



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. 16 of 28 June 2024 on the Resumed Evaluation of Alexei PANIȘ,  
Candidate for the Superior Council of Magistracy*

The Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors (“the Commission”) deliberated in private on 16 April 2024, 7 June 2024 and 28 June 2024. The members participating were:

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

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

*I. The procedure*

Alexei PANIȘ, judge at the Chișinău Court, Râșcani office (“the candidate”), was on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 6 April 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge for the initial five-year term on 15 March 2017 to serve in the Chisinau Court. On 1 January 2019 the candidate was appointed as judge with specialization in examining administrative cases in Chisinau Court, Râșcani office. On 8 November 2022 the President of the Republic of Moldova rejected the appointment of the candidate as a judge until the retirement age.

The candidate was initially evaluated by the Commission (hereinafter “initial evaluation”) starting on 8 July 2022. The candidate submitted the voluntary ethics questionnaire on 5 July 2022. On 15 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.<sup>1</sup>

<sup>1</sup> 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

The candidate also responded to written questions and requests for information from the Commission.<sup>2</sup> Following the candidate's request, on 9 January 2023, the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022. On 12 January 2023, the candidate participated in a public hearing before the Commission. The Commission issued its decision failing the candidate on 24 January 2023.

On 13 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 candidate responded to two rounds of written questions from the Commission, including two questions, 12 sub-questions and nine requests for further documentation. 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 25 March 2024. Following the candidate's request, on 25 March 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 1 April 2024. The candidate requested a public hearing. On 16 April 2024, the candidate appeared at a hearing before the Commission.

Tatiana RĂDUCANU participated in the first resumed evaluation hearing of the candidate on 16 April 2024 (hereinafter "the resumed evaluation hearing") but resigned as member of the Commission on 14 May 2024 prior to the Commission taking a decision on the resumed evaluation of the candidate. As the Commission thereby lacked a quorum, according to art. 11 para. (2) of Law No. 26/2022, the Commission decided, also based on a request by the candidate submitted to the Commission on 14 May 2024, to undertake an additional resumed evaluation hearing on 7 June 2024 (hereinafter "the additional resumed evaluation hearing"). Victoria HENLEY, who did not participate in the first resumed evaluation hearing on 16 April 2024, notified the other members of the Commission on 24 May 2024 that she had reviewed the videorecording of the hearing of 16 April 2024 in its entirety. Victoria HENLEY participated in the hearing on 7 June 2024 and in the further proceedings related to this matter.

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by sources about a candidate was pertinent to the Commission's assessment. All information received was carefully screened for accuracy and relevance.

<sup>2</sup> The Commission sent four rounds of questions to the candidate, including 39 questions, 84 sub-questions and 45 requests for further documentation.

## 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. 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.<sup>3</sup> 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.<sup>4</sup> 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

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

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

in the action of the Superior Councils depends very much, or essentially, on the personal integrity, competence, and credibility of its membership.<sup>5</sup> Venice Commission Opinion No. 1069/2022 specifically noted that the creation of ad hoc bodies to assess the integrity of judges and 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.<sup>6</sup>

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”.<sup>7</sup> 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.<sup>8</sup> 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 Parliament<sup>9</sup> 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*”.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> A recent opinion of the Venice Commission in relation to Georgia reached similar conclusions about the need for an inclusive

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<sup>5</sup> 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.

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

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

<sup>8</sup> 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.

<sup>9</sup> 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)).

<sup>10</sup> 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.

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

<sup>12</sup> 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.

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.<sup>13</sup>

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

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<sup>13</sup> 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.

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 factions 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.<sup>14</sup> 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”.<sup>15</sup> 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.<sup>16</sup>

According to well-established ECtHR case law, there is no right to a favorable outcome<sup>17</sup> and there is, in principle, no right under the Convention to hold a public post related to the administration of justice.<sup>18</sup> As a matter of principle, States have a legitimate interest in regulating public service positions.<sup>19</sup> In adopting Law No. 26/2022, the Moldovan Parliament required candidates for membership on the Superior Council of Magistracy and the Superior Council of

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

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> 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.

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 of the evaluation. In *Xhoxhaj v. Albania*,<sup>20</sup> 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.<sup>21</sup> 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

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

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

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 effective deterrents”.<sup>22</sup> A joint report of four Moldovan CSOs mirrors these findings and documents cases where disciplinary liability of judges failed.<sup>23</sup> 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”.<sup>24</sup> 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”.<sup>25</sup> 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”.<sup>26</sup> 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”.<sup>27</sup>

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

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

<sup>23</sup> Transparency International, and others, State Capture: the Case of the Republic of Moldova, 2017, p. 21.

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

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

<sup>26</sup> International Commission of Jurists, The Undelivered Promise of an Independent Judiciary in Moldova, 2019, p. 35.

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

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.<sup>28</sup> For comparison, a similar provision is included in item 1.5.3 in the Methodology (2021) of the Ukrainian Ethics Council, referred to by the Venice Commission as an example regulating the evaluation of candidates.<sup>29</sup> 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”.<sup>30</sup> 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.<sup>31</sup> It also means that the Commission will treat differently persons whose situations are significantly different.<sup>32</sup> 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.<sup>33</sup> 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

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<sup>28</sup> 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.

<sup>29</sup> 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.

<sup>30</sup> 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.

<sup>31</sup> *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

<sup>32</sup> *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.

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

elements, and the comparable situations must be considered in their totality, avoiding singling out marginal aspects which would lead to an artificial analysis.<sup>34</sup>

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 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.<sup>35</sup> 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.<sup>36</sup> 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."<sup>37</sup> 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 special panel 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

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<sup>34</sup> *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.

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

<sup>36</sup> 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.

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

was in the impossibility to present previously at the evaluation stage and before the SCJ special panel 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 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 15 July 2022, the 45-day period for the Commission's collection of information ended on 29 August 2022. Thus, after 29 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 300,000 MDL loan and money used from father's salary card*

##### *a. The facts*

In his annual declaration of assets and personal interests for 2021 (hereinafter "annual

declaration”), submitted to the National Integrity Authority (hereinafter “NIA”) , the candidate declared a loan of 300,000 MDL from his father in 2021 with no interest and no due date. The candidate’s father, who was required to file annual declarations as a public servant, also declared this loan in his 2021 annual declaration.

During the initial evaluation, the candidate claimed that the source of funds for the loan was income from the business activities of his father who had been in the agricultural business for 30 years. The candidate told the Commission that his father received considerable income in 2021, approximately 1,000,000 MDL, from leasing agricultural lands that the candidate’s parents had purchased between 2008 - 2020. In 2021, the officially registered income of the candidate’s father was 1,193,959 MDL, and his mother’s income was 662,043 MDL. Most of the income was earned from leasing agricultural lands. The parents’ plots of lands were leased to companies in which the candidate’s father owned shares; in the lease contracts, the candidate’s father appeared both in his private capacity as the lessee of the plots of land and as the lessor of the plots of land while representing the companies.

In 2022 the candidate was using his father’s salary card. According to the information available to the Commission, during the first six months of 2022 the candidate spent 58,927 MDL from that account.

On 7 July 2020, NIA initiated verification proceedings concerning the candidate’s father’s assets and personal interests and on 8 September 2021 published an Act of findings No. 280/11, which found that there was a discrepancy between the wealth acquired by the candidate’s parents and their income of 1,928,091 MDL during the period 2012 - 2020. On 8 December 2021, the Chişinău Court, Râşcani office, annulled the NIA's Act of findings No. 280/11. On 6 December 2022, the Chisinau Court of Appeal upheld the NIA's Act of findings.<sup>38</sup> The candidate’s father appealed this decision to the SCJ. During the initial evaluation, this appeal was still pending. On 12 June 2024, the SCJ declared the candidate’s father’s appeal inadmissible.<sup>39</sup>

At the initial evaluation hearing, the candidate maintained that in 2021 he had received a 300,000 MDL loan from his father. The candidate stated that he had received this amount in cash instalments. The candidate indicated that he had moved to a new house at the end of 2020, and throughout 2021 he needed funds to furnish the house. The candidate had no confirmation documents for this loan as, in his view, it was unnecessary to use formal agreements. The candidate also maintained that he had used his father’s salary card for approximately one year, starting after the first two months of 2022.

At the initial evaluation hearing, the candidate also stated that he had been informed of the NIA verification procedure concerning his father’s assets and personal interests about a week or two

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<sup>38</sup> NIA’s press release available at <https://ani.md/ro/node/2713>.

<sup>39</sup> The SCJ decision regarding the candidate’s father is available at [https://jurisprudenta.csj.md/search\\_col\\_civil.php?id=75210](https://jurisprudenta.csj.md/search_col_civil.php?id=75210).

after its initiation, i.e. not later than August 2020, when his father was officially notified about the procedure. This is long before he accepted the loan from his father in 2021 and started using his father's salary card in 2022. Answering the Commission's questions as to whether the source of funds that were used to provide him with 300,000 MDL might be considered questionable until there is a final court decision, the candidate answered in the negative in view of his father's official registered income in 2021 of 1,193,959 MDL. According to the candidate: "No, there is no [doubt], it is not questionable" and he invited the Commission to check the findings of the NIA's Act of findings No. 280/11. The candidate maintained that the NIA's Act of findings contained erroneous calculations of his father's income, income that the candidate said, exceeds his father's expenses. He also believed that it was ethical for him to continue receiving money from his parents while their wealth was under investigation to verify the legitimacy of its origins, because the source of the money was legal. In this regard the candidate inquired whether the Commission expected him to take bribes instead of accepting help from his parents. The candidate argued that the very purpose of his parents buying goods for him, which had started in 2011, was to ensure that he resisted any temptation to engage in unlawful dealings. The candidate stated that this "is just political retaliation against my father". The candidate was further asked whether, at least from 8 September 2021 when the NIA's Act of findings was released, he should have exercised diligence concerning money received from his parents. To this he replied: "certainly not".

During the resumed evaluation, the Commission considered not only the NIA's Act of findings No. 280/11 of 8 September 2021, but also the background documents relating to this document, which were not available to the Commission during the initial evaluation. The Commission also obtained information from other sources and considered information from other NIA's verification proceedings relating to the candidate and the candidate's father.

In total, three acts of findings have been issued by NIA relating to the candidate's father. All three acts involve the potential violation of the legal regime of incompatibilities by the candidate's father who simultaneously held the position of President of the Florești District, while at the same time serving as administrator of and actively managing a private company, and related issues concerning the legality of funds.

The candidate's father was the President of the Florești District from 28 March 2012 until 1 December 2023. He was first elected President in 2012 by Decision No. 02/05 of the Florești District Council and re-elected by Decision No. 02/02 of 16 July 2015 and Decision No. 01/07 of 20 November 2019. Because this position is a dignitary position, the candidate's father was obliged to submit annual declarations to NIA during that period.

Beginning on 20 April 1999, the candidate's father held the position of administrator of the company "P" L.L.C. and held an ownership share in the company of 75%. After he became the President of Florești District in March 2012, the father continued to function as this company's administrator until 9 April 2019. In addition, on 10 September 2012, the candidate's father

established “E.G.” L.L.C. and held the position of administrator of this company from 18 March 2019 until 27 May 2020, when he resigned from that position.

On 7 July 2020, NIA initiated verification proceedings concerning the assets and personal interests of the candidate’s father between 2012 - 2020. The verification procedure was instituted to check the legality of the funds by which “Mr. Panis Stefan, President of the Floresti district, during 2019, became a majority shareholder with 80% of the shares of “E.G.” L.L.C., with the share capital of 26,845,365 MDL”. The candidate’s father was informed of the verification proceedings by letter dated 8 July 2020. Pursuant to art. 32 para. (1) of Law No. 132/2016 on the National Integrity Authority (in force in 2020), “in the process of verifying the assets and personal interests, the integrity inspector shall verify the data and information regarding the existing assets of the person subject to inspection, as well as the property changes occurred during the exercise of mandates, positions of public officials or positions of dignitaries”. The essence of the control of assets and personal interests is to establish the existence or non-existence of substantial differences between acquired assets and income obtained by the subject of the declaration.

On 8 September 2021, NIA published a statement of findings following the verification (Act of findings No. 280/11). The Act of findings No. 280/11 covered the period of 28 March 2012 to 7 July 2020. According to it, during the period subject to the verification, the candidate’s father purchased, through a total of 198 contracts, real estate consisting of 547 plots of agricultural land, at a total cost of 2,825,456 MDL. The Act of findings also establishes that the father received dividends in the total amount of 2,816,530 MDL from “P” L.L.C., based on decisions made by the company in the period 2015 - 2018, covering the operational period of the company in 2002 - 2007. The Act of findings further established that, during the period 28 March 2012 - 1 August 2016, the total expenses of the candidate’s father and his wife amounted to 4,074,296 MDL, whereas the income of the father and his wife amounted to 2,416,656 MDL, thereby creating an “obvious difference” within the meaning of art. 2 of Law No. 1264/2002 concerning the declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions, of 1,658,640 MDL. In addition, NIA concludes that during the period 1 August 2016 - 7 July 2020, there existed a “substantial difference” of 269,451 MDL between the acquired wealth of the candidate’s father and his wife and their income. This differential was created by the purchase of real estate by the candidate’s father on 6 November 2017, which the father did not have sufficient funds to pay for at that time. According to the NIA’s Act of findings, the possession of these properties has an unjustified character. As a result of these findings, NIA submitted its Act of findings No. 280/11 to the competent court for examination and for confiscation of unjustified assets. Confiscation can involve the full value of the assets owned by the subject of the declaration, the partial value of these assets or certain specific assets. The Act of findings also concluded that the candidate’s father should lose the right to exercise a position of public official or a position of dignitary, for a period of three years from the date of his resignation or dismissal from office or from the date on which the assets of the candidate’s father are to be found, in whole or in part, unjustified by a final court decision and that the candidate’s father was to be registered in the State Register of persons who are prohibited

from holding a position of public official or a position of dignitary.

In addition to NIA's Act of findings No. 280/11 of 8 September 2021, the Commission has received two other NIA's acts of findings about the candidate's father. Both documents relate to the non-compliance of the candidate's father with the legal regime of incompatibilities. NIA's Act of findings No. 63/20 of 21 February 2022 relates to the violation of the legal regime of incompatibilities because of the concurrent exercise of the mandate of President of the Florești District and the position of manager of "P" L.L.C., a position the candidate's father held from 20 April 1999 until 9 April 2019. NIA started an inspection into this matter on 8 November 2021 and informed the candidate's father on 9 November 2021. The candidate's father filed an appeal against this act of findings and the case is at present pending before the SCJ.

The NIA's Act of findings No. 52/08 of 25 February 2021 relates to the incompatibility between the candidate's father's position as President of the Florești District since 20 November 2019 and the position of manager of "E.G." L.L.C., which he held from 18 March 2019 until his resignation on 7 July 2020. In the latter capacity, the candidate's father had entered into a contract on 20 January 2020 for the purchase of agricultural products with a value of 1,000,000 MDL. The verification in this case was initiated on 19 August 2020 and the candidate's father was informed on 21 August 2020. Both Acts of findings No. 52/08 and No. 280/11 refer to art. 16 of Law No. 133/2016 on declaration of assets and personal interests, according to which the subject of declaration is in a state of incompatibility if, in addition to the position of public official or the position of dignitary, he concurrently holds/exercises another post, capacity or activity, a fact which is prohibited by the Constitution of the Republic of Moldova and/or by other legislative acts, which are described in detail in both acts. The Act of findings No. 63/20 also states that a violation of the legal regime of incompatibilities constitutes a corruption related offence and may lead to disciplinary action or termination of the mandate.

The candidate's father first appealed the NIA's Act of findings No. 52/08 and on 22 September 2021 augmented the appeal with the request to annul also the NIA's Act of findings No. 280/11. On 8 December 2021, the Chișinău Court, Râșcani office, annulled the NIA's Acts of findings No. 52/08 and No. 280/11. On 6 December 2022, the Chișinău Court of Appeal upheld both NIA's Acts of findings. On 12 June 2024, the SCJ declared the appeal of the candidate's father of the decision of the Chișinău Court of Appeal inadmissible, thereby confirming the findings in the Court of Appeal's decision and making these findings irrevocable.

The income of the candidate's father as President of the Florești District over the period 2012 to 2021 totaled 1,106,339 MDL.

In the statement of facts and serious doubts document during the resumed evaluation, the Commission informed the candidate that it has serious doubts about the financial and ethical integrity of the candidate in regard to his receipt and use of a loan of 300,000 MDL and use of a salary card for the amount of 58,927 MDL from the candidate's father, while the candidate was

aware that his father was the subject of three verification procedures by NIA relating to the candidate's father's position as President of the Florești District, while at the same time being engaged in and receiving a considerable income from private economic activities, in violation of the legal regime of incompatibilities, and related issues of legality of funds acquired over the years 2012 - 2020.

In response to the statement of facts and serious doubts document and during the resumed evaluation hearing, the candidate conceded that his father had been the President of Florești District from 28 March 2012 until 1 December 2023, and that he held the position of administrator of company "P" L.L.C. from 20 April 1999 until 9 April 2019. The candidate also confirmed that his father established company "E.G." L.L.C. on 10 September 2012, i.e. after he became President of Florești District, and held the position of administrator in that company from 18 March 2019 until 27 May 2020.

At the resumed evaluation hearing, the candidate emphasized that his father was not a lawyer and not familiar with how the provisions of Law No. 133/2016 on declaration of assets and personal interests should be applied. He also argued that in assessing whether there has been a violation of these provisions, it should be taken into consideration whether the violation was deliberate or not. At the same time, in his response to the statement of facts, at the resumed evaluation hearing and the additional resumed evaluation hearing, the candidate repeatedly argued that his father never received a salary from his company while he was President of Florești District, but instead, in accordance with the provisions of art. 39 of Law No. 135/2007 on limited liability companies, regularly received dividends from the company. According to the candidate, receiving dividends rather than salary means that there was no violation of the incompatibility requirements, as dividends were not to be considered remuneration. According to the candidate, all of his father's income was derived primarily from dividends, salary from his position of President of the District Council and income from leasing land.

The Commission established that the candidate's father, prior to becoming President of Florești District, received a salary from company "P" L.L.C. for which he was registered as administrator, but that, after becoming President, he no longer declared any salary, but only dividend over the years 2015 - 2019. The total amount of dividends received that were declared to the NIA over these years was 2,816,530 MDL. As of 2019, while the candidate's father still acted as administrator of one or both companies, he started to declare income from leasing agricultural land, first from company "P" L.L.C., and as of 2021 also from company "E.G." L.L.C. In 2021, the candidate's mother also declared income from the lease of agricultural lands from company "P" L.L.C. As of 2020, the year in which NIA initiated the verification proceedings, the candidate's father no longer declared dividends received from company "P" L.L.C., only income from leasing agricultural lands.

In addition, the Commission was able to establish that the candidate's father was not only registered as administrator of the two companies mentioned above but was actively engaged in

managerial activities and executing contracts on behalf of both companies. For example, on 9 April 2019, the candidate's father purchased 80,000 MDL of shares in company "P" L.L.C., signing the sales-purchase contract both on behalf of the company as administrator and as purchaser of the shares. On 30 October 2019, a contract for the lease of agricultural plots of land for the years 2019 - 2024 was signed by his father, both in the capacity of administrator of company "E.G." L.L.C. as lessee and in his personal capacity as lessor of these land plots. And on 20 January 2020, the candidate's father, acting as administrator of company "E.G." L.L.C., signed a contract worth 1 million MDL relating to the delivery of seeds, fertilizers and phytosanitary products.

Both in response to the statement of facts and serious doubts document and at the resumed evaluation hearing and the additional resumed evaluation hearing, the candidate made a comparison between his father's NIA case and a case referenced in a NIA's Act of findings of 10 December 2021 involving a member of Parliament who, while in Parliament, also held, according to the candidate, the position of chairperson of "a legal entity". In that case, it was found that the person did not violate the legal regime of incompatibilities as the person concerned was not remunerated for the latter position.

In response to a question by the Commission at the resumed evaluation hearing, whether as a judge he would have the obligation to ensure that the legality of sources of funds used by him are of an undisputed nature and whether it would be ethical to make use of funds if he was not aware that the legality of such funds would be of an undisputed nature, the candidate responded that the ongoing NIA's verification procedure relates to the years prior to the year he took the loan from his father and that NIA had established that his parents had an income in 2021 of over 1 million MDL from legal sources and that the loan was not of a disputed nature.

During the resumed evaluation hearing, the candidate was also asked whether, if his father had fully respected the rules of incompatibility after he became President of Florești District on 28 March 2012, his father would have been able to provide him with the loan and with the use of the salary card. To this question, the candidate responded that there was no document that establishes that there has been an incompatibility, that the use of the salary card related to the salary of his father which was paid from the state budget and that his father had only received dividends from his company. He also repeated in his response to the statement of facts and serious doubts document, and at both the resumed evaluation hearing and the additional resumed evaluation hearing the argument that the NIA's Act of findings No. 280/11 relating to the verification over the years 2012 - 2020 is not in force and not valid and produces no legal effects and that the only NIA's act that is in force is the protocol on refusal to initiate the verification on his father No. 1162/16 of 25 November 2021 that confirms that the source of the income of his father in the year that the candidate took the loan from him was greater than 1.3 million MDL.

On 12 June 2024, the SCJ declared the candidate's father's appeal of the Chișinău Court of Appeal decision of 6 December 2022 inadmissible, thereby upholding the Chișinău Court of Appeal

decision, which found that the NIA's Acts of findings No. 52/08 and No. 280/11 correctly established that the candidate's father had violated the legal regime of incompatibilities, by simultaneously exercising the function of President of Florești District and the position of administrator of company "E.G." L.L.C.. This circumstance of incompatibility was belatedly terminated on 7 July 2020, when the candidate's father resigned from the position of administrator of company "E.G." L.L.C.

In relation to the father's position as administrator of company "E.G." L.L.C., the SCJ mentioned that the appellate court concluded that by its nature, the role of an administrator of a commercial company implies the pursuit of a profit-making purpose, and can be remunerated for that position. The court concluded that it was sufficiently established that the activity of an administrator, by its nature, is remunerative since the administrator pursues a profit activity. The court also concluded that it is presumed that an administrator is remunerated for the activity in question and that even if a person renounces remuneration or otherwise ceases to be paid remuneration, this situation does not alter the remunerative nature of the respective position. The SCJ concluded that the candidate's father carried out a remunerated activity, simultaneously with the exercise of the mandate of President of Florești District.

The SCJ decision of 12 June 2024 also maintained the appellate court's findings regarding the NIA's Act of findings No. 280/11 relating to discrepancies between the income and wealth/expenditures of the candidate's parents during the period of 28 March 2012 - 1 August 2016 and 1 August 2016 - 7 July 2020 and the lack of sufficient funds for the purchase of real estate on 6 November 2017. The court concluded that the NIA's Act of findings was issued in compliance with the legal provisions, that the conclusions of the integrity inspector were founded and that there was no basis to annul this Act of findings.

In its decision, the SCJ also addressed the comparison made between the case of the candidate's father and two other cases, including one of a member of Parliament who at the same time held the position of chairperson of a non-profit sports organization, which case the candidate referred to in his response to the statement of facts and serious doubts document (the candidate referred to that organization as "a legal entity"). The SCJ held that the case of the candidate's father and the two other cases were incomparable, as the latter involved positions in non-profit associations which are non-commercial organizations, established for non-commercial purposes and which do not generate income, unlike commercial companies that have share capital, carry out economic activity and whose purpose is to increase their value.

After the additional resumed evaluation hearing, on 20 June 2024, the Commission sent a copy of the SCJ decision to the candidate and provided him an opportunity to submit any comments about the decision. In his response to the Commission on the same day, the candidate repeated his arguments that the loan of 300,000 MDL was made from the income of his father during 2021 and not on the income of his father during the years 2012 - 2020, the time period covered by the NIA's Act of findings [No. 280/11]. The candidate also informed the Commission that his father

had submitted that same day a request to NIA for withdrawal of the documents that formed the basis for the conclusions of the SCJ decision.

*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). Pursuant to art. 8 para. (5) lit. e), the Commission is also required to verify the existence of loan agreements where the candidate is a contracting party.

According to art. 8 para. (2) lit. a) of Law No. 26/2022, the candidate shall be deemed to meet the criterion of ethical integrity if 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.

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 paras. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

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

According to the Bangalore Principles of Judicial Conduct, “A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer” (Principle 3.1). And Principle 3.2. states that “[t]he behavior and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done”.

The 2015 Judge’s Code of Ethics and Professional Conduct states in art. 5 para. (1) that the judge “shall respect the highest standards of integrity and responsibility, in order to ensure the society’s trust in the courts. He/she is aware of the risks of corruption and shall not admit or create the appearance of a corrupt behavior in his/her work; shall not ask for, accept or receive gifts, favors or benefits for the fulfillment or non-fulfillment of the service duties or by virtue of the position held”. In para. (5) of the same article it provides that the judge “shall conclude transactions regarding personal property in a way that does not cause doubt or does not affect his/her independence and impartiality or trigger conflict of interest.” Also, according to art. 6 para. (2)

of the Code, a judge “must refrain from any behavior, action or manifestation that could prejudice the public’s trust in the judicial system”.

According to art. 2 para. (2) of the Evaluation Rules of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, pursuant to Law No. 26/2022 (hereinafter “Evaluation Rules”), in assessing a candidate’s ethical integrity, the Commission may take into account the gravity or severity, the surrounding context, and the willfulness, of any integrity incident, and as to minor incidents, whether there has been a sufficient passage of time without further reoccurrences. While determining the gravity, the Commission will take into account all circumstances, including but not limited to:

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

According to art. 16 of Law No. 133/2016 on declaration of assets and personal interests, the subject of the declaration is in a state of incompatibility if, in addition to the position of public official or the position of dignitary, he concurrently holds/exercises another post, capacity or activity, a fact which is prohibited by the Constitution of the Republic of Moldova and/or by other legislative acts.

According to art. 23 para. (3) of Law No. 133/2016 on declaration of assets and personal interests, the deed of the subject of the declaration regarding whom was found the state incompatibility not resolved within the legal term constitutes grounds for disciplinary, administrative offence liability and/or, as the case may be, for the termination of the mandate, of his employment or service relations.

According to art. 7 para. (1) lit. e) of Law No. 768/2000 on the status of the local elected official, the mandate of the local elected official is incompatible with other cases established by law, including those provided for in art. 84 of Law No. 436/2006 on local public administration.

Art. 8 of the same law states that the local elected official who is in one of the cases of incompatibility provided for in art. 7 shall resign from the position incompatible with the mandate held or shall tender resignation within 30 days from the occurrence of the incompatibility.

Art. 84 para. (1) of Law No. 436/2006 on local public administration provides that the chairperson of the district, during the mandate, does not have the right to hold other remunerated positions or to aggregate another position, by contract or agreement, in foreign companies or joint ventures, in enterprises, institutions and organizations with any form of legal organization, with the exception of scientific, teaching and creative activities.

According to art. 12 para. (1) of Law No. 199/2010 regarding the status of persons holding positions of public dignity, the official is not entitled to carry out any other remunerated activity, with the exception of teaching and scientific activities. And para. (3) of art. 12 states that the situation of incompatibility is to cease within one month from the moment of its occurrence, if the special law regulating the activity of this official does not establish another term.

Additionally, according to art. 12 para. (2) lit. a) of Law No. 82/2017 on integrity, the public agent is obliged to resolve his incompatibility within one month from the beginning of the mandate, employment or service relationship or, if the cessation of the incompatibility within the given period does not depend on his will, to present evidence regarding him undertaking in good faith of the actions to eliminate this situation.

Art. 25 para. (2<sup>1</sup>) of the Law No. 158/2008 regarding the public office and the status of the civil servant states: “The civil servant is not entitled to carry out entrepreneurial activity, except as the founder of the commercial company.”

Art. 80 of the Tax Code states that “The economic agent pays dividends to its shareholders (associates) from the remaining income after taxation.

Art. 80<sup>1</sup> para. (2) of the Tax Code states that “The amount of tax paid by the economic agent [...] is taken into account as tax applied to the taxable income of the respective economic agent for the fiscal period in which the payment was made.

### *c. Reasoning*

The SCJ special panel held that the Commission unjustifiably raised serious doubts about the source of funds for the 300,000 MDL loan and the candidate’s use of his father’s salary card in 2022, as the challenge of the NIA’s Act of findings of 8 September 2021 concerning the candidate’s father’s finances was still being litigated before the SCJ and has not become final or irrevocable, while at the same time, the Commission did not take into account other final NIA’s documents, including the protocol No. 1162/16 of 25 November 2021, refusing to initiate a check in relation to the candidate’s father. The SCJ special panel also acknowledged the candidate’s argument that the loan he took from his father in 2021 was made from income registered in 2021, while the NIA’s Act of findings of 8 September 2021 relates to the father’s income over the period 2012 to 2020. As to the source of funds relating to the use of the father’s salary card in 2022 in the amount of 58,927 MDL, the SCJ special panel noted that the candidate’s father held a public position at that time for which he was remunerated from the state budget.

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 declaring assets and personal interests and is required to verify sources of income and methods of acquiring assets by the candidate, family members and close persons to the candidate. The Commission is also required to verify the existence of loans if the candidate is a contracting party.

The decision of the SCJ of 12 June 2024 came at the very end of the resumed evaluation procedures, i.e. after the submission of the statement of facts and serious doubts document to the candidate, his responses to that document and the resumed and additional resumed evaluation hearings. During the resumed evaluation, the candidate repeatedly argued that the NIA's Act of findings No. 280/11 of 8 September 2021 was still subject to litigation and had not become final whereas NIA's protocol No. 1162/16 of 25 November 2021 relating to his father had become final. During the resumed evaluation, the Commission noted that, although the Chişinău Court, Râşcani office had annulled the NIA's Act of findings No. 280/11, the Chisinau Court of Appeal upheld it on 6 December 2022 and that decision was enforceable, subject to an appeal on points of law. The candidate's father submitted an appeal that remained pending before the SCJ. The Commission considered that, as the Court of Appeal decision had confirmed the NIA's Acts of findings, it could not ignore the factual basis for these NIA findings as to the alleged violation of the incompatibility requirements and the considerable discrepancies between the income the candidate's father earned and acquired wealth between 2012 - 2020. The Commission also considered that the fact that the SCJ was reviewing a decision of the appellate court upholding the NIA's act of findings was sufficient to create serious doubts about the legality of the father's income and assets over the years 2012 - 2020. During the resumed evaluation, the Commission also took into consideration three other NIA's acts of findings relating to the candidate's father, as well as other sources of information. With the SCJ decision of 12 June 2024, declaring the candidate's father's appeal of the Court of Appeal decision of 6 December 2022 inadmissible, the findings set forth in the NIA's Act of finding No. 52/08 and No. 280/11, the decision of the Court of Appeal and the decision of the SCJ, became final and irrevocable. In addition, based on art. 8 para. (6) and art. 10 para. (9) of Law No. 26/2022, both during the initial and resumed evaluations, the Commission carried out its own analysis of the facts and legal framework regarding the candidate's father's wealth and incompatibilities, and drew conclusions regarding the candidate's evaluation relevant to the 300,000 MDL loan and the use of the father's card.

In his 2021 annual declaration, the candidate declared a loan of 300,000 MDL received from his father in cash, in instalments. One aspect of the 300,000 MDL loan raised serious questions, namely, the source of the father's funds which enabled him to lend this amount to the candidate.

The candidate claimed both during the initial and the resumed evaluation that the source of funds for the loan was income from the business activities of his father who had been in the agricultural business for 30 years. In 2021, the official registered income of the candidate's father was 1,193,959 MDL, and his mother's income was 662,043 MDL. The candidate also claimed that the salary card he used was connected to the salary of his father as President of Floreşti District,

a salary paid from the state budget.

The doubts about the source of funds for the loan arose from the proceedings initiated by NIA in June 2020, which aimed to verify the legality of the assets and personal interests of the candidate's father and from two other NIA's acts of findings regarding the alleged incompatibility of the father's position as President of Florești District with his positions of administrator of two private companies.

The candidate's father was President of Floresti District from 28 March 2012 until 1 December 2023, which is a public dignity function. At the same time, the candidate's father held the position of administrator of company "P" L.L.C. from 20 April 1999 until 9 April 2019 and the position of administrator of company "E.G." L.L.C. from 18 March 2019 until 27 May 2020.

Both in response to the statement of facts and serious doubts document and during the resumed and additional resumed evaluation hearings, the candidate argued that it was erroneous to consider that his father's income from his private business activities was incompatible with his public office. The candidate emphasized that his father, while President of the Florești District, never received a salary from these two companies, but only dividends in accordance with the provisions of art. 39 of Law No. 135/2007 on limited liability companies. Dividend income, according to the candidate, is not remuneration and therefore does not constitute a violation of the incompatibility requirements. At the same time, the candidate emphasized that his father was not a lawyer and not familiar with the functioning of Law No. 133/2016 on declaration of assets and personal interests and that in considering any violations of the provisions of this law it should be taken into account whether any violation was deliberate or not. In response to a question during the additional resumed evaluation hearing, the candidate also stressed that the economic activities undertaken by his father in no way affected the public interest he served as President of the Florești District and did not lead to a conflict of interest.

The decision of the SCJ of 12 June 2024 confirmed that the candidate's father violated the legal regime of incompatibilities, by simultaneously exercising the function of President of Florești District and the position of administrator of company "E.G." L.L.C., that the position of administrator of a commercial company is, by its very nature, of a remunerative character and that a person in that position is presumed to be remunerated for the activity in question. The decision also confirmed the findings in the NIA's Act of findings No. 280/11 relating to discrepancies between the income and expenditures of the candidate's parents during the period of 28 March 2012 - 1 August 2016 and the period 1 August 2016 - 7 July 2020 and the lack of sufficient funds for the purchase of real estate on 6 November 2017.

Before the Commission, the candidate argued that the situation of his father should be treated in the same way as that of a member of Parliament, who, at the same time, held the position of chairperson of a non-profit sports organisation. This argument had also been used by the candidate's father in the proceedings before the SCJ. In response to this argument, the SCJ held

that these cases were not comparable. In the case of the member of Parliament, and another case referred to by the SCJ, the other positions occupied had been with non-profit associations, which were non-commercial organizations, established for non-commercial purposes and which did not generate income, unlike commercial companies that have share capital, carry out economic activity and whose purpose is to increase its value.

The decision of the SCJ relates only to the incompatibility of the candidate's father between the position of President of Florești District and administrator of company "E.G." L.L.C. in the period 9 April 2019 until 27 May 2020. The appeal by the candidate's father against NIA's Act of findings No. 63/20 relating to the incompatibility between the position of President of Florești District and administrator of company "P" L.L.C. remains pending before the SCJ. Based upon the similarity of the legal questions involved in both proceedings, relying upon the SCJ decision, the Commission concluded that these two positions should also be considered incompatible as of 28 March 2012, when the candidate's father became President of Florești District until 9 April 2019, when the candidate's father resigned from the position of administrator of company "P" L.L.C.

The Commission also notes that, contrary to the repeated argument of the candidate during the initial and resumed evaluation that the candidate's father's position as President of Florești District was not incompatible with the position of administrator of the two companies, the candidate's father acknowledged in the proceedings before the SCJ that the positions were incompatible, but instead argued that the NIA verification should have been discontinued because he had in the meantime resigned from his position as administrator of company "E.G." L.L.C. and consequently the incompatibility no longer existed.

Based on the above circumstances, the Commission concludes that the candidate's father violated the legal regime for incompatibilities from when he became President of Florești District on 28 March 2012 until 27 May 2020, when he resigned from the position of administrator of the company "P" L.L.C., a position he held during these years, for more than eight years in total. In the period 2015 - 2018, the candidate's father received dividends in the total amount of 2,816,530 MDL from company "P" L.L.C. Although the candidate's father presented these as dividends covering the operational period of the company between 2002 - 2007, according to art. 80 and 80<sup>1</sup> of the Tax Code, dividends are paid on the retained earnings of the corresponding years of payment and should therefore be considered dividends paid to the candidate's father for the years 2015 - 2018, that is during the time period he was in a position of incompatibility with his position as President of Florești District.

According to NIA's Act of findings No. 280/11, upheld by the SCJ, the candidate's father purchased 547 plots of agricultural land during the period 2012 - 2020. According to the same report, the candidate's parents during the period 28 March 2012 - 1 August 2016 had expenses which exceeded their income by 1,658,640 MDL, and during the period 1 August 2016 - 7 July 2020 their acquired wealth exceeded their income by 269,451 MDL. The latter was the result of

the purchase of agricultural plots of land on 6 November 2017, for which the candidate's parents did not have sufficient funds and which, according to the act, made the possession of these properties have an unjustified character.

As elaborated above, the Commission established that the candidate's father was not only formally registered as administrator of two private companies, but was also actively engaged in managerial activities for these companies, while holding the position of President of Florești District. The Commission also notes that the candidate's parents purchased many plots of agricultural lands for a total cost of 2,825,456 MDL after the candidate's father became President of Florești District. The purchase of these plots of land were related to the candidate's father's position as administrator of company "P" L.L.C.. According to the SCJ decision of 24 June 2024, the position of administrator of this company was incompatible with his position of President of Florești District, as such a position by its nature is of a remunerative nature. As the salary of the candidate's father as President of Florești District over the years 2012 - 2021 totaled 1,106,339 MDL, it is obvious that without the income from the position of administrator of company "P" L.L.C., the candidate's parents would never have been in a position to purchase so many agricultural plots of land.

In 2019, the candidate's father signed a contract between himself as private individual and himself as administrator of "E.G." L.L.C. company for the lease of agricultural land to "E.G." L.L.C. company. In 2020, a similar arrangement was made with "P" L.L.C. company. As of 2019, the candidate's father started to declare income from this lease arrangement and in 2021, the candidate's mother also declared to the NIA income from the lease of agricultural land.

The candidate claims that the source of funds for the loan of 300,000 MDL in 2021 was the officially registered income of the candidate's father of 1,193,959 MDL, and his mother's income of 662,043 MDL in that year and was not related to the income of his father over the years 2012 - 2020, which are the subject of the NIA's verification process. The Commission notes however that the 2021 income of both parents is to a very large extent income derived from lease contracts of agricultural lands concluded between his father as a private individual and companies managed by his father during a time when his father was also President of Florești District, in other words, income resulting from his father's position of incompatibility. In addition, as the administrator of company "P" L.L.C., the father played an important role in the decision to grant himself dividends from the operations of this company, which dividends were in turn being used to purchase the agricultural plots of land. As the NIA's Act of findings No. 280/11 found, and as confirmed by the SCJ decision of 12 June 2024, these resources were insufficient to cover all of the purchases of land plots, thereby giving at least the properties purchased in 2017 an unjustified character.

The Commission acknowledges that the activities of the father and the violation of incompatibility requirements are attributable to the father of the candidate and not to the candidate. At the same time, the candidate took a loan of 300,000 MDL from his father in 2021 and used the father's salary card for 58,927 MDL in 2022.

At the initial evaluation hearing, the candidate stated that he learned about the NIA's proceedings soon after his father was informed about them, but not later than August 2020. This is well before he accepted a loan from his father in 2021 and started using his father's salary card in 2022. The candidate denied that the source of funds that were used to provide him with 300,000 MDL might be considered questionable in light of the NIA's findings, and he also denied that, starting at least from 8 September 2021 when the NIA's Act of findings No. 280/11 was released, he should have displayed diligence concerning money received from his parents. He insisted that there was no need to verify the source of funds received from his father, as he was confident that the funds were legal.

The candidate also believed that accepting funds from his parents during the pendency of the verification proceedings was fully compliant with judicial ethics standards. During the resumed evaluation, the candidate repeated his argument that the NIA's Act of findings No. 280/11 covered the period 2012 - 2020, whereas the loan he took from his father was based on the 2021 income of his parents which was to a large extent based on the income from the leasing of agricultural plots of land. As the Commission has noted before, the 2021 income of his parents cannot be isolated from the income of his father over the years 2012 - 2020, when acting in violation of incompatibility requirements and purchasing a total of 547 plots of land, as to which purchases the NIA found exceeded the parents' income during these years and thereby – at least in part – were properties of an unjustified character.

As respects the use of the candidate's father's salary card in 2022, the candidate stated in response to the statement of facts and serious doubts document that "on the salary card of my father, used by me in this case exclusively held funds derived from the remuneration for his public function as the President of the Florești District Council. The origin and legality of these financial resources cannot be doubted in any way, as the remuneration in question being provided from the public budget." In this respect, the Commission again observes that the use of the salary card cannot be seen in isolation from the other sources of funds accumulated by his father in 2022 and previous years. Without having accumulated funds from these sources during the years prior to 2022, it would have been unlikely that the candidate could have used his father's salary card for a total of 58,927 MDL in 2022 as the total income of his father in that year as President of the Florești District was 196,446 MDL. The Commission notes that the candidate knowingly and willingly utilised the financial resources of his father because, in the words of the candidate, he needed the money to construct and furnish his new house.

Both during the initial evaluation and the resumed evaluation, the candidate was very firm in his position and tried to convince the Commission that he was fully respecting the applicable legal provisions, never conceding that he might have used funds, the legality of which might be doubtful, or that he had violated ethical rules. The Commission finds the candidate's justification for accepting funds from his parents troubling, specifically when he asked the Commission during the initial evaluation hearing whether it expected him to take bribes instead of accepting help

from his parents. Further, the candidate also stated that the very purpose of his parents purchasing goods for him had been to ensure that he, as a judge, resisted any temptation to engage in unlawful dealings.

The Commission assesses the integrity of the candidates in compliance with the highest standards applicable to judges. It is guided by the internationally recognized ethical principles that judges should meet the highest expectations at all times, including in personal transactions, in a manner that is beyond reproach. The Commission expects judges, who play a key role in democratic society, to resist all temptations to engage in unlawful activities for their personal gains. The Commission found that the candidate's disavowal of any responsibility for verifying the lawfulness of financial sources under the circumstances of the NIA's verification proceedings was also troubling.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criteria of financial and ethical integrity as per art. 8 para. (2) lit. a), para. (4) lit. b), para. (5) lit. c), d) and e) of Law No. 26/2022 with respect to the source of funds for the 300,000 MDL loan and the salary card of the candidate's father used by the candidate in 2022 while his father was the subject of the verification proceedings, which have not been mitigated by the candidate.

## *2. Sale of KIA Sorento car and investment in house*

### *a. The facts*

#### *(i) Cars*

In 2012 the candidate purchased a new KIA Sorento car, m./y. 2012 for 300,000 MDL (est. 19,300 EUR). According to his 2017 annual declaration, the candidate sold this car five years later, in 2017, for the exact same amount - 300,000 MDL (est. 14,400 EUR). During the initial evaluation, the candidate was asked to provide copies of the contracts for the purchase of the car in 2012 and the sale of the car in 2017. In his written communication with the Commission, the candidate stated that he did not have a copy of the sales-purchase contract of 2012 as he had not kept it and that there was no sales contract in 2017 as the agreement had been made orally. In his answer to the Commission's question why the sales price in 2017 was the same as the purchase price of the car in 2012, the candidate stated that it was due to high inflation and that between 2012 and 2017 the value of the Moldovan Leu depreciated by 72% compared to the U.S. Dollar. At the initial evaluation hearing, the candidate admitted that he and the purchaser of the car had signed a template contract at the Public Services Agency (hereinafter "PSA"). In its initial evaluation decision, the Commission noted the inconsistency between the candidate's initial statement that there was only a verbal agreement for the sale of the KIA Sorento car and his concession at the hearing that a template contract form had apparently been used. The Commission also noted in its decision that the candidate's failure to submit a written contract for the sale of the car and the

absence of any payment-related documents made it impossible for the Commission to verify the truthfulness of the declared sales price of the car in his 2017 annual declaration and rendered it impossible to verify that the candidate had complied with the tax regime regarding this transaction. Thus, the candidate did not mitigate the Commission's doubts in respect of the sales price of the KIA Sorento in 2017 and his compliance with the tax obligations.

During the resumed evaluation, the Commission sought further information from the PSA about any sales and purchases of cars by the candidate during the period 2017 to 2022. In relation to the purchase and sale of the KIA Sorento car, the Commission established during the initial evaluation that the candidate sold the KIA car on 25 March 2017 for 300,000 MDL to A.M. According to information from the PSA received during the resumed evaluation, on 13 January 2018, less than 9 months later, A.M. sold the car for 20,000 MDL. The car was twice sold again in 2020 and 2022 for the same price of 20,000 MDL.

In addition, according to information in the candidate's annual declarations for 2013 and 2020, he bought a Hyundai Tucson car, m./y. 2013, in 2013 for 360,000 MDL and sold the car in 2020 for 13,000 EUR (est. 256,620 MDL). However, according to information from the PSA received during the resumed evaluation, the contractual price for the sale of the car in 2020 was 1,000 MDL, not 13,000 EUR (est. 256,620 MDL) as declared by the candidate in his 2020 annual declaration.

Furthermore, according to information in the candidate's annual declarations for 2021 and 2022 he bought a Yamaha Virago motorbike, m./y. 2000, in 2021 for 1,700 EUR (est. 35,500 MDL) and sold it a year later for 1,700 EUR (est. 34,000 MDL). However, according to information from the PSA received during the resumed evaluation, the contractual price for the purchase of the motorbike was 30,000 MDL and the contractual sale price was 40,000 MDL. The candidate did not pay tax on the increased value of the motorbike according to the State Tax Services (hereinafter "STS"). In both the purchase and the sale of this motorbike, there was a difference between the contractual prices, according to the PSA information received during the resumed evaluation, and the prices declared by the candidate in his annual declarations. Finally, the candidate bought a Renault Scenic car, m./y. 2018, in 2022, for the price of 260,092 MDL, which is still owned by the candidate.

In response to the statement of facts and serious doubts document concerning the purchase and sale of the KIA Sorento car, the candidate referred to his arguments during the initial evaluation about inflation between 2012 and 2017 and that similar prices for comparable cars could be found on specialized websites. The candidate also argued that he provided the actual prices for the KIA Sorento, Hyundai Tucson, Renault Scenic cars and the Yamaha Virago motorcycle in his annual declarations and that they corresponded to market value. In relation to the Yamaha Virago, he states that he purchased the vehicle for 1,700 EUR (est. 35,000 MDL) and sold it at the same price - 1,700 EUR (est. 35,000 MDL). When asked during the resumed evaluation hearing, why the KIA Sorento car that he sold on 25 March 2017 for 300,000 MDL, was sold for only 20,000

MDL less than 9 months later, the candidate responded that he was not a party to these transactions and does not know why the transactions were done that way.

During the resumed evaluation hearing, the candidate was asked to explain why in his 2020 annual declaration he declared the sales price of the Hyundai Tucson to be 13,000 EUR (est. 256,620 MDL), whereas according to information from the PSA, the contractual price for the sale of the car in 2020 was only 1,000 MDL. The candidate responded that the PSA contracts are standardized contracts, are just used as a formality to transfer ownership of a car and that no one pays attention to them. He admitted that in reality there are no cars for the price of 1,000 MDL and that obviously this was not the real price of the car. He described such prices as “hallucinating and unreal prices”. Asked by the Commission whether it was ethical for him to sign a sale purchase contract which clearly does not reflect reality, the candidate admitted that it was not ethical, but that it also is not serious enough to fail a candidate’s evaluation because of this.

Both in response to the statement of facts and serious doubts document and at the resumed evaluation hearing, the candidate argued that he has been subjected to discriminatory treatment by the Commission. He refers to Decision No. 4 of 9 December 2022 and Decision No. 26 of 13 March 2023, in which decisions, according to the candidate, the Commission *ex officio* checked specialized online portals to determine whether the prices of cars declared by candidates mitigated any serious doubts, whereas in his case the Commission refused to accept that the price indicated by him corresponded to the market price. The candidate also argues discriminatory treatment in relation to Decisions No. 39 of 9 June 2023 and No. 41 of 9 June 2023, in which the Commission, according to the candidate, accepted illusory prices as real prices and accepted that repairs had been required without the presentation of any documentation to confirm the expenses for the repairs. During the resumed evaluation hearing, the candidate repeated his argument of discriminatory treatment and referred to four other decisions made by the Commission: Decision No. 40 of 9 June 2023, which also related to a difference between the contractual price reflected in the sales-purchase contract of a car and the market price of the car, and Decisions No. 3 of 26 October 2022, No. 39 of 9 June 2023 and No. 42 of 12 June 2023, which relate to differences in the contractual prices and the market prices for the sale or purchase of real estate.

#### *(ii) Investment in house*

In his annual declaration for 2016, the candidate declared that he had received 45,000 EUR (est. 987,750 MDL<sup>40</sup>) in cash at his wedding in 2016. The candidate also declared 300,000 MDL in cash from the sale of the KIA Sorento car, discussed above. In his 2018 annual declaration, the candidate declared 6,000 EUR (est. 119,040 MDL) and 6,000 USD (est. 100,800 MDL) in cash from the baptism event for his first child. In 2018, according to the candidate, the total amount of cash he had was 1,507,590 MDL. Out of this amount, he paid 984,070 MDL (est. 50,000 EUR) for a house and a plot of land in Chisinau municipality in October 2018. After the purchase of the

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<sup>40</sup> According to the exchange rate in October 2016 when the candidate married. In 2018, 45,000 EUR amounted to 892,800 MDL based on the average annual rate.

house, the candidate had 523,590 MDL<sup>41</sup> remaining in cash. The candidate did not declare any cash in his 2018 annual declaration, submitted on 29 March 2019. According to art. 4 para. (1) lit. d) of Law No. 133/2016 on declaration of assets and personal interests, the candidate was required to declare all cash amounts in MDL or foreign currency that exceeded 15 average salaries as of the filing of the annual declaration for the prior year. Fifteen average monthly salaries per economy, projected for 2018, was 92,250 MDL. In his written communication with the Commission during the initial evaluation, the candidate stated that he did not have cash to report when he filed his annual declaration because approximately 200,000 MDL had been used to cover consumption expenses in 2018 and up to 300,000 MDL had been spent at the beginning of 2019 (January - March) on construction materials and repairs to the house.

The candidate mentioned that he had paid approximately 60,000 MDL for the demolition of the old house on the property. He told the Commission that he had incurred the following additional expenses: sand – 20 trucks x 2,000 MDL/truck; reinforced iron – 5 tons x 13,000 MDL/ton; cement – 20 tons x 1,300 MDL/ton; limestone – 50 m<sup>3</sup> x 2,000 MDL/m<sup>3</sup>. The materials listed by the candidate totaled 231,000 MDL. At the initial evaluation hearing, the candidate noted that due to his heavy workload and family engagements, he had hired a special supervisor to take care of all of the construction work on the house. The candidate also confirmed that he had not provided supportive documents concerning these expenses, noting that the Civil Code did not oblige a person to sign a service contract with service providers and, as a judge, he had no special responsibilities in that regard. All payments for the supervisor and the materials and other costs had been made in cash. Furthermore, the candidate noted that he was not interested in the paperwork (bills/invoices etc.). When asked why he had not declared the 60,000 MDL expense for the demolition of the house or any of the other expenses included in the 300,000 MDL in his five-year declaration to the Commission, the candidate stated that he had declared all the expenses related to the house in Chisinau municipality in the total sum of 2,200,000 MDL invested in the house during the period of 2018 - 2021. The candidate did declare 2,200,000 MDL in Section 10 (“Expenses”) of the five-year declaration as “costs for construction/finishing work (the repair works were carried out by private persons, not companies, all payments paid in cash). Purchases of materials and furniture”. No breakdown of costs was provided.

In its initial evaluation decision, the Commission concluded that the candidate’s failure to provide confirmatory documents made it impossible for the Commission to verify the truthfulness of the claimed expenses of 300,000 MDL and when these expenses were incurred. The Commission did not accept the candidate’s continued insistence that his listing of 2.2 million MDL total expenses between 2018 - 2021 in his five-year declaration was proof of the payment of 300,000 MDL expenses in 2019. The Commission observed a practice of the candidate engaging in transactions without contracts, making it impossible for the Commission to assess the accuracy of the candidate’s statements. The candidate’s lack of interest in keeping receipts proving his expenses, further demonstrated a lack of appreciation for the importance of accountability as a public official when spending substantial amounts, especially in cash.

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<sup>41</sup> According to the exchange rate in 2018.

During the resumed evaluation the candidate was asked twice to provide more details about the costs of the services provided by the site supervisor, the identity of this supervisor and the costs relating to the demolition and construction of the house during the years 2019 - 2021. The candidate did not provide any further details. He stated that all relevant documents relating to the permits for the demolition and construction of the house had already been provided to the Commission but provided no further financial details. Instead, the candidate repeatedly emphasized in his answers that the SCJ special panel decision of 1 August 2023 established that the candidate was entitled to a favorable decision and that the SCJ decision has the effect of *res judicata*. The candidate also argued that requests by the Commission for further information “exceed the limit imposed by the provisions of the Commission’s Rules in terms of the evaluation resumed, given that these aspects do not derive from the text of the SCJ decision nr. 3-16/23 of 1 August 2023” and that “this implies in itself the prohibition of resuming the verification of the trenchant aspects settled by the Court’s solution.”

During the resumed evaluation, the Commission specifically asked the candidate in written questions to provide more information about his expenditures relating to the house prior to the submission of his annual declaration on 29 March 2019. According to the candidate, he spent up to 300,000 MDL in the first three months of 2019 to pay for the demolition of the old house and on construction materials for the new house. The candidate obtained a permit to demolish the house on 17 January 2019 and a permit to construct a new house on 17 April 2019. During the initial evaluation, the candidate confirmed that the dismantling of the building began in February 2019 and that the costs for demolition amounted to 60,000 MDL. But he also stated during the initial evaluation that, prior to the moment of demolition of the old house no materials or services had been purchased. As the permit for the construction of the new house was not issued until 17 April 2019, the question remained how the candidate had incurred 231,000 MDL for costs relating to the construction of the house after the demolition of the old house in February 2019 and prior to the submission of his annual declaration on 29 March 2019.

In response to the statement of facts and serious doubts document about the expenditure of 2.2 million MLD for the demolition of the old house and the construction of a new house during the years 2018 - 2021 and the expenditures in early 2019, the candidate merely referred to the SCJ special panel decision of 1 August 2023, according to which the conclusion of the Evaluation Commission relating to the candidate’s demonstration of lack of appreciation for the importance of responsibility when spending substantial amounts, especially in cash, was “devoid of factual and legal support”. He also argued that the Commission overlooked the fact that the demolition permit was issued on 17 January 2019 and that by then preparatory work for the start of the construction of the building had taken place, including the demolition of the old house and debris removal and works relating to the entrance and fence around the construction site.

During the resumed evaluation hearing and the additional resumed evaluation hearing, the candidate repeated that as a judge he had no special obligations compared to other citizens of the

Republic of Moldova to keep any financial records and that he had acted in full compliance with the law on declaration of assets and personal interests. During the resumed evaluation hearing, the candidate repeated that he had not kept any records of his expenditures as he had no interest in keeping them and that he had spent a total of 2.2 million MDL in cash on the demolition of the old house and the construction of the new house. The candidate also repeated that at the time of submission of the annual declaration on 29 March 2019, he did not have cash funds exceeding the equivalent of 15 average salaries and was therefore not required to declare such funds. In his response to the statement of facts and serious doubts document, the candidate states that he “had no incentive to not declare any financial assets I may have owned; it would be absurd to do so. The way in which I have always filled in the declarations of assets and personal interests clearly demonstrates that I have always indicated the real data with the utmost diligence. It is unclear what benefits I would have gained from not declaring legal financial assets?”. The candidate argues that he has been discriminated against and refers to Decision No. 11 of 5 January 2023 and Decision No. 25 of 10 March 2023, in which the Commission, although finding omissions in the candidate’s declarations, concluded that as it did not identify any benefits to the candidates, it did not have serious doubts regarding the financial integrity of the candidates. The candidate also made a comparison with Decision No. 26 of 13 March 2023, which related to construction works and in which the Commission did not have serious doubts, based on the information and documentation provided by the candidate in that case.

*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).

The Commission’s 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 Evaluation Rules also provide that the Annex to the rules defines the method for calculating undeclared wealth (art. 3 para. (2)).

Art. 8 para. (5) lit. b) of Law No. 26/2022 provides that the Commission is required to verify compliance of the candidate with the legal regime of declaring assets and personal interests.

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 assets and personal interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

Pursuant to art. 8 para. (5) lit. a) and c) of Law No. 26/2022 the Commission is required to verify the compliance of the candidate with the tax regime related to the payment of taxes on taxable

income and the payment of import duty and export duty, the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2022.

To satisfy the criterion of financial integrity, the Commission must find that the candidate's wealth acquired in the past 15 years corresponds with declared revenues (art. 8 alin. (4) lit. b) of Law No. 252/2023).

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 paras. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

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

Art. 4 para. (1) lit. d) of Law No. 133/2016 on declaration assets and personal interests (in force in 2018) 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 the Instruction on how to complete the declaration of wealth and personal interests, approved by NIA's Order No. 2 of 13 January 2017, under the Law No. 133/2016 on declaration of assets and personal interests, provided in the point 14: 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 the Government Decision No. 54/2018, the average monthly salary per economy, forecasted for 2018, was 6,150 MDL. Fifteen average monthly salaries per economy, forecasted for 2018, was 92,250 MDL.

Art. 5 para. (4) of Law No. 133/2016 on declaration of assets and personal interests provides that the responsibility for the timely submission of the declaration, as well as for the truthfulness and completeness of the information lies with the person submitting it.

*c. Reasoning*

The SCJ special panel determined that the Commission did not fulfill its obligation to thoroughly, comprehensively, and objectively examine the facts related to the transaction of selling the KIA Sorento car in 2017 and the cash investments made in the house located in Chişinău municipality in 2018 and should have made greater use of its powers under art. 10 paras. (2) - (3), (7), and (9) of Law No. 26/2022 to access informational systems and request information from natural and legal persons of public or private law. According to the SCJ special panel, the Commission unjustifiably reversed the burden of proof, requiring the appellant to provide a copy of the sale purchase contract for the KIA Sorento car. The SCJ special panel criticized the Commission for finding serious doubts only in relation to the sale transaction of the KIA Sorento car in 2017, although the candidate used the same procedure in relation to four other vehicles in the years 2017 to 2022, thereby treating similar situations differently and inconsistently. In relation to the candidate's non-declaration of savings in his 2018 annual declaration, the SCJ special panel considered the Commission's assessment of the candidate as demonstrating a lack of appreciation for the importance of responsibility and accountability when spending substantial amounts, especially in cash, to be devoid of factual and legal basis as the candidate provided logical and sufficient arguments and explanations to the Commission. The decision of the Commission, according to the SCJ special panel, lacks consistent, well-founded, and logical reasoning.

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 the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2022, as well as the expenses for the maintenance of such assets and sources of income. The Commission is also required to verify that the candidate has complied with the legal regime of declaring assets and personal interests.

*(i) Cars*

During the initial evaluation, the Commission attempted to verify that the candidate purchased a new KIA Sorento, m./y. 2012 model car for 300,000 MDL (est. 19,300 EUR) in 2012 and sold it five years later in 2017 for exactly the same amount - 300,000 MDL (est. 14,400 EUR), as indicated in the candidate's annual declaration. In its initial evaluation decision, the Commission noted the candidate's failure to submit a written contract for the sale of the car and the absence of any payment-related documents, which made it impossible for the Commission to verify the

truthfulness of the declared sales price of the car in the candidate's declaration for 2017 and rendered it impossible to verify that the candidate had complied with the tax regime in connection with this transaction.

During the resumed evaluation, the Commission received information from PSA about sales and purchases of cars by the candidate during the period 2017 to 2022. The PSA was not able to provide information about the contractual sales price of the KIA Sorento car, which the candidate declared he had sold in 2017 for 300,000 MDL.

As respects to the Hyundai Tucson car, m./y. 2013, according to the information provided by the candidate to NIA in his annual declarations for 2013 and 2020, he bought this car in 2013 for 360,000 MDL and sold it seven years later in 2020 for 13,000 EUR (est. 256,620 MDL). During the resumed evaluation, the Commission was informed by the PSA, that the contractual sales price of the car in 2020 was 1,000 MDL, not 13,000 EUR (est. 256,620 MDL).

With respect to the Yamaha Virago motorbike, m./y. 2000, according to the information in the candidate's annual declarations, the candidate bought this motorbike in 2021 for 1,700 EUR (est. 35,500 MDL) and sold it a year later in 2022 for the same price 1,700 EUR (est. 34,000 MDL). During the resumed evaluation, the Commission was informed by PSA, that the contractual purchase price of the motorcycle in 2021 was 30,000 MDL and the sales price in 2022 was 40,000 MDL. According to the STS, the candidate did not pay tax on the capital increase related to the sale of the motorbike.

Based on the PSA information, the Commission concludes that all of the prices for the purchase or sale of vehicles reflected by the candidate in his annual declarations, except the price of the Renault Scenic car purchased on 3 June 2022, do not correspond with the contractual prices registered by the PSA.

During the resumed evaluation hearing, the candidate was asked to explain why he declared the sales price of the Hyundai Tucson car in his annual declaration for 2020 to be 13,000 EUR (est. 256,620 MDL), while according to the PSA information, the contractual sales price was 1,000 MDL. The candidate responded that PSA contracts are standardized contracts, are just used as a formality to transfer ownership of a car and that no one pays attention to them. He admitted that 1,000 MDL was not the real price of the car. He also admitted that it was not ethical for him to sign a sales-purchase contract which clearly does not reflect reality, but that in his view, it was not serious enough to fail him.

The candidate argued that the Commission subjected him to discriminatory treatment and compared his case with a number of other decisions taken by the Commission in relation to the declaration of prices of cars and real estate. The candidate referred to Decision No. 4 of 9 December 2022 and Decision No. 26 of 13 March 2023, in which decisions, according to the candidate, the Commission *ex officio* checked specialized online portals to determine whether the

prices of cars declared by candidates mitigated any serious doubts, whereas in his case the Commission refused to accept that the price indicated by him corresponded to the market price. The candidate also referred to Decision No. 39 of 9 June 2023 and Decision No. 41 of 9 June 2023, in which the Commission, according to the candidate, accepted illusory prices as real prices and accepted that repairs had been required without the presentation of any documentation to confirm the expenses for the repairs. And the candidate referred to Decision No. 3 of 26 October 2022, Decision No. 39 of 9 June 2023 and Decision No. 42 of 12 June 2023, which involved differences between the contractual prices and the market prices for the sale or purchase of real estate.

There were 14 candidates in the initial evaluations with issues raised about the valuation of automobiles in their declarations. Six of the candidates failed the evaluation; eight candidates passed. There was an objective, rational basis for distinguishing between the candidates who failed and those who passed the evaluation.

In each of the decisions involving candidates who failed the evaluation with an issue involving the sub-evaluation of one or more automobiles (two of the six failing decisions involved two automobile transactions), the candidate did not produce the contract for purchase of the automobile and only some candidates produced the contract for the sale of the automobile. If the candidate claimed that the low purchase price was because of the damaged condition of the automobile, no documentation was provided of the automobile's condition or of repairs the candidate claimed to have made. In three of the six fail decisions, the candidates sold the automobiles for more than the amount they claimed to have paid but did not pay tax on the capital increase (two candidates paid during the evaluation after being questioned by the Commission about the failure to pay the tax). In the fail decisions, the candidate's explanations were demonstrably dishonest, evasive, or otherwise unconvincing, as noted in each Commission decision.

In contrast, the candidates who passed the evaluation provided purchase contracts and other records regarding the transactions, including statements from the sellers or other witnesses and photographs and repair estimates where a low purchase price was claimed because of the damaged condition of the automobile and in no instance did the candidate financially benefit from the discrepancy between the contract price or declared purchase price and the actual price paid for the automobile. In none of the pass decisions did a candidate receive income on the sale of the automobile and fail to pay capital increase taxes. In all but one of the eight pass decisions, the valuation of the automobile was an isolated incident (in one decision, the valuation of two automobiles was an issue, but the transactions were related). In the pass decisions, the candidates were cooperative and forthright, even when it was prejudicial to them.

In all four decisions referred to by the candidate, the Commission evaluated candidates in relation to the declared value of one or more cars purchased and/or sold. In three of the four decisions, the candidates passed the evaluation as a result of the submission of timely, detailed, consistent

and credible information, of copies of relevant contracts or of photographs demonstrating the conditions of the car. In one case, the candidate failed the evaluation as he did not provide convincing explanations or supportive documents. In several of these cases, the Commission made use of marketplace websites for cars as one of the tools to verify the explanations and documents provided by the candidates.

Also, in the three cases relating to the value of real estate, referred to by the candidate to support his argument about discriminatory treatment, the Commission passed the candidates in all three cases, as the candidates provided detailed information and, where possible, supporting documentation to the Commission, the candidates were fully transparent about their actions, the issues in all three cases were of an isolated nature and none of the candidates benefitted from any of their actions.

In the present case, the candidate repeatedly submitted information in his annual declarations to NIA about the purchase and sale of vehicles over a number of years which differed – at times considerably – from the information the candidate submitted to PSA. When asked by the Commission to provide explanations or supportive documents, the candidate merely argued that PSA contracts are just used as a formality to which no one pays attention. Unlike the past decisions, in which candidates were cooperative and forthright, the candidate acted in conformity with candidates in other fail decisions, where the explanations provided were evasive and unconvincing.

Although the candidate, both in his response to the statement of facts and serious doubts document and at the resumed evaluation hearing, argued that the prices he included in his annual declarations reflect the market prices for the vehicles he purchased and sold, he did not provide the Commission any written sales-purchases contracts or other documentation which would demonstrate the real prices agreed upon. The candidate admits that the prices reflected in the PSA contracts are not real and that these prices were “hallucinating and unreal prices”. The candidate also admits during the resumed evaluation hearing that it was unethical of him to misrepresent such prices. Furthermore, the information provided by PSA demonstrates that the actions of the candidate are not of an isolated nature, but rather reflect a pattern of misrepresentation in the contracts he concluded and registered with PSA. The Commission is troubled by the repeated actions of the candidate in relation to these contracts. As a judge, he should be fully aware of the importance of ensuring that contracts in the conclusion of which he is involved, fully reflect the reality and do not amount to obvious misrepresentations of that reality. The Commission does not accept the candidate’s argument that the PSA contracts are a mere formality. The candidate’s actions made it impossible for the Commission to verify the truthfulness of the declared purchase and sales price of the vehicles or to verify that the candidate had complied with the tax regime regarding these transactions. According to art. 5 para. (4) of Law No. 133/2016 on declaration of assets and personal interests, the responsibility for the truthfulness and completeness of the information [included in the annual declaration] lies with the person submitting it.

*(ii) Investment in house*

In 2018, the candidate had a total cash of 1,507,590 MDL from gifts received at his wedding, a baptism event for his first child and the sale of a car. He states that in October 2018, he paid 984,070 MDL (est. 50,000 EUR) for a house and a plot of land in Chişinău municipality, which left him with 523,590 MDL<sup>42</sup> in cash at the end of 2018. On 29 March 2019, the candidate submitted his 2018 annual declaration in which he did not declare any cash. According to the candidate during the initial evaluation, he did not have cash to report as he used 200,000 MDL to cover consumption expenses in 2018 and up to 300,000 MDL at the beginning of 2019 (January - March) for construction materials and repairs to the house, consisting of approximately 60,000 MDL for the demolition of the old house and approximately 231,000 MDL for construction materials for the new house.

During the initial evaluation, notwithstanding repeated requests from the Commission, the candidate did not submit any documentation demonstrating expenses of 300,000 MDL paid in January - March 2019. The candidate only referred to the lump sum of 2.2 million MDL that he had indicated in the five-year declaration to the Commission as an investment in a house in Chişinău municipality over the period of 2018 – 2021, for which he did not provide any breakdown of the costs incurred. All services and materials had been paid in cash and the candidate made it clear that he was not interested in managing records and keeping receipts. He did not consider that, as a judge, he had special responsibilities in that regard.

During the resumed evaluation the candidate was asked again in written questions to provide more details about the expenditure of 2.2 million MDL during the years 2018 - 2021, and in particular more details about the expenditures in early 2019, prior to the time he submitted his annual declaration. The candidate did not provide more information. During the initial evaluation, the candidate had informed the Commission that, after he obtained a permit to demolish the house on 17 January 2019, the demolition of the old house began in February 2019 and that, prior to that moment, no materials or services were purchased. During the resumed evaluation, the Commission expressed its doubts about how the candidate, apart from the 60,000 MDL for the demolition of the house, had spent 231,000 MDL for the construction of the house after the demolition of the house in February 2019 and prior the submission of his annual declaration on 29 March 2019, given the fact that the permit for the construction of the new house was not issued until 17 April 2019. Whereas the candidate during the initial evaluation had informed the Commission that some materials had been purchased, during the resumed evaluation he stated that work had taken place relating to the entrance and fence around the construction site.

The candidate repeated his argument that as a judge he had no special obligations compared to other citizens of the Republic of Moldova to keep any financial records, that he had not kept any records of his expenditures as he did not have any interest to keep them and that he had spent a total amount of 2.2 million MDL in cash on the demolition of the old house and the construction

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<sup>42</sup> According to the exchange rate in 2018.

of the new house. The candidate also repeated the argument that when he submitted his annual declaration on 29 March 2019, he did not have cash funds exceeding the equivalent of 15 average salaries and was therefore not required to declare such funds. He also argued that he had no incentive to not declare any financial assets and that it would be absurd to do so. The candidate however did not provide any further information or documentation which would demonstrate the expenditure of the 231,000 MDL prior to 29 March 2019.

During the additional resumed evaluation hearing, the candidate was asked how he would be able to provide adequate information to NIA in relation to his assets and personal interests, if NIA were to undertake a random verification or a verification in response to a complaint concerning his annual declarations. The candidate merely repeated his argument that the law does not require him to keep records of expenses and that the law is equal for everyone, including judges and prosecutors. He argued that the law on declaration of assets and personal interests was not amended until 2021 or 2022 to require expenditures exceeding a certain threshold to be declared, and that before that amendment declaration of expenditures was not required.

The candidate also made the argument of discriminatory treatment and compared his case to Decision No. 11 of 5 January 2023, Decision No. 25 of 10 March 2023 and Decision No. 26 of 13 March 2023. Decisions No. 11 and 25 related to the non-declaration of bank accounts and income, in which the Commission concluded that the candidates did not benefit from these omissions. In Decision No. 11, the Commission was able to establish that the loans, salaries and pension payments involved had been fully disclosed, that no suspicious transactions had taken place and that no other sources of income had been identified. In Decision No. 25, the Commission was able to establish that the candidate had omitted to declare some sources of income to the Commission, that these sources were relatively modest, legitimate and documented and that all income required to be reported to the STS was reported and all required taxes were paid. Thus, the candidate's omission in that case appeared to be an unintentional oversight. The Commission was therefore able to establish in both cases that the candidates had not benefitted from the non-disclosure of the bank accounts or sources of income. In Decision No. 26, the candidate purchased a land plot and invested in the construction of a guest house on the property. The candidate provided the Commission with many documents and detailed explanations relating to, amongst others, the purchase of the plot of land, the construction of the house and all related financial aspects. All three decisions referred to are different from the case of the present candidate, in that all three candidates provided detailed and verifiable information which mitigated any doubts expressed by the Commission. Notwithstanding repeated requests by the Commission, the candidate in the present case has failed to provide explanations and supporting documentation and has regularly argued that he was not obliged to and not interested in keeping financial records relating to the demolition of the old house and the construction of the new house. The candidate has therefore made it impossible for himself to mitigate the doubts expressed by the Commission.

The candidate also argued that based on the SCJ special panel decision of 1 August 2023, he was entitled to a favorable decision, that the SCJ decision has the authority of *res judicata* and that the SCJ decision implied the prohibition of resuming the verification of the trenchant aspects settled by the Court's solution. The Commission is not able to accept this argument. The decision of the SCJ special panel clearly states that the Commission "is ordered that Alexei Panis be re-evaluated". The Commission therefore rejects this argument presented by the candidate.

The Commission also reiterates that the resumed evaluation is conducted in compliance with the provisions of art. 14 para. (10) of Law No. 26/2022 and art. 19 of its Rules of Procedure. Furthermore, in recent decisions<sup>43</sup> on appeals against decisions of the Commission, the SCJ special panel held that: "although the plaintiff, referring to art. 206 of the Administrative Code, tries to argue that the independent evaluation Commission was obliged following the decision of 1 August 2023 to adopt a favorable promotion decision, this allegation has no legal merit. Law No. 26/2022, which is a special one, very clearly highlights the powers of the court: either it rejects the appeal, or it admits it and orders a re-evaluation. The possible solution of obliging the Commission to adopt a favorable decision is contrary to the spirit and letter of Law No. 26/2022". It also noted that "the undeniable binding nature of the arguments and conclusions contained in the decision of the SCJ, however, does not oblige the Commission to issue, within the re-evaluation, a decision to promote the candidate, once the totality of facts (circumstances) resulting from the new evidence, accumulated within the re-evaluation, is different and, naturally, more advanced, than the initial one, within the initial evaluation. It is essential, however, that the Commission motivates the chosen solution, with precise reference to the examined facts and the resulting conclusions, a fact that was done in full in the decision".

As the Commission held in its initial evaluation decision, the candidate's failure to provide confirmatory documents made it impossible for the Commission to verify the truthfulness of the declared expenses up to 300,000 MDL and when these expenses were made. Thus, the Commission was unable to conclude whether 300,000 MDL was indeed spent between January - March 2019. The Commission did not accept the candidate's continued insistence that the listing of total 2.2 million MDL expenses between 2018 - 2021 in his five-year declaration was proof of the payment of 300,000 MDL expenses in 2019. The candidate was not able to mitigate the reasonable doubt of the Commission regarding the cash expenses in the amount of 300,000 MDL and accuracy of the declared amounts in his five-year declaration.

The Commission observed a pattern whereby the candidate engaged in transactions without concluding written contracts and making payments only in cash. Because of the absence of any

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<sup>43</sup> Decision of the SCJ special panel of 8 February 2024 in relation to the appeal of Vitalie CODREANU of the Commission's decision on initial evaluation, available at [https://jurisprudenta.csj.md/search\\_col\\_civil.php?id=73660](https://jurisprudenta.csj.md/search_col_civil.php?id=73660); Decision of the SCJ special panel of 19 February in relation to the appeal of Tatiana CHIRIAC of the Commission's decision on initial evaluation, available at: [https://jurisprudenta.csj.md/search\\_col\\_civil.php?id=73765](https://jurisprudenta.csj.md/search_col_civil.php?id=73765). See also, Decision of the SCJ special panel of 14 February 2023 in relation to the appeal of Anatolie GIRBU of the Commission's decision on initial evaluation, available at: [https://jurisprudenta.csj.md/search\\_col\\_civil.php?id=73672](https://jurisprudenta.csj.md/search_col_civil.php?id=73672).

records of payments, it was impossible for the Commission to assess the accuracy of the candidate's statements. The Commission also took note of the candidate's statement that he had "no interest" in keeping receipts proving his expenses, demonstrating a lack of appreciation of the importance of accountability when spending substantial amounts, especially in cash. The Commission notes that keeping records, particularly for large payments, is important for the observance of the legal regime of declaration of assets and personal interests by judges, as it aims to prevent unjustified and illicit enrichment and to avoid conflicts of interest in their activity, as well as aiming to hold them accountable for such deeds.

In this context, the Commission notes that in a recent decision on an appeal of a decision of the Commission<sup>44</sup>, the SCJ special panel held that "the Commission only notes the existence of serious doubts, doubts that can be generated by certain uncertainties or even by the lack of information or evidence. Accordingly, it depends on the positive obligation of the candidates to provide the Commission with information and evidence that dispel the Commission's doubts. If the candidates show a passive attitude and pass the proof obligation to the Commission, the doubts turn into serious doubts and, according to art. 8 in conjunction with art. 13 para. (5) from Law No. 26/2022, the candidate does not pass the evaluation".

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criteria of financial and ethical integrity as per art. 8 para. (2) lit. c), para. (4) lit. a) and b), para (5) lit. a), b), c), d) and e) of Law No. 26/2022 because of the discrepancies in the information and lack of documentation regarding the declared sales price of different vehicles and cash expenditures in the amount of 300,000 MDL, which have not been mitigated by the candidate.

### *3. Public statement by candidate on 19 January 2022*

#### *a. The facts*

In 2021, the candidate examined the case filed by the former Chairperson of the Chişinău Court of Appeal (Vladislav Clima) against the decree of the President of the Republic of Moldova annulling the prior president's appointment of Vladislav Clima to the position of the President of the Chişinău Court of Appeal. In accordance with the candidate's decision of 31 December 2021, Vladislav Clima was reinstated as the President of the Chişinău Court of Appeal. On 16 January 2022 the reasoned Decision in this case was delivered. It could be appealed within 30 days.

The candidate's father had a long-standing business relationship with the uncle of judge Vladislav Clima. The candidate had worked as a lawyer in one of their companies for three months in 2011. The candidate did not recuse himself from examining the case of Vladislav Clima.

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<sup>44</sup> Decision of the SCJ special panel of 25 April 2024 in relation to the appeal of *Alexandru ROTARI* of the Commission's decision on initial evaluation, available at: [https://jurisprudenta.csj.md/search\\_col\\_civil.php?id=74847](https://jurisprudenta.csj.md/search_col_civil.php?id=74847).

On 19 January 2022, the candidate commented on requests to the National Anticorruption Center (hereinafter “NAC”), the General Prosecutor’s Office (hereinafter “GPO”) and the Superior Council of Magistracy (hereinafter “SCM”) to examine his actions related to the Decision of 31 December 2021 to reinstate Vladislav Clima as the President of the Chişinău Court of Appeal. The requests, signed by Eugeniu Rurac, Head of the General Direction of the Security and Intelligence Service (hereinafter “SIS”) dated 14 January 2022 and 17 January 2022, had been obtained by media sources.<sup>45</sup> One letter apprised the SCM that the NAC and GPO had been asked to investigate the potential crimes of exceeding the duties of service (art. 328 para. (3) of the Criminal Code) by the candidate and usurpation of the position of the President of the Chişinău Court of Appeal, based on the candidate’s 31 December 2021 Decision. The letter referred to “actions contrary to the legal provisions in order to keep illegally in power in violation of the provisions of the Constitution, in complicity with some judges, through usurpation the official capacity of President of the Chişinău Court of Appeal”. The second letter addressed business relationships between the candidate’s father and Vladislav Clima’s uncle and the candidate’s work as a lawyer in one of their companies. The candidate’s comments about the letters were published by the web portal Ziarul de Gardă<sup>46</sup>. The candidate made the following statement:

*“I read Mr. Rurac’s complaint. In fact, I regard this complaint as intimidation, and I have already highlighted that Rurac has rich experience in intimidating judges. Rurac worked as a prosecutor during the “captured state” period and it was him who made accusations against a judge who is currently a judge at the Constitutional Court, it was him who then boasted, during the “captured state” period, that he had evidence proving she was guilty. We all know how that case ended. Therefore, who Mr. Rurac worked for back then and who he works for at present – is not up for discussion now. There is no conflict of interest because the law is very clear. I am sorry that Rurac does not know, because guys from the SIS come to court hearings prepared and they know the legal provisions. Mr. Rurac has a personal interest, I have emphasized this previously. The decision is reasoned, and I have not seen anyone read it in order to verify the aberrations of Mr. Rurac and Mr. Musteaţă. I worked as a lawyer because that was my father’s company, so what’s the conflict of interest? The law sets a very clear definition of what a conflict of interest is, or should we presume that my father started to work 40 years ago so that 40 years later I would admit Clima’s action, or what is the logic of Mr. Rurac here? If he wants to talk about usurpation of power, he should check how Dorel Musteaţă appointed President of the Court of Appeal by decree and not by an SCM Decision, and if that is not abuse of*

<sup>45</sup> Available at: <https://tv8.md/2022/14/01/doc-sis-a-sesizat-cna-si-pg-pe-actiunile-judecatorului-care-l-a-restabilit-pe-clima-in-functie-reactia-magistratului-panis/190573> and <https://www.zdg.md/stiri/stiri-justitie/doc-sis-vine-cu-o-noua-sesizare-in-care-invoca-faptul-ca-magistratul-alexei-panis-care-a-dispus-repunerea-lui-vladislav-clima-in-functia-de-presedinte-al-ca-chisinau-s-ar-afla-in-conflict-de-interese/>; <https://www.zdg.md/stiri/stiri-justitie/doc-sis-vine-cu-o-noua-sesizare-in-care-invoca-faptul-ca-magistratul-alexei-panis-care-a-dispus-repunerea-lui-vladislav-clima-in-functia-de-presedinte-al-ca-chisinau-s-ar-afla-in-conflict-de-interese/>

<sup>46</sup> Available at: <https://www.zdg.md/stiri/stiri-justitie/magistratul-panis-despre-sesizarea-sis-in-care-se-spune-ca-ar-fi-in-conflict-de-interese-cu-clima-calific-sesizarea-aceasta-ca-o-intimidare-rurac-a-activat-in-perioada-statului-capturat-c/>

*power, then I don't know what is".*

The Disciplinary Board of Judges within the SCM (hereinafter "the Disciplinary Board") examined a complaint against the candidate concerning the above-mentioned public statement. On 22 April 2022, by Decision No. 16/4, the Disciplinary Board decided that the candidate, as a judge, had acted in a way that affected the "honour, professional probity and prestige of justice that affect trust in justice, committed in the exercise of their duties or outside them, which, according to their seriousness, cannot be qualified only as violations of the Code of Ethics and Professional Conduct of Judges", but amount to a disciplinary offense provided for under art. 4 para. (1) lit. p) of Law No. 178/2014 on the disciplinary responsibility of judges. The Plenary of the Disciplinary Board decided to give the candidate a warning as a disciplinary sanction. The candidate contested the Decision of the Disciplinary Board.

In his written answers to the Commission during the initial evaluation, the candidate stated that, in making his statement, he had acted in defense of the entire judiciary and in full compliance with ethical rules. The candidate also stated that he did not file a complaint with the SCM concerning the "intimidation of judges" because, from his point of view, SCM's constitutional mandate had expired and "its activity is contrary to the interests of justice".

At the public hearing during the initial evaluation, the candidate said that he had not commented on the SIS request but on the request that was signed by Eugeniu Rurac, who had a personal interest in the case and who was not authorized to sign the request on behalf of the SIS. It should have been signed by the head of the SIS. The candidate further noted that this request, which was made public, contained severe accusations against him.

Regarding "Mr. Rurac's personal interest," the candidate noted that when the Presidential Decree annulling the appointment of Vladislav Clima to the position of the President of the Chisinau Court of Appeal was issued, Eugeniu Rurac was working as an adviser at the President's Office. At the time of the examination of that file by the court, Eugeniu Rurac was working at the SIS. He was the one who had applied to the prosecutor's office with the request to initiate a criminal case against the candidate. Thus, Eugeniu Rurac had had a conflict of interest. When asked about the evidence confirming Eugeniu Rurac's involvement in drafting the presidential decree, the candidate referred to statements made during a television program by the then-chairperson of the Parliament's Legal, Appointments and Immunities Committee, who, at the time of the decree, was an adviser to the President. When asked specifically whether Eugeniu Rurac had been involved in drafting the decree, the candidate explained that there was no need to specify that, because, according to public information confirmed during the TV program, the entire legal department had been working on the document. The interview of then-chairperson of the Parliament's Legal, Appointments and Immunities Committee on the TV8 program "Cutia Neagră" aired on 20 January 2022.<sup>47</sup>

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<sup>47</sup> Asked if she participated in the drafting of the decree signed by the president of the country, Olesia Stamate

The candidate also told the Commission during the initial evaluation that his comments in the statement did not concern the case involving judge Vladislav Clima and that they did not refer to persons who were participants in the case, and that his comments had come as a response to unfounded allegations of a criminal nature. The candidate noted that: “If I am not mistaken, it was insinuating that there was the creation of a criminal group or something I don’t remember in that note of information, but there was something worthy of an action movie”. The candidate told the Commission that he did not believe that his comment about whether or not he had a conflict of interest in that case was a comment on the case for purposes of ethical standards. The candidate noted that commenting on the conflict of interest did not amount to comment on the substance of the case. The candidate further argued that: “I highlight that that note was speaking about the existence of a criminal group and that aspect about the conflict of interest was the key to the reasoning. I was obliged to make that comment and that was strictly about those criminal-nature accusations”. He added that: “I made a comment with regards to an accusation, an allegation of a criminal nature that was purposefully launched in the public space by people who had a direct interest in the fate of that case”.

The candidate claimed that his statements were ethical because they did not refer to the work of other judges. On the contrary, through his statements he defended “the independence of the judicial authority from the illegal pressures coming from the representative of the SIS”. The candidate also stated that judges can make public statements to inform about any false allegations that are published against them in the mass-media. The candidate stated that his actions fully complied with the Code of Ethics and Professional Conduct of Judges, and specifically art. 9. para. (5).

The candidate emphasized that all his declarations and comments were made in line with the provisions of the 2015 Code of Ethics and Professional Conduct of Judges. He referred to the statements of the Association of Judges of the Republic of Moldova and the Magistrates Association of Romania of 17 January 2022 criticizing the alleged involvement of the intelligence services in the case of judge Vladislav Clima.

In its initial evaluation the Commission found that it had serious doubts about the compliance of the candidate with the criterion of ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to his public statement on 19 January 2022, which have not been mitigated by the candidate.

On 13 February 2023, the candidate appealed the Commission’s decision to the SCJ. On 1 August 2023, the 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.

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answered that “to some extent, but the idea came after some discussions between colleagues.” According to Olesea Stamate, the Supreme Court of Justice will further establish the competence of the Court of Appeal. “It was a discussion between colleagues where they discussed the way he was appointed, the conflicts of interest, certain elements that were not known and that were known later. And the question was asked, is it good to go this way, is it correct?”. The interview is available at <https://www.youtube.com/watch?v=miFmq-dLIMI>, from 1.01.07.

During the resumed evaluation, on 24 October 2023, the Plenary Meeting of the SCM decided upon the appeal of the candidate against the decision of the Disciplinary Board of 22 April 2022, No. 16/4 and admitted the appeal and found that no disciplinary offence was committed. The SCM Plenary held that in order “to involve the disciplinary liability of a judge under art. 4 lit. p) of Law No. 178 of 25 July 2014 on the Disciplinary Liability of Judges – “other acts that prejudice the professional honor or probity or the prestige of justice, committed while carrying out job duties or beyond them, which, in terms of their severity, cannot be qualified as a mere violation of the Code of Ethics and Professional Conduct of Judges” – it is necessary to prove the existence of reasonable grounds of the judge being guilty for committing a disciplinary violation while carrying out his/her job duties [...]”. The SCM Plenary considered that the acts imputed to the candidate “did not go beyond the limits established by law”. The SCM Plenary referred to the right to freedom of expression, within certain specified limits. It also stated “that the comments made (by the candidate) were a response to allegations of a criminal nature, and, *a priori*, they were not made in order to damage the interests of the office and prestige of justice or to compromise dignity or honor”. Instead, the comments made by the candidate, according to the SCM Plenary, were “aimed at eliminating those allegations that were made public in order to shape the opinion of the public”. When the candidate commented in the media about the article in which SIS had asked NAC and GPO to examine the actions of the candidate, the candidate “did not get involved in public debates, denigrating the mentioned people, which cannot raise public doubt about the seriousness, independence, impartiality or integrity of the judge”. The SCM Plenary further stated that “according to the law, a judge can be held liable for a disciplinary violation only when, as a result of checking the arguments [...], it is found that there are factual and legal circumstances confirming that the judge committed that disciplinary violation”. The SCM Plenary concluded “that the actions of the envisaged judge did not comprise the elements of a disciplinary violation as found in the Disciplinary Board Decision No. 16/4 of 22 April 2022, since the administered evidence does not confirm the intent of the judge to damage the professional honor or probity or prestige of justice to an extent that would affect the trust in justice”.

In his response to the statement of facts and serious doubts document, the candidate reiterated that the Code of Ethics and Professional Conduct of Judges (adopted by the General Assembly of Judges Decision No. 8 of 11 September 2015) and the Bangalore Principles on Judicial Conduct recognize the right of judges to freedom of expression, in line with art. 10 of the ECHR and that the comments he made about other persons were made in response to unfounded accusations of a criminal nature and that it was his obligation as a citizen, but especially as a magistrate, to take measures to dispel any suspicions that may arise concerning his personality. The candidate stated that his comments had been made in answer to allegations of a criminal nature and not in reference to the case he had been examining. The candidate argued that his statement complied with art. 8 para. (3) of the 2015 Code of Ethics and Professional Conduct of Judge , as it did not concern the activities of other judges and was aimed at defending the independence of the judiciary against illegal pressures from a representative of the SIS, Eugen

Rurac. With reference to art. 9 paras. (1), (4) - (6) of the 2015 Code of Ethics and Professional Conduct of Judges the candidate stated that he had not disclosed, commented on, or used information that he had become aware of in the exercise of his duties as a judge. He also stated that he had exclusively used facts existing in the public domain about Eugen Rurac's previous activities, through which he had intimidated other judges. The candidate further noted that a judge may express his/her opinion through public statements in order to refute any false or defamatory statements, including those published in the mass media, regarding him/her, during which he/she shall be guided by criteria of reasonableness and moderation. In conclusion, the candidate stated that "I have used exclusively my right to freedom of expression" and that "all my statements met the criteria of reasonableness and proportionality."

In his response to the statement of facts and serious doubts document, the candidate again referred to the statement made by the Association of Judges of the Republic of Moldova and the Association of Magistrates of Romania, published on 17 January 2022. The candidate also mentioned the conclusions of the SCM Plenary (Decision No. 477/30 of 24 October 2023) which annulled the Disciplinary Board Decision No. 16/4 of 22 April 2022.

In his response to the statement of fact and serious doubts document and at the hearing during the resumed evaluation the candidate stated that the SCM decision of 24 October 2023, unanimously approved by all members of the newly formed SCM, is irrevocable and enforceable. The candidate stated that, although it was not a SCJ decision, this was a final decision in force at the moment. He also argued that the decision of the SCM Plenary is in full compliance with the ECHR case-law. In response to the statement of facts and serious doubts document and at the resumed evaluation hearing, the candidate contended that he was being treated differently from other candidates and referred to Decision No. 38 of 8 June 2023. The candidate argued that in that case the candidate was confronted with three disciplinary proceedings for which three disciplinary sanctions were imposed. That candidate had not appealed any of the sanctions, and yet, the Commission had had no doubts about the ethical integrity of that candidate. Unlike that candidate, only one disciplinary proceeding was initiated against the candidate. The candidate also noted that, in that case involving the other candidate the Commission considered it relevant that no new disciplinary proceedings were initiated against the candidate after the end of the chief prosecutor's mandate in 2017. Accordingly, in the candidate's view, the Commission should also consider that, after the departure of Dorel Musteață from the SCM and the departure of Eugen Rurac from the NAC, no disciplinary proceedings were initiated against him. In conclusion, the candidate argued that, in view of the SCJ special panel's finding that a warning is the mildest disciplinary sanction, the present issue could not form the basis for a decision to fail him.

