*Decision No. 13 of 21 May 2024 on the Resumed Evaluation of Candidacy of Ion CHIRTOACĂ, 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 13 March 2024 and 21 May 2024. The members participating were:

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

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

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

## *I. The procedure*

Ion CHIRTOACĂ, judge at the Chisinau Court, Buiucani office, was on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 6 April 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge on 17 March 2016 at the Chisinau Court, Buiucani office. On 8 November 2022, the President of the Republic of Moldova rejected the appointment of the candidate as judge until the retirement age. From 2010 to the present the candidate has occupied various positions in the Academy "Ștefan cel Mare" of the Ministry of Internal Affairs. From 2019 to the present the candidate has been a lecturer at the National Institute of Justice.

The candidate was initially evaluated by the Commission 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.[1]

[1] The sources from which information was obtained concerning evaluated candidates generally included the National Integrity Authority, State Fiscal Service, General Inspectorate of Border Police, financial institutions, public

The candidate also responded to written questions and requests for information from the Commission.[2] Following the candidate's request, on 12 December 2022, the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022. On 15 December 2022, the candidate participated in a public hearing before the Commission. The candidate responded to post-hearing questions from the Commission. The Commission issued its decision failing the candidate on 20 January 2023.

On 10 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 three written questions from the Commission, including six sub-questions and one request 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 9 February 2024. Following the candidate's request, on 7 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 16 February 2024. The candidate requested a public hearing and requested that his parents be heard. The candidate presented additional documentation. On 13 March 2024, the candidate appeared at a hearing before the Commission. The candidate's parents were heard at the request of the candidate.

## *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

institutions, open sources such as social media and investigative journalism reports and reports from members of civil society. Not all sources produced information concerning each candidate and not all of the information produced by sources about a candidate was pertinent to the Commission's assessment. All information received was carefully screened for accuracy and relevance.

[2] The Commission sent 4 rounds of questions to the candidate, including 25 questions, 50 sub-questions and 19 requests for further documentation.

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

Guided by the aim of upholding the fundamental principles of the rule of law (art. 1 para. (3) of Constitution), sovereignty and state power (art. 2 of Constitution), the Commission's decisions are adopted in accordance with the law, pursue the legitimate aims listed in Law No. 26/2022, and the outcome is necessary for a democratic society to achieve the aim or aims concerned.[3] The Commission's evaluation of candidates' integrity consists of verifying their ethical integrity and financial integrity (art. 8 para. (1) of Law No. 26/2022) in order to increase the integrity of future members of the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and prosecutors and in the justice system overall (preamble to Law No. 26/2022). Increasing the confidence of society in the judicial system and the proper functioning of these institutions concern matters of great public interest.[4] The Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe (hereinafter "Venice Commission and the DGI") observed that the integrity evaluation is not being applied to judges or prosecutors with respect to their roles as such judges or prosecutors and is thus not engaging the independence of their role. However, it is a crucial part of the Moldovan structure of governing the justice system that judges and prosecutors serve from time to time on the self-administration bodies and noted that these are more than administrative positions; they are crucial roles in ensuring the good governance of these bodies in the justice system. Accordingly, the Venice Commission and the DGI further observed that the personal integrity of the members that constitute the Superior Councils (of judges and prosecutors) is an essential element to the nature of such bodies; it ensures the confidence of citizens in justice institutions – trust in magistrates and their integrity. In a society that respects the fundamental values of democracy, citizens' trust in the action of the Superior Councils depends very much, or essentially, on the personal integrity, competence, and credibility of its membership.[5] Venice Commission Opinion No. 1069/2022 specifically noted that the creation of ad hoc bodies to assess the integrity of judges and prosecutors is based on the assumption that the justice system has extremely serious deficiencies and that there are systemic doubts about the integrity of magistrates.[6]

[3] *Mutatis mutandis*, *Xhoxhaj v. Albania,* no. 15227/19, para. 378, 31 May 2021; *Nikëhasani v. Albania*, no. 58997/18, para. 93, 13 December 2022.
[4] *Baka v. Hungary* [GC], no. 20261/12, para. 171, 23 June 2016; *Morice v. France* [GC], no. 29369/10, para. 125, ECHR 2015.
[5] Joint opinion No. 1069/2021 of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts, 13 December 2021 (hereinafter "Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022"), para. 15 and 11.
[6] Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, paras. 11-12.

Regarding the justification for vetting procedures, both in the Albanian and Ukrainian contexts, the Venice Commission repeatedly commented that the extraordinary measures to vet judges and prosecutors were "not only justified" but were "necessary for Albania to protect itself from the scourge of corruption which, if not addressed, could completely destroy its judicial system".[7] In those contexts, the Venice Commission also took into account existing major problems with corruption and incompetence in the judiciary, political influence on judges' appointments in the previous period, and the almost complete lack of public confidence in either the honesty or the competence of the judiciary.[8] In a 2019 opinion on a draft law in Moldova that included vetting of SCJ judges, the Venice Commission and the DGI took note of the assessment made by the authorities, in particular, two resolutions of the European Parliament[9] that *"in the last years the justice system has shown an unprecedented lack of independence and submission to oligarchic interests"* and that *"national and international institutions have declared the Republic of Moldova a captured state."*[10] The Venice Commission and the DGI also noted that it ultimately fell within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary creates sufficient basis for subjecting all judges and prosecutors, as well as members of the Superior Council of Magistracy and Superior Council of Prosecutors, to extraordinary integrity assessments.[11] As the European Court of Human Rights (hereinafter "ECtHR") has held on many occasions, national authorities, in principle, are better placed than an international court to evaluate local needs and conditions.[12] A recent opinion of the Venice Commission in relation to Georgia reached similar conclusions about the need for an inclusive national consultative process to address possible reform measures including evaluating the integrity of members of that nation's High Council of Judges in light of persistent allegations of lack of integrity in the High Council. The opinion expressly noted the temporary option of using mixed national/international advisory boards to facilitate that procedure.[13]

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

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

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

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

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

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

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

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

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

A number of versions of ethical codes applied to judges over the period of time covered by the evaluation. The codes were *Judge's Code of Professional Ethics*, adopted at the Conference of Judges on 4 February 2000, *Judge's Code of Ethics*, approved by the Superior Council of Magistracy decision No. 366/15 on 29 November 2007, *Judge's Code of Ethics and Professional Conduct,* approved by decision No. 8 of the General Assembly of Judges of 11 September 2015, amended by decision no. 12 of the General Assembly of Judges of 11 March 2016, as well as the *Commentary to the Code of Judges' Ethics and Professional Conduct*, approved by Superior Council of Magistracy's decision No. 230/12 of 8 May 2018. Since 2018, the *Guide for Judges' Integrity* approved by the Superior Council of Magistracy's decision No. 318/16 of 3 July 2018 is another relevant source to assess judicial integrity issues.

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

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

Art. 8 para. (4) of Law No. 26/2022 provides that a candidate shall be deemed to meet the criterion of *financial integrity* if:
a) the candidate's assets have been declared in the manner established by law;
b) the Evaluation Commission finds that his/her wealth acquired in the last 15 years corresponds to the declared revenues.

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

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

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

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

The Evaluation Commission has functional independence and decision-making autonomy from any individual or legal entity, irrespective of their legal form, as well as from political 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.[14] This important distinction between vetting and pre-vetting processes was highlighted in another recent Venice Commission Report on vetting in Kosovo, which stated that "[i]n a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources". Also, "[i]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability".[15] In the case of Law No. 26/2022, art. 13 para. (6) makes clear that the results of the assessment by the Commission, set forth in the evaluation decision, constitute legal grounds for not admitting the respective candidate to the elections or competition. The law provides no other legal consequences of the evaluation decision; the negative decision of the Evaluation Commission does not affect in any way the judge or prosecutor's career, but only prevents him or her from running for office as a member of the Council.[16]

According to well-established ECtHR case law, there is no right to a favorable outcome[17] and there is, in principle, no right under the Convention to hold a public post related to the administration of justice.[18] As a matter of principle, States have a legitimate interest in regulating public service positions.[19] In adopting Law No. 26/2022, the Moldovan Parliament required candidates for membership on the Superior Council of Magistracy and the Superior Council of Prosecutors to undergo the extraordinary assessment by the Commission as a part of the election/ appointment process.

In the vetting context, once the evaluating body has identified integrity issues, the burden of proof shifts to the candidate. This approach has been found permissible by the ECtHR, even in the vetting of sitting judges who may lose their positions or otherwise be sanctioned as a consequence of the evaluation. In *Xhoxhaj v. Albania,*[20] the ECtHR stated that "it is not per se arbitrary, for the purposes of the 'civil' limb of Article 6 para. 1 of the Convention, that the burden of proof shifted

[14] Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 14 and para. 43.
[15] Venice Commission, CDL-AD (2022)011-e, Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), para. 10 and para. 9.
[16] Section 115 of the Constitutional Court Decision Concerning Exceptