the purpose of the expenditure, the socio-economic status of the household and the environment, 2006 - 2018, is chosen with the following variables: Year - Total consumption expenditure - Environment (Urban/Rural) - Socio-economic status (retirees) - Measurement unit, MDL, monthly average per capita for a single person. The generated result is multiplied by the number of family members and by 12 calendar months.

Source 3: Contributions from candidate's mother

During the resumed evaluation, the Commission also obtained information about the candidate's mother's taxable and non-taxable income and her ability to make donations. According to the information collected from databases, during the period of 2007 - 2014 (the year the loan was repaid), the candidate's mother received income in the form of a retirement pension, that varied from 459 MDL in 2007 to 1,089 MDL at the end of 2014. During the same period, the candidate's mother received payments in the form of social allowances totaling 260 MDL in 2010 and 390 MDL in 2011. Hence, the total income of the candidate's mother in the period of 2007 to 2014 was 81,404 MDL and the CEP for the same period was 113,892 MDL.

During the resumed evaluation, in answering the statement of facts and serious doubts, the candidate provided for the first time a series of documents about potential additional sources of income for her mother, specifically: reimbursement for the damage incurred due to the theft of household goods worth 5,017 MDL in 2007, 1,200 MDL from the sale of a bicycle, and sale of a Moskvich 412 model car in 2009 - 2010.

Additionally, during the resumed evaluation, the candidate provided documentation about shares her mother held in two companies. Those documents indicate an income of 1,150 MDL received in 2013 from a local company in Moldova.

Source 4: Contribution from a close relative for childcare

The candidate did not provide any specifics about amounts received from this close person as a contribution to the repayment of the loan, and according to the candidate's statements, the money and goods received from the relative during the period of 2003 - 2008 was intended for child care. The Commission did not receive any additional information about how the funds received before 2008 possibly covered the acquisitions made in 2012 or the repayment of the loan in 2014.

Source 5: Judges' salary increase in 2014

Before the SCJ special panel and during the resumed evaluation, the candidate raised the argument about the salary increase for judges in 2014 as a source of income, an argument that she had raised for the first time at the hearing during the initial evaluation. The candidate stated that she and her husband were both working as judges at that time and that this increase allowed them to save money to repay the loan in 2014. During the resumed evaluation, the Commission further analyzed this issue.

The candidate and her husband's combined total net income from their judicial salaries for 2013 was 156,324 MDL and for 2014 was 239,229 MDL, according to the information from State Tax Service (hereinafter "STS"). According to information provided by the lending bank during the resumed evaluation, the 2012 loan was repaid on 6 June 2014 which means that the candidate's

family had only five months of increased salary in 2014 to use to pay off the loan. The candidate stated that the increase allowed them to accumulate savings to pay back the loan. If the candidate's and her husband's total net income available for savings for the first five months of 2014 is considered (net income less expenses), it amounts to 60,188 MDL, assuming the candidate's family had no additional expenses during that time.⁴⁰ If the total combined amount of the salary *increase* of 82,905 MDL in 2014 over 2013 is used instead, at 6,909 MDL per month, it would amount to only 34,545 MDL for the first five months of 2014.

Table No. 2. Comparison of Incomes (in MDL) for the period of 2012 - 2015: Cupcea - Sanduta spouses

Name / Year	2012	2013	2014	2015
Veronica CUPCEA (gross/ net)	77,929 / 63,126	100,926 / 80,143	153,402 / 119,315	186,388 / 142,842
Spouse Ev. SANDUTA (gross/ net)	72,420/ 59,094	94,958 / 76,181	154,252 / 119,914	194,826 / 149,425
Combined total gross / net income	150,349 / 122,220	195,884 / 156,324	307,654 / 239,229	381,214 / 292,267

b. The law

Art. 8 para. (5) lit. c) and d) of Law No. 26/2022 provides that the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) 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 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-

⁴⁰ The candidate and her husband's total net income for 2014 was 239,229 MDL (based on gross income of 307,654 MDL); their average monthly net income from salaries was 19,936 MDL. Thus, the net income for the first five months of 2014 was 99,680 MDL. After deducting the CEP of 33,242 MDL for that five-month period, their net income available for savings would have been 66,438 MDL. However, the candidate and her husband also paid five monthly instalments on the loan in 2014 totalling 6,250 MDL (1,250 MDL per month), reducing the amount of funds available for savings in 2014 to 60,188 MDL, if no other expenditures are considered.

in-law/mother-in-law, son-in-law/daughter-in-law)”.

c. Reasoning

The SCJ special panel accepted the candidate’s argument that the Commission unjustly sanctioned her because she did not clearly remember when her mother sold all the plots of land she owned as a well-founded argument and determined that the Commission had failed to adequately investigate the facts. In addition, the SCJ special panel indicated that the candidate’s claim that her and her husband’s salary increases in 2014 allowed them to pay off the loan had not been factually analyzed by the Commission.

In the context of a multi-faceted, comprehensive and objective review, the Commission undertook a resumed evaluation of the candidate, based on information available at the initial evaluation and any information obtained during the resumed evaluation.

To determine a candidate’s integrity under Law No. 26/2022, the Commission is required to verify sources of income and methods of acquiring assets by the candidate, family members and close persons to the candidate, the existence of loans and other agreements that can generate financial benefits, donations and other aspects of the candidate’s wealth (art. 8 para. (5)). Loans, for example, have been recognized as a means to cover up a declarant’s incoming cash flow from undeclared sources. Similarly, undeclared income or expenditures are relevant for financial integrity, insofar items that have not been declared truthfully, and for ethical integrity, insofar they relate to prohibited secondary incomes, tax evasion, or violation of anti-money-laundering provisions.

According to the candidate, over many years up to 2014, she and her husband received financial support from close persons, including her parents and her husband’s parents. According to the candidate, as a result of these contributions, as well as salary savings and income from the sale of an apartment, the candidate and her husband were able to buy two properties in 2012 for 902,338 MDL. Also, with the contributions of her close persons, the candidate and her husband were able to pay off the loan of 270,000 MDL in 2014, earlier than required.

Sources of funds for 2012 purchases and 2014 loan payoff

The candidate established income of 174,812 MDL from the sale of an apartment and the loan of 270,000 MDL which were used for the purchase of the two properties in 2012. The remaining amount of funds required for the two purchases was 457,526 MDL. The amount of funds needed to pay off the loan was 246,250 MDL. According to the candidate, family savings and contributions from relatives were used to cover the purchases and loan payoff.

Source 1: Sale of four land plots by candidate's mother

As respects the first source of funds claimed by the candidate, two of her mother's garden plots were sold on 5 April 2016 and two additional land plots were sold on 27 March 2015. As both of these sales took place after the purchase of the properties in 2012 and the payoff of the loan in 2014, these funds were not available for either transaction.

Source 2: Father-in-law's pension

The second claimed source of funds for the purchase of the properties, the father-in-law's pension, was supported by documents received from the MIA during the resumed evaluation that show the total amount of the candidate's father-in-law's pension funds was 143,181 MDL (125,377 MDL for the period of 2009 – 2012 and 17,804 MDL for 2013).

Source 3: Contributions from candidate's mother

The third source of funds, unspecified amounts of contributions from the candidate's mother, were evaluated in terms of the candidate's mother's taxable and non-taxable income and her ability to make donations to the candidate's family. During the resumed evaluation, the information collected from databases showed that during the period of 2007 - 2014 (the year the loan was repaid), the candidate's mother received monthly income in the form of a retirement pension, that varied from 459 MDL in 2007 to 1,089 MDL at the end of 2014. During the same period, the candidate's mother received payments in the form of social allowances totaling 260 MDL in 2010 and 390 MDL in 2011. Thus, the total income of the candidate's mother in the period of 2007 to 2014 was 81,404 MDL and the CEP for the same period was 113,892 MDL.

The candidate also produced documentation, mainly during the resumed evaluation, which showed that the candidate's mother had additional income from the sale of excess agricultural products, poultry, dairy products. Due to the nature and specifics of this merchant activity, the candidate could not estimate the amount of contributions that the candidate received from her mother from this activity. Moreover, because the pension income received by the candidate's mother over the years was approximately 2.6 times lower than the level of consumption expenditures for population calculated by the National Bureau of Statistics, the candidate's mother's additional income was likely required for her personal consumption expenses and thus, was not available as savings to make the claimed donations to the candidate.

The Commission did consider that some of the additional income of the candidate's mother that was identified by the candidate, totalling 7,367 MDL, could have been used by the candidate's family, specifically: reimbursement for damage incurred due to a theft in 2007 of household goods worth 5,017 MDL and income of 1,200 MDL from the sale of a bicycle. In addition, the candidate provided documentation about shares her mother held in two companies. Those documents indicate an income of 1,150 MDL received in 2013 that potentially could be a source

of funds donated to the candidate's family for the repayment of the loan. Proceeds from the sale of a Moskvich 412 model car in 2009 - 2010 were not included as the candidate did not furnish the amount received from the sale.

Source 4: Contribution from a close relative for childcare

The fourth source of funds identified by the candidate were contributions received from a close relative for the candidate's family's care of the relative's child who lived with them from 2003 to 2008. The candidate did not provide any specifics about amounts received from this close person as a contribution to the repayment of the loan, and according to the candidate's statements, the money and goods received from the relative during the period of 2003 - 2008 was intended for childcare. The candidate also did not explain how the funds received before 2008 possibly covered the acquisitions made in 2012 or the repayment of the loan in 2014. Also, at the hearing during the resumed evaluation, the candidate explained that the contributions received from the relative of the child they cared for were more in the form of non-monetary support, that allowed her family to make cash savings. However, these contributions were reimbursement for additional expenses incurred by the family for the care of the child, not additional income per se.

Source 5: Judges' salary increase in 2014

An additional source of funds for the repayment of the loan in 2014 identified by the candidate was the salary increase for judges in 2014. The candidate and her husband's total net income for 2013 was 156,324 MDL based on gross income of 195,327 MDL and for 2014 was 239,229 MDL based on gross income of 307,654 MDL, according to the information from STS. According to information provided by the lending bank during the resumed evaluation, the 2012 loan was repaid on 6 June 2014 which means that the candidate's family had only five months of increased salary in 2014 to use to pay off the loan. If the candidate's and her husband's total net income available for savings for the first five months of 2014 is considered (net income less expenses), it amounts to 60,188 MDL, assuming the candidate's family had no additional expenses during that time.⁴¹ If, however, the 82,905 MDL total combined salary increase in 2014 over 2013 is used, at 6,909 MDL per month, the amount of the salary increase received was less – only 34,545 MDL (for five months). At most, there was only 60,188 MDL of funds from increased salaries to use to pay off the loan and it may have been as little was 34,545 MDL.

As demonstrated, the Commission examined and assessed all of the possible sources of funds identified by the candidate in both the initial and resumed evaluations and screened the

⁴¹ The candidate and her husband's total net income for 2014 was 239,229 MDL (based on gross income of 307,654 MDL); their average monthly net income from salaries was 19,936 MDL. Thus, the net income for the first five months of 2014 was 99,680 MDL. After deducting the CEP of 33,242 MDL for that five-month period, their net income available for savings would have been 66,438 MDL. However, the candidate and her husband also paid five monthly instalments on the loan in 2014 totalling 6,250 MDL (1,250 MDL per month), reducing the amount of funds available for savings in 2014 to 60,188 MDL, if no other expenditures are considered.

information for accuracy and relevance. The established sources of funds and the amounts needed for the transactions are set forth on Table 3 below.

Table 3: Funds established for 2012 and 2014 transactions compared to amounts needed for transactions

Funds established by candidate	Funds for 2012 purchases (457,526 MDL needed)	Funds for 2014 loan payoff (246,250 MDL needed)
Father-in-law's pension 2009 - 2012	125,377 MDL	
Father-in-law's pension 2013		17,804 MDL
Mother's income from sale of bike and reimbursement for 2007 theft	6,217 MDL	
Mother's 2013 stock income		1,150 MDL
2014 salary increase		60,188 MDL
Total funds	131,594 MDL	79,142 MDL
	(total cumulatively: 210,736 MDL)	
Difference between funds established and amounts needed	-325,932 MDL	-167,108 MDL

Cumulatively, the candidate established a total of 210,736 MDL contributions from close persons and salary increases that could have been used for the 2012 purchases and the 2014 loan payoff.⁴² While the candidate was not very precise about which contributions were used in 2012 versus 2014, of the 210,736 MDL of funds that the candidate was able to establish, 79,142 MDL were available only for the 2014 loan payoff because they were generated after the 2012 transactions (the father-in-law's 2013 pension in the amount of 17,804 MDL; her mother's income from stock dividends in the amount of 1,150 MDL in 2013; the candidate and her husband's salary increases for the first five months of 2014 in the amount of 60,188 MDL). Significantly, when asked at the hearing during the initial evaluation why she and her husband took the loan in 2012, the candidate stated that they did not have enough funds to buy the property without the loan. Thus, whatever amount of savings and contributions from relatives the candidate had at the time of the 2012 purchases, it was depleted by those transactions, requiring the candidate to take out the loan. However, the candidate established only 79,142 MDL of "new" funds available for the 2014 loan payoff, leaving a shortfall of 167,108 MDL⁴³ (246,250 MDL needed to pay off the loan less 79,141 MDL of "new" funds) and a shortfall of 325,932 MDL for the 2012 transactions (457,526

⁴² The candidate established income of 174,812 MDL from the sale of an apartment and the loan of 270,000 MDL used for the purchase of the two properties in 2012. The remaining amount of funds required for the two purchases was 457,526 MDL. The amount of funds needed to payoff the loan was 246,250 MDL.

⁴³ The shortfall for 2014 would be even greater – 192,751 MDL – if only the amount of the salary increases in 2014 (of 34,545 MDL for the first five months of 2014) are used rather than the candidate and her husband's net salaries for 2014.

MDL needed in addition to loan and proceeds from sale of apartment less 131,594 MDL of funds established for 2012). In summary, the candidate accounted for less than one-third of the funds needed for the 2012 and 2014 transactions and was unable to explain the shortfalls for either the 2012 transactions or the 2014 loan pay off. Even if the Commission accepted that the candidate had savings to contribute to the 2012 purchases – despite the absence of any specifics or confirmatory information from the candidate – the shortfall of funds for the 2014 loan payoff creates serious doubts concerning that transaction and heightens doubts about the 2012 transactions as well.

In light of above circumstances on resumed evaluation of the candidate, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criteria of financial and ethical integrity as per art. 8 para. (4) lit. b) and (5) lit. c), d) and f) of Law No. 26/2022 with respect to the sources of income for the purchase of the two properties in 2012 and the payoff of the loan in 2014, which have not been mitigated by the candidate.

2. Undeclared donations from close persons in candidate's annual declarations for 2012 - 2014, undeclared cash savings in the candidate's 2019 annual declaration and undeclared financial contributions in her 2020 annual declaration

a. The facts

i. Undeclared donations from close persons in candidate's annual declarations for 2012 - 2014

The candidate did not declare in her annual declarations on income and property submitted to the National Integrity Commission (hereinafter “annual declaration”) for 2012 to 2014 any financial contributions from relatives, discussed above in Issue 1, as required by Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions. In response to written questions during the initial evaluation, the candidate stated that she did not declare these contributions because “according to art. 4 para. (3) of the Law No. 1264 of 19.07.2002, the valuation of the property is carried out, according to the legislation, by indicating the value (cost) mentioned in the document certifying the origin of the property (alienation, exchange, donation, inheritance, privatization, etc.)”, and that she and her family did not conclude donation contracts. The candidate further stated that “the material support provided by the parents cannot be interpreted as a donation under the terms of the legislation”.

On the non-disclosure of the funds received from family members in her annual declarations, during the resumed evaluation, the candidate reiterated her position that she had complied with the legal regime regarding the declaration of assets and personal interests, stating that: “in the declaration form there were sections omitted regarding support/aid/contributions from close relatives (parents, adult children), creditor debts, and other obligations of third parties towards

the subject of the declaration and his/her family members”. The candidate further specified that: “Consequently, support/aid/contributions from close relatives who are not family members could not be declared due to the lack of a legal framework, or these did not fall under the definition of income obtained together with my family members as per the present law”.

At the hearing during the resumed evaluation, the candidate was asked repeatedly if the contributions received from her close persons in the period of 2012 - 2014 could be considered as income and the candidate reiterated that those contributions could not be considered as income because under the “legislation on declaration of income”, according to the candidate, “the object of declaration continued not to have predictability at that stage and [...] in the declaration form sections for these incomes were omitted”.

ii. Undeclared cash savings in the candidate’s 2019 annual declaration and undeclared financial contributions in her 2020 annual declaration

In 2018, the candidate and her husband took out a loan of 540,000 MDL from a commercial bank in Moldova for the period of 2018 - 2028, at a 7% interest rate. The purpose of the loan was to complete the construction of the house in Criuleni district that they had purchased in 2012. During the initial evaluation, the Commission determined that a substantial portion of the loan’s outstanding balance of 446,670 MDL in 2020 was repaid in three payments during the period of April - October 2020: (1) a payment of 182,000 MDL in April 2020; (2) a payment of 100,000 MDL in September 2020 and (3) a payment of 164,670 MDL in October 2020. The loan was paid off in full in June 2021.

According to the calculations provided by the candidate during the initial evaluation, she and her husband contributed 296,670 MDL to the loan payoff in 2020. Also, during the initial evaluation, the candidate had informed the Commission that, after the loan was taken out, she paid the expenses to maintain the family while her husband made the loan payments from his pension. In the written communication during the initial evaluation, the candidate stated that the 296,670 MDL paid between April and October 2020 included (1) her husband’s pension accumulated for several months; (2) the income from his activity as an attorney; (3) family savings, “because we did not start the new year with zero in the account”.

In the written communication with the Commission during the initial evaluation, when asked about the sources of funds to pay the three instalments on the loan in 2020, the candidate provided a calculation of her family’s income and expenditures for 2019 and claimed to have had 484,189 MDL in cash savings at the end of 2019 that she brought into 2020. However, the candidate, did not use net income amounts, as prescribed by the rules on calculation of wealth⁴⁴, but the gross

⁴⁴ Annex: Unjustified wealth to the Evaluation Rules, available at https://vetting.md/wp-content/uploads/2023/09/EvalRules_ENG_amended_09.2023.pdf.

income received in that year.⁴⁵ Nonetheless, the candidate herself claimed 484,189 MDL in cash savings at the end of 2019.

With respect to the candidate's husband's accumulated pension and the income from his activity as an attorney as a source for repayment of the loan, the husband's pension for eight months of 2020 totalled 160,168 MDL and his attorney income totalled 6,070 MDL.

At the hearing during the initial evaluation, when the candidate was asked why she had not declared cash savings in her 2019 annual declaration, she gave multiple somewhat varying responses: that she had disclosed the income from which the savings were derived and did not think she had to double-declare, that she had calculated the savings based on information in income and expense tables furnished by the Commission, that she never calculated the savings and was not sure that this was the exact amount and that it was only an approximate amount and that she might not have declared the savings if the actual amount of savings was smaller. The candidate stated that she always kept savings in cash, not in financial institutions. When she submitted her 2019 annual declaration to the National Integrity Authority (hereinafter "NIA"), she was required to declare cash savings totalling 15 average salaries or more which was 119,295 MDL in 2020, according to the Government Decision No. 678 of 27 December 2019.

During the resumed evaluation, the Commission sought clarification on the calculation of the candidate's possible cash savings for 2019. To ensure the accuracy of its calculation, the Commission analyzed the financial flows of candidate's family for the period of 2018 - 2020 (the period in which the loan of 540,000 MDL was taken and repaid). The table of incomes and expenditures for the period of 2018 - 2020 reflects incoming and outgoing cash flows for the period 2018 – 2020.⁴⁶

The totals for each of the three years analyzed show significant amounts of cash held by the candidate at the end of each year. The Commission included the positive balance resulting at the end of each year as income at the beginning of the next year in accordance with the Commission's Evaluation Rules (hereinafter "Evaluation Rules")⁴⁷. Following those calculations, the table showed a maximum amount of 520,873 MDL available for savings for the candidate and her family

⁴⁵ According to the candidate's version: "[...] Thus, (together with the income of 48,000 MDL from the sale of the land), my family's income in 2019 was 665,922 MDL (not 569,392 MDL as indicated in the table), and the expenses were 181,733 MDL (credit repayment 89,808 MDL + CEP of 91,925 MDL), respectively 484,189 MDL are the savings I spent in 2020 that helped me repay the loan in full".

⁴⁶ See the Annex No. 1 to this decision - Incomes and expenses for the period of 2018 – 2020. The difference in numbers from Annex compared to numbers that were included in the statement of facts and serious doubts sent to the candidate is due to additional verifications of collected information on income and expenses conducted by the Commission after the candidate's hearing (e.g. CEP for 2018 - 2020 were recalculated). The differences between the numbers does not affect the outcome of the decision.

⁴⁷ Pt. 3.4 Annex: Unjustified Wealth to the Evaluation Rules: As stated by the ECtHR, savings (including cash) have a double nature: At the beginning of the period, they count as incoming cash-flow ("coming into the period"); at the end of the period, they count as outgoing cash-flow. The outgoing cash-flow of savings at the end of the period equals the incoming cash-flow of savings at the beginning of the next period.

in 2018, 627,483 MDL in 2019 and 546,683 MDL at the end of 2020. All of these amounts exceeded the threshold of 15 average salaries per economy required to be disclosed in the annual declarations as cash savings. The candidate never disclosed cash savings in her annual declarations.

In her answers to the statement of facts and serious doubts, the candidate explained that:

“At the time of submitting the 2019 declaration, I no longer had cash savings that exceeded the value of 15 times the average monthly salary, especially since we were building a house in Criuleni district, and construction materials during the winter are a bit cheaper, and we were striving to procure them precisely during this period, especially since some companies also offer discounts during the winter holidays.”

The candidate provided no documentation of any construction materials purchased during early 2020 before the submission of her 2019 annual declaration. The candidate did not declare any cash savings in her 2019 or 2020 annual declarations.

The Commission noted that the third payment on the loan in 2020, in the amount of 164,000 MDL, was made in October 2020 and, according to the candidate, was made from funds received from her son. The candidate stated in her written communication with the Commission during the initial evaluation that:

“the amount of my son’s contribution for the repayment of the loan was 150,000 MDL from the 265,000 MDL paid in September - October 2020, which were granted to us by the son in cash, without any confirmation documents”

and that:

“the loan was repaid less from own sources and more by the son [...]”.

In the written communication with the Commission and at the hearing during the initial evaluation, the candidate confirmed that she did not declare her son’s financial contribution in the amount of 150,000 MDL in her 2020 annual declaration, filed on 3 March 2021, referring to her answer and explanations to art. 4 para. (3) of Law No. 133/2016 on declaration of assets and personal interests, which provides that the gifts received by the subject of the declaration free of charge from his family members, from his parents, brothers, sisters or children, whose individual value does not exceed 10 average salaries in the economy, are exempt from the declaration.

The SCJ special panel accepted the candidate’s claim that during her activity as a judge, the NIA did not find any violations of the legal regime of the declaration of wealth and personal interests and admitted as evidence the NIA protocols of 16 December 2021 and 22 November 2022, concluding that the authority had verified the declarations of wealth and personal interests

submitted by the candidate and did not establish any violations.

In her answer to the statement of facts and serious doubts, the candidate referred again to the same art. 4 para. (3) of Law No. 133/2016 on declaration of assets and personal interests, explaining that she was not supposed to declare that contribution. Furthermore, in the written communication and at the hearing during the resumed evaluation, for the first time, the candidate stated that “we reached the amount of savings of 484,189 lei through a miscalculation”. The candidate stated that she “at the date of submitting the declaration for 2019 we had no cash savings that would have exceeded the value of 15 average salaries per economy”.

With respect to the donation of 150,000 MDL received from her son, the candidate specified during the resumed evaluation that her son never delivered funds to them physically, but the funds were maintained at the candidate’s home and they used them when needed and she had nothing to do with that money, as it was managed by her husband. The candidate also specified that her son brought money to the Republic of Moldova every time he came home during 2018 - 2020 and the money was kept in the candidate’s house. In response to the Commission’s statement of facts and serious doubts, the candidate claimed for the first time that her son’s contributions did not have to be declared because they were received in three installments none of which exceeded the declaration threshold. (“The Commission very correctly indicates that the amount of 150,000 MDL I took from the son in three installments: on 07.04.2020; 03.09.2020; 07.10.2020, that is, they constitute three individual contributions, and each of which does not exceed the amount of 87,160 MDL. However, $150,000 \text{ MDL} / 3 = 50,000 \text{ MDL}$. Therefore, under the legislation in force at the time of filing the 2020 declaration, I completed the declaration accurately.”)

b. The law

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

The Evaluation Rules state that undeclared income or expenditures are relevant for financial integrity, including but not limited to insofar as they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions. (art. 3 para. (1)). The rules also provide that the Annex to the Evaluation Rules defines the method for calculating undeclared wealth. (art. 3 para. (2) of Evaluation Rules).

According to the Annex to Evaluation Rules, only actual cash flows are relevant for the formula (For example, whereas the actual purchase price paid is a cash flow, representations on transactional documents or non monetary gifts are not) and that [...] savings (including cash) have a double nature: At the beginning of the period, they count as incoming cash-flow (“coming into the period”); at the end of the period, they count as outgoing cash-flow. The outgoing cash-flow of savings at the end of the period equals the incoming cash-flow of savings at the beginning

of the next period.

According to art. 4 para. (1) of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force in 2012), the subject of declaration is required to declare “income obtained together with family members” during the declaration period”.

Art. 2 of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force in 2012) defines income as “any increase, addition or extension of the patrimony, regardless of the source or origin, expressed in patrimonial rights or in any other patrimonial benefit, obtained by the subject of the declaration or by the members of their families during the reference period both in the country and abroad”.

According to art. 4 para. (1) lit. a) of Law No. 133/2016 on declaration of assets and personal interests (in force in 2020), the subject of the declaration is obligated to declare income obtained by the subject of declaration together with the family members, the concubine/concubine in the previous fiscal year. And art. 2 of the same Law defines income as “any financial benefit, regardless of the source of origin, obtained by the subject of the declaration and by the family members, its concubine / concubine both in the country and abroad”.

Art. 4 para. (1) lit. d) of Law No. 133/2016 on declaration assets and personal interests (in force in 2020) provided that are to be disclosed financial assets of the subject of declaration, i.e., cash in national currency or foreign currency exceeding the value of 15 average salaries per economy and not subject to deposits in financial institutions.

According to Instruction on Declarations No. 2 of 13.01.2017, approved by NIA, under the Law No. 133/2016 on declaration assets and personal interests: In section C “Cash in national currency and/or in foreign currency that exceeds the amount of 15 average salaries in the economy and which is not subject to deposits in financial institutions and other documents incorporating patrimonial rights” - is to be declared cash in national currency or in foreign currency that exceeds the value of 15 average salaries in the economy at the date of submission of the declaration and which is not the subject of deposits in financial institutions or other documents incorporating property rights, on the basis of which the holders hold financial means with a value exceeding the set limit, specifying and indicating the name and surname of the subject of the declaration, the family member or his/her concubine or, where appropriate, of the person to whom the financial means were transmitted, the year and month when the rights were acquired, the amount and the currency.

According to Government Decision No. 21/2019 of 18 January 2019 on the approval of the amount of the average monthly salary in the economy, the average salary per economy in 2019 was 6,975 MDL.

According to Government Decision No. 678 of 27 December 2019 on the approval of the amount of the average monthly salary in the economy, the average salary per economy in 2020 was 7,953 MDL.

According to the Government Decision No. 923 of 21 December 2020 on the approval of the amount of the average monthly salary in the economy, the average salary per economy in 2021 was 8,716 MDL.

According to the Advisory Note of the NIA on 19 June 2023 on interpretation of the provisions of art. 4 para. (1) and (3) of Law No. 133/2016 on declaration of assets and personal interests, received by the Commission during the resumed evaluation, the object of the declaration provided for in art. 4 para. (1) lit. d) - g) and o) and para. (3) from Law No.133/2016 on declaration assets and personal interests will only be indicated if it exceeds the amount established on the date of submission of the declaration, taking into account the approved average monthly salary in the economy, forecast for the year in which the declaration is submitted.

Art. 4 para. (3) of Law No.133/2016 on assets and personal declarations provided that gifts received for free by the subject of declaration from members of his/her family, parents, brothers, sisters or his/her children, the value of which, individually, is not higher than 10 average salaries per economy, does not need to be declared. Law No. 130 of 7 October 2021 for amending some normative acts, in force since 29 October 2021, replaced “individually” with “cumulatively during one year”.

c. Reasoning

In its decision of 1 August 2023, the SCJ special panel accepted the candidate’s claim that during her activity as a judge, NIA did not find any violations of the legal regime of the declaration of assets and personal interests and admitted as evidence the NIA protocols of 16 December 2021 and 22 November 2022, concluding that the authority had verified the declarations of assets and personal interests submitted by the candidate and did not establish any violations.

The SCJ special panel considered relevant the candidate’s argument that during the period of 2012 – 2015, she did not disclose any donations, because the material support provided by her parents cannot be interpreted as a donation in the sense of the legislation, on the grounds raised by the candidate for the first time before the SCJ special panel that in fact, they maintained a joint household and the contributions did not take the legal form of a donation, but were used for the management of the joint household. The SCJ special panel also noted that the Commission did not appreciate the candidate’s argument that her parents’ income and the son’s aid were not to be declared as they did not fall under the meaning of the notion of “family member” provided by art. 2 of Law No. 1264 of 19 July 2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions, according to which a family member whose income is to be declared is a spouse, minor children and

dependents. In this context, the SCJ special panel noted that in the standard form of the annual statement, valid for the years in which the failure to declare the financial aid from the candidate's and her husband's parents and their grown-up son is cited, there was no column/field in which this aid could be indicated.

In the context of a multi-faceted, comprehensive and objective review, the Commission undertook a resumed evaluation of the candidate, based on information available at the initial evaluation and any information obtained during the resumed evaluation.

The Commission is required to verify that the candidate has complied with the legal regime of the declaration of assets and personal interests, family members and close persons to the candidate.

With respect to the contention that NIA found no issues with the candidate's declarations, art. 8 para. (6) of Law No. 26/2022 provides that in assessing and deciding upon the criteria related to financial and ethical integrity, the Commission shall not depend on the findings of other bodies competent in the field concerned. More importantly, the NIA protocols of 16 December 2021 and 22 November 2022 presented by the candidate before the SCJ special panel relate to 2020 and 2021 and do not cover the candidate's annual declarations for 2012 - 2014 and 2019, the accuracy of which were also included in the Commission's evaluation. Further, the protocols themselves state that NIA's assessment is based upon a comparison of the information obtained by NIA from online state registries with the data provided by the subject of the declaration in the declaration of assets and personal interests on the basis of which NIA determined that there was "a lack of *apparent* violation" (emphasis added) of the legal regime of the declaration of assets and personal interests. In this instance, donations from relatives and the candidate's cash savings were neither declared by the candidate or registered in any state registry (none of the donations were even documented in writing) so there was nothing for NIA to verify. Thus, the NIA verifications cannot be construed as a finding that there were no issues with the candidate's non-declaration of cash savings and contributions, and certainly not as to 2012 - 2014 and 2019, years that were not even considered by NIA.

With respect to the candidate's non-disclosure of contributions from relatives in her annual declarations for 2012 - 2014, which the candidate claimed were not required to be disclosed, the Commission notes that the income obtained by the subject of declaration in the form of monetary financial contributions from close persons and/or third parties was to be disclosed in the Incomes Section of the annual declarations, i.e. in the chapter for incomes obtained from donations and inheritances in the annual declaration on income and properties. The candidate's contention that her close relatives were not family members whose income was required to be disclosed (i.e. a spouse, minor children and dependents) is misplaced because she was required to declare their donations – not as their income – but as *income to her family*. While the candidate claimed, for the first time before the SCJ special panel, that she was not required to declare support from her mother because they shared a household, in addition to raising doubts about the candidate's

credibility, this rationale would not extend to donations from other close relatives, notably the substantial pension payments assigned by the candidate's father-in-law.

The candidate's claimed financial contributions from various close persons used to pay for the property purchases in 2012 and to pay off the loan in 2014 constituted a substantial additional source of income for the candidate's family, from which they purportedly purchased goods and fulfilled contractual obligations they assumed – exactly what is framed in the definition of income provided by the Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions as an addition to or increase of patrimony, “regardless of the source or origin” of the income. The exemption for gifts from family members whose individual value does not exceed 10 average salaries per economy was not introduced into law until 2016. Moreover, even after the law changed, the candidate failed to declare the 150,000 MDL donation from her son in 2019 that was more than twice the 69,750 MDL threshold for declaring gifts from relatives for that year. While there is an exception for disclosure for gifts from family members that do not exceed 10 average monthly salaries, the amount of average salary per economy set for 2021, when the candidate's 2020 annual declaration was filed, was 8,716 MDL. The total of 10 average salaries amounts therefore to 87,160 MDL, approximately half the amount donated by the candidate's son in 2020.

While the candidate conceded at the hearing during the initial evaluation that her son's 150,000 MDL donation in 2020 should have been disclosed, in response to the Commission's statement of facts and reasonable doubts during the resumed evaluation, the candidate claimed for the first time that her son's contribution did not have to be declared because the funds were received in three installments none of which exceeded the declaration threshold. (“The Commission very correctly indicates that the amount of 150,000 MDL I took from the son in three installments: on 07.04.2020; 03.09.2020; 07.10.2020, that is, they constitute three individual contributions, and each of which does not exceed the amount of 87,160 MDL. However, $150,000 \text{ MDL} / 3 = 50,000 \text{ MDL}$. Therefore, under the legislation in force at the time of filing the 2020 declaration, I completed the declaration accurately.”) This argument was not even raised before the SCJ. The candidate had previously maintained consistently that “the amount of my son's contribution for the repayment of the loan was 150,000 MDL from those 265,000 MDL paid in September - October 2020, which were granted to us by the son in cash, without any confirmation documents” (candidate's response to written questions from the Commission during the initial evaluation). In fact, the three dates indicated by the candidate are the three dates that the candidate and her husband made the payments on the loan in 2020, not dates ever indicated by the Commission as dates that funds were received from the candidate's son. Further, according to the candidate, her son always brought cash with him over the years when he visited the Republic of Moldova which he left with them for safekeeping, and they kept in their house. If so, when he allowed them to use 150,000 MDL for the October 2020 payment, the candidate was required to declare the donation. The candidate's changing version of the events undermined her credibility.

As respects the candidate's failure to declare cash savings in 2019 and 2020, the Commission

notes that the candidate also provided inconsistent explanations about the cash savings in her family's possession when her annual declarations were submitted.

In the written questions and at the hearing during the initial evaluation, the candidate stated that one source of funds for repayment of the loan in 2020 was savings from 2019 which the candidate first stated, very definitively, was in the amount of 484,189 MDL. After she was asked why the savings had not been disclosed in her 2019 annual declaration, the candidate appeared to prevaricate about the amount of savings they held. Regarding the obligation to disclose cash savings that exceed 15 average salaries per economy, the candidate herself confirmed that she and her husband had savings in cash at the end of 2019 amounting to an estimated 484,189 MDL. Fifteen average salaries per economy in 2019 was 104,625 MDL. The cash savings claimed by the candidate were required to be disclosed.

During the resumed evaluation, the Commission sought further clarification about the cash savings held by the candidate and undertook an analysis of the candidate's family's cash flows for 2018 and 2020, to obtain a better understanding of the candidate's financial situation during 2018 - 2020. The analysis for each of the three years analyzed⁴⁸ shows that theoretically they could have had these savings at the end of each year provided they did not have higher expenditures than those accounted for by the Commission. The Commission included the positive balance existing at the end of each year as income at the beginning of the next year, as required by the rules of calculating the inexplicable wealth⁴⁹. Following those calculations, the table in Annex No. 1 shows a maximum amount of 520,873 MDL available for savings for the candidate and her family in 2018, 627,483 MDL in 2019 and 546,683 MDL at the end of 2020, provided that the candidate and her family did not have higher expenditures than those accounted for by the Commission. These amounts available at the end of each year, ranging up to 70 - 80 average salaries per economy, surpass by a significant amount the threshold for disclosure of cash savings in annual declarations. The total of 15 average salaries for 2018 was 104,625 MDL, for 2019 was 109,295 MDL and for 2021 was 130,740 MDL. The cash savings calculated by the Commission exceeded the threshold for reporting in each year and thus, required reporting.

The Commission's doubts related to the candidate's failure to declare cash savings were heightened by the frequent change in statements made by the candidate, who, after confirming in the initial evaluation that she had savings in cash in the amount of 484,189 MDL, then claimed adamantly that she did not have savings exceeding 15 average salaries per economy: the amount of 15 average salaries in 2020 was 119,295 MDL – a threshold four times lower than the amount initially claimed by the candidate. The candidate's assertion, not made until the resumed evaluation, that because the annual declaration for 2019 was submitted in January, 2020 it was possible that when she filed the declaration they did not have the amounts of savings they had at the end of 2019 because of expenses they might have paid around the holidays for repairing the house, was also suspect. In addition to furnishing no documentation to support the claim that

⁴⁸ See the Annex No. 1 to this decision - Incomes and expenses for the period of 2018 – 2020.

⁴⁹ Annex: Unjustified wealth to the Evaluation Rules - [EvalRules_ENG_amended_09.2023.pdf \(vetting.md\)](#).

purchases or service contracts might have been made during this time period, the candidate's husband's accumulated pension and work income for their contribution to the loan payments in 2020 totaled only 166,238 MDL of their 296,670 MDL contribution, leaving a 130,432 MDL shortfall. According to the candidate, their contributions to the loan payments in 2020 came from the husband's pension and work income and savings. Thus, the 130,432 MDL shortfall must have been covered by savings. While the candidate claimed and it appears that her family, in theory, could have had more in savings, even the 130,432 MDL needed to cover their contribution to the loan payments in 2020 exceeded the threshold declaration amount of 119,295 MDL.

The Commission reiterates that the observance of the legal regime of the declaration of assets and personal interests by public civil servants aims to prevent unjustified and illicit enrichment and avoid conflicts of interest in their activity, as well as aiming to hold them accountable for such deeds. The legal regime was repeatedly violated by the candidate in a multitude of respects over many years involving substantial contributions that were claimed to be the primary source for multiple financial transactions. The candidate's persistent failure to declare these donations undermines the efficacy of the disclosure regulations, by permitting a public official to attribute substantial expenditures to funds received from undisclosed sources. Such non-disclosures directly contravene the intended purpose of the declaration requirements, which aim to prevent precisely this scenario. Thus, the Commission concluded that there was a serious doubt about the compliance of the candidate with the requirements stipulated in the legislation relating to disclosure of assets.

In light of above circumstances, on resumed evaluation of the candidate, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial and ethical integrity as per art. 8 para. (2) lit. c), (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 with respect to the failure to declare monetary contributions from candidate's close persons in her annual declarations for the period of 2012 - 2014 in the manner prescribed by law, the failure to declare cash savings in her 2019 annual declaration and her failure to declare the monetary contribution from her son in her 2020 annual declaration in the manner prescribed by law, which have not been mitigated by the candidate.

IV. Decision

Upon the resumed evaluation of the candidate pursuant to art. 14 para. (8) lit. b) and para. (10) of Law No. 26/2022, based on art. 8 para. (1), (2) lit. c), (4) lit. a) and b) and (5) lit. b), c), d) and f) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate does not meet the financial and ethical integrity criteria as serious doubts have been found as to the candidate's compliance with the ethical and financial integrity criteria and thus fails the evaluation.

The aim of the evaluation of the ethical and financial integrity of candidates for leadership

positions in the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies is to increase the integrity of future members of those bodies, as well as the society's trust in the activity of the self-administration bodies of judges and prosecutors and in the justice system overall (art. 8 para. (1) preamble to Law No. 26/2022). When candidates fail the evaluation because there are serious doubts about financial and/or ethical integrity issues, it demonstrates that candidates for leadership positions in the justice system have been scrupulously held to high standards of integrity, increasing the public's confidence in those candidates who pass and are eligible for election as members of the self-administration bodies. Especially considering the critical role of members of the self-administration bodies in the selection, promotion and discipline of their colleagues and in their administration of benefits such as preferential housing programs, it is imperative that the members themselves have demonstrated the highest level of financial and ethical integrity so that they can be expected as leaders to promote high standards for themselves and others.

According to art. 13 para. (1) of Law No. 26/2022, there are only two outcomes for the evaluation of candidates for positions as members in the self-administration bodies: passing or failing the evaluation. No other measures are available to the Commission. According to the ECtHR, it is consistent with the vetting process to have a more limited scale of measures. (In Albania there were only two measures that could be imposed: dismissal from office or suspension with the obligation to attend a training program.)⁵⁰ For perspective in terms of the proportionality of a fail decision based upon reasonable doubts about a candidate's financial integrity, the ECtHR has repeatedly upheld confiscation orders issued by domestic authorities based only on a preponderance of evidence suggesting that the respondents' lawful incomes could not have sufficed for them to acquire the property in question. Confiscation orders have been upheld not only with respect to persons directly accused of offenses, but also in connection with their family members and other close relatives who had been presumed to possess and manage the "ill-gotten" property informally on behalf of the suspected offenders or who otherwise lacked the necessary *bona fide* status.⁵¹ A failing decision in the context of the evaluation of candidates seeking to serve on self-administration bodies in the justice system is in no way comparable in magnitude to confiscation of property orders, which have been sustained by the ECtHR on the basis of similar standards of proof.

The SCJ special panel suggested that the Commission could pass some candidates with perhaps minor integrity issues and provide a detailed description of those issues in the Commission's decisions so that the issues could be considered by those voting on the candidates for positions as members in the self-administration bodies. Commission evaluation decisions are public only with the candidate's consent and thus, there could be no assurance that voters would have any information about the integrity issues identified by the Commission. During the initial evaluation

⁵⁰ *Sevdari v. Albania*, no. 40662/19, para. 87, 13 December 2022.

⁵¹ *Telbis and Viziteu v. Romania*, no. 47911/15, para. 68, 26 June 2018; *Gogitidze and Others v. Georgia*, no. 36862/05, para. 107, 12 May 2015; *Webb v. the United Kingdom* (dec.), no. 56054/00, 10 February 2004; *Morabito and Others v. Italy* (dec.), 58572/00, 7 June 2005; and *Saccoccia v. Austria*, no. 69917/01, paras. 87-91, 18 December 2008.

of candidates, only 26 of the 45 candidates that failed the evaluation – slightly more than half – consented to their decisions being public.

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 of receiving the decision.

Pursuant to art. 13 para. (7) of Law No. 26/2022, this decision is sent by email to the candidate and to the institution responsible for organizing the election or competition, which in the present case is the Superior Council of Magistracy. If, within 48 hours of sending the decision, the candidate does not notify the Commission of his or her refusal to publish the decision, the 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 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

Annex No. 1. Incomes and expenses for the period of 2018 - 2020

Income MDL 2018		Expenses MDL 2018	
Veronica Cupcea net salary	241,476 MDL	Payments for the loan contracted in 2018	44,856 MDL
Evghenii Sanduta net income from attorney's activity	34,817 MDL	CEP	98,964 MDL
Retirement pension Evghenii Sanduta	218,400 MDL	Purchase of a Mitsubishi Lancer	100,000 MDL
Loan	540,000 MDL	Repair Costs for the Criuleni district house	270,000 MDL
Total	1,034,693 MDL	Total	513,820 MDL
Maximum possible cash savings from 2018		520,873 MDL	
Income MDL 2019		Expenses MDL 2019	
Possible savings from 2018	520,873 MDL	Repayment of the loan contracted in 2018	89,808 MDL
Veronica Cupcea net salary	281,964 MDL	CEP	126,972 MDL
Evghenii Sanduta net income from attorney's activity	26,394 MDL	Repair costs for the Criuleni district house	270,000 MDL
Retirement pension Evghenii Sanduta	237,032 MDL		
Income from the sale of land	48,000 MDL		
Total	1,114,263 MDL	Total	486,780 MDL
Maximum possible cash savings from 2019		627,483 MDL	
Income MDL 2020		Expenses MDL 2020	
Possible savings from 2019	627,483 MDL	Repayment of the loan contracted in 2018	496,934 MDL
Veronica Cupcea net salary	305,928 MDL	CEP	136,116 MDL
Evghenii Sanduta net income from attorney's activity	6,070 MDL		
Retirement pension Evghenii Sanduta	240,252 MDL		
Total	1,179, 733 MDL	Total	633,050 MDL
Maximum possible cash savings from 2020		546,683 MDL	

*Annex No. 2. Candidate's table for 2019 in the Answer to the
Statement of facts and serious doubts*

Income MDL in 2019		Expenditures MDL in 2019	
Income from salary	281,964 MDL	CEP	91,925 MDL
Income from lawyer's activity	26,394 MDL	Costs for building the house	270,000 MDL
Income from pension Income from the sale of land	237,032 MDL 48,000 MDL	Loan repayment	89,808 MDL
Total	593,390 MDL	Total	451,733 MDL
2019 possible savings of cash		141,657 MDL	