#### *b. The law*

Art. 4 para. (1) of Law No. 178/2014 on the disciplinary liability of judges lists what constitutes a disciplinary offence, and lit. p) states "other acts that affect the honour or professional probity or prestige of justice to such an extent that the trust in the justice is affected, committed in the

exercise of their duties or outside of them, which, according to their seriousness, cannot be qualified only as violations of the Judge's Code of Ethics and Professional Conduct".

Art. 9 para. (4) of the 2015 Judge's Code of Ethics and Professional Conduct provides that judges shall not make public comments, including in the media, on cases then pending in court until the entry in force of the decisions adopted.

Art. 9 para. (5) of the 2015 Judge's Code of Ethics and Professional Conduct provides that judges may express their opinions through public statements, fulfilling their right to reply, in order to refute any false or defamatory statement, including published in the media, at their address. While making public statements, a judge should be guided by the criteria of reasonableness and measure.

Art 8 para. (2) and (3) of the 2015 Judge's Code of Ethics and Professional Conduct provides that a judge may not disparage in public the professional and moral integrity of his colleagues and shall refrain from public comments about the work of other judges.

According to the well-established principles of the ECtHR, the freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment (*Delfi AS v. Estonia* [GC], no. 64569/09, para. 131, ECHR 2015; and *Perinçek v. Switzerland* [GC], no. 27510/08, para.196, ECHR 2015). Freedom of expression is subject to exceptions, which must be construed strictly, and the need for any restrictions must be established convincingly (*Baka v. Hungary* [GC], no. 20261/12, para.158, 23 June 2016). The Court has recognised in its case-law the applicability of art. 10 of the ECHR to civil servants in general (see *Vogt v. Germany*, 26 September 1995, para. 53, Series A no. 323, and *Guja v. Moldova* [GC], no. 14277/04, para. 52, ECHR 2008), and members of the judiciary (*Wille v. Liechtenstein* [GC], no. 28396/95, paras. 41-42, 28 October 1999, and *Harabin v. Slovakia*, no. 58688/11, para. 149, 20 November 2012). The ECtHR emphasized that the judiciary, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties (*Morice v. France* [GC], no. 29369/10, para. 128, ECHR 2015).

There is little scope under art. 10 para. 2 of the Convention for restrictions on political speech or on debate on matters of public interest, (see *Süreker v. Turkey (no. 1)* [GC], no. 26682/95, para. 61, ECHR 1999-IV; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, para. 46, ECHR 2007-IV; and *Axel Springer AG v. Germany* [GC], no. 39954/08, para. 90, 7 February 2012). The remarks on the functioning of the judiciary concern matters of public interest (*Roland Dumas v. France*, no. 34875/07, para. 43, 15 July 2010, and *Morice v. France* [GC], no. 29369/10, para. 125, ECHR 2015, *Kudeshkina v. Russia*, no. 29492/05, para. 86, 26 February 2009).

According to the well-established principles of the ECtHR, given the prominent place among State organs that the judiciary occupies in a democratic society, public officials serving in the

judiciary should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called into question. (*Di Giovanni v. Italy*, no. 51160/06, para. 71, 9 July 2013, *Wille v. Liechtenstein* [GC], no. 28396/95, para. 64, 28 October 1999). The dissemination of even accurate information must be carried out with moderation and propriety (*Kövesi v. Romania*, no. 3594/19, para. 201, 5 May 2020, *Kudeshkina v. Russia*, cited above, para. 93). Judicial authorities, in the exercise of their adjudicatory function, are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges. That discretion should dissuade them from making use of the press, even when provoked (*Olujić v. Croatia*, no. 22330/05, para. 59, 5 May 2009), but also in expressing criticism towards fellow public officers and, in particular, other judges (*Di Giovanni v. cited above*, paras. 80-81, 9 July 2013). The ECtHR takes into account the circumstances and overall background against which the statements in question were made. It must look at the impugned interference in the light of the case as a whole, attaching particular importance to the office held by the applicant, his statements and the context in which they were made (*Baka v. Hungary*, cited above, para.166).

According to the Consultative Council of European judges (CCJE) Opinion No. 25 (2022) of 2 December 2022 §52: “Statements are permissible if they do not go beyond mere criticism from a strictly professional perspective, if they are part of a debate on matters of great public interest and if they are based on substantiated allegations. Moderation and propriety must guide the judge even in the dissemination of accurate information. When criticizing other actors in the justice system, a judge must maintain respect. Criticism should not be motivated by personal grievance or hostility or the expectation of personal gain. Generally, judges should avoid expressing themselves in an impulsive, irresponsible and offensive manner”. In §53, the Opinion further states, that “[...] judges should avail themselves first of any existing remedial measures, before going public”.

### *c. Reasoning*

In its decision of 1 August 2023, the SCJ special panel held that it could not endorse the conclusions of the Commission that the public statement by the candidate raises serious doubts about the candidate’s compliance with the criterion of ethical integrity. The SCJ special panel referred to Decision No. 16/4 of April 22, 2022, issued by the Plenum of the Disciplinary Board, pursuant to which the candidate had received a disciplinary sanction in the form of a warning. According to the SCJ special panel, a warning is the mildest disciplinary sanction and involves advising the judge about the committed disciplinary offense, with a recommendation to observe legal provisions in the future. In the view of the SCJ special panel, the conclusion of the Commission that the candidate seriously violated the rules of ethics and professional conduct for judges through his public statement on 19 January 2022, was not proportionate to his actions, considering the Disciplinary Board’s conclusion that the actions of the candidate did not constitute a serious disciplinary offense. Furthermore, the SCJ special panel held that the decision of the Disciplinary Board has been appealed by the candidate and that that appeal was still

pending. The SCJ special panel concluded that the Commission's decision lacked a consistent and well-founded reasoning that clarified how the Commission deemed the candidate's public statement to be a "serious violation of the rules of ethics and professional conduct of judges".

In light of the SCJ special panel decision and the information assessed during the resumed evaluation, the Commission is not including the issue of the candidate's public statement of the on 19 January 2022 in its determination on the candidate's passing or failing the evaluation in the resumed evaluation. At the same time, the Commission cannot agree with the SCJ special panel's determination that the candidate's statement was not a departure from ethical standards and that he did not violate the principle of integrity under the criteria established by Law No. 26/2022 for the following reasons.

The candidate made a statement in response to a news article which repeated the content of the SIS request, signed by Eugeniu Rurac to the NAC, the GPO and the SCM to examine the candidate's actions related to his decision of 31 December 2021 to reinstate Vladislav Clima as the President of the Chişinău Court of Appeal. The deadline for appealing this decision was 30 days from 16 January 2022, the date the reasoned decision was delivered.

The Disciplinary Board by its decision No. 16/4 of 22 April 2022 found that the candidate's actions amounted to a disciplinary offense and gave the candidate a warning as a disciplinary sanction. That decision was repealed by the Plenary Meeting of the SCM on 24 October 2023. The candidate argued that the decision of 24 October 2023 is final and irrevocable. In this regard the Commission notes that pursuant to art. 8 para. (6) of Law No. 26/2022, the Commission "shall not depend on the findings of other bodies competent in the field concerned". Thus, the Commission is not bound by the findings or determinations of disciplinary bodies and necessarily must independently determine what significance or weight, if any, to give them. The decision of the SCM Plenary has not been subject to a review and final determination by the SCJ. The Commission furthermore expresses its doubts whether the decision of the SCM Plenary is in full conformity with the case law of the ECtHR in such matters.

The candidate disputed that his comments on whether he had a conflict of interest presiding over the Vladislav Clima case were improper comment on a pending case claiming that they did not concern the merits of the case but rather the allegations of criminal conduct being made about him. The Commission reiterates that while his comments did not address the merits of the case, they did concern his relationship or lack of relationship with the litigant who had initiated the case, and whether there was a conflict of interest with respect to the candidate presiding over the case. The issue of a potential conflict of interest and the propriety of a judge presiding over the case is an integral aspect of a legal proceeding that can be raised in the proceeding and, if raised, will require a judicial determination on the issue, which could have been subject to appellate review. The Commission does not accept that comments on the presence or absence of a conflict of interest on the part of the candidate and whether it was proper for him to examine the case were not comments on an aspect of the case for purposes of the prohibition on judges making

comments on pending cases.

The Commission maintains that even if the candidate's remarks did not constitute comments on a pending case, the scope, tenor and basis for the remarks made by the candidate in his statement were problematic from the standpoint of judicial ethics. Even when freedom of expression is permitted in order to respond to slanderous allegations, such expression is to be measured and reasonable, as the 2015 Code of Ethics and Professional Conduct of Judges, the ECtHR case-law and other international standards require. The candidate cited an interview with the then chairperson of the Parliament's Legal, Appointments and Immunities Committee as the basis for his allegations that Eugeniu Rurac had been involved in the Decree that was the subject of the Clima case. Eugeniu Rurac is not named in the Parliament's Committee's chairperson's comments and there are only references to discussions among unidentified colleagues. Furthermore, the interview he identified as the basis for his remarks was broadcast one day after his own public comment. If the candidate accused Eugeniu Rurac of a conflict of interest without direct knowledge of the facts, the candidate's conduct could be deemed reckless and not consistent with the requirement of reasonableness, measure and respect expected of judges.

The Commission also found that the candidate's remarks about Eugeniu Rurac's handling of the case involving another judge when Eugeniu Rurac was a prosecutor and his remarks about usurpation of power on the part of judge Musteata likewise lacked reasonableness and measure. The candidate was not able to explain how those remarks were relevant to the facts or merits of the request for an investigation of him, only that the allegation of usurpation of authority against him justified him accusing judge Musteata of usurpation of power. The Commission found that the comments in his statement were gratuitous and disparaging, in violation of the applicable ethics standards for judges. His remarks about judge Musteata's purported handling of judicial appointments at the SCM were also in conflict with the ethical provisions prohibiting judges from commenting on the work of other judges and from disparaging the professional and moral integrity of colleagues.

During the initial and resumed evaluation, the candidate contended that he had the right to respond to the allegations in the request of the SIS and that he did so in compliance with the 2015 Code of Ethics and Professional Conduct of Judges. The candidate argued that he acted in defense of the judiciary and that his speech was fully protected by his right to freedom of expression. As already noted, the ECtHR recognizes that it is legitimate for a State to impose on civil servants, on account of their status, a duty of discretion and that civil servants are individuals and, as such, qualify for the protection of art. 10 of the Convention (see *Vogt*, cited above, § 53, and *Guja*, cited above, § 70). According to the ECtHR jurisprudence, matters concerning the functioning of the justice system fall within the public interest, enjoying a high degree of protection under the European Convention (see, *Baka v. Hungary [GC]*, cited above, para. 159, 23 June 2016). Given the prominent place among State organs that the judiciary occupies in a democratic society, it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are

likely to be called in question. Therefore, even the dissemination of accurate information must be carried out with moderation and propriety because the authority and impartiality of the judiciary is at stake.

A series of cases adjudicated by the ECtHR on the freedom of expression of judges (e.g. *Baka v. Hungary*, cited above, *Żurek v. Poland*, no. 39650/18, 16 June 2022 and *Miroslava Todorova v. Bulgaria*, no. 40072/13, 19 October 2021) concern situations when the applicants, because of their official positions, had made critical statements about the situation in the judiciary in their respective states. Unlike the applicants in the above-mentioned cases, the candidate's evaluation does not concern the views expressed by him on matters related to the reform and functioning of the judiciary, but his personal situation, namely, a request by the SIS to the respective authorities to examine the candidate's possible conflict of interest in deciding a case related to the reinstatement of Vladislav Clima as the President of the Chisinau Court of Appeal. The fact that the candidate's comments were allegedly made in response to allegations of a criminal nature was explicitly recognized by the SCM Plenary decision of 24 October 2023, which the candidate relies on as a final and enforceable decision on this subject.

The candidate also argued that the Commission failed to treat him equally with another candidate. The candidate cited Decision No. 38 of 8 June 2023, in which three disciplinary procedures were initiated against a candidate relating to her professional functioning as a prosecutor leading to the sanctions of one warning and two reprimands. In that evaluation, the Commission found that the candidate provided detailed information about, amongst others, the high volume and unequal distribution of work, the difficult working environment, the lack of an effective IT tool to track progress in the management of cases and her reasons for not appealing the disciplinary decisions before the Superior Council of Prosecutors, thereby mitigating the concerns of the Commission. The facts of that case differs substantially from the candidate's case, which involves him making public statements about a case in which he acted as a judge and which bring about questions on limitations to the right of freedom of expression for a person acting in a judicial capacity. Therefore, the issue of unequal treatment does not arise.

In view of all the above-mentioned, the Commission has concerns about the compliance of the candidate with the criterion of ethical integrity with respect to his public statement of 19 January 2022, in that the scope and tenor of the remarks appear to be inconsistent with ethical requirements in that they exceed the scope of an appropriate response to the accusations against him and also might lack measure and reasonableness.

As noted above, in light of the SCJ special panel decision, the Commission is not including this issue in its determination on the candidate's passing or failing the evaluation in the resumed evaluation.

#### 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. a) and c), para. (4) lit. a) and b) and para. (5) lit. a), b), c), d) and e) 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.)<sup>48</sup> 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.<sup>49</sup> A failing decision in the context of the evaluation of candidates seeking to

<sup>48</sup> *Sevdari v. Albania*, no. 40662/19, para. 87, 13 December 2022.

<sup>49</sup> *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.

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 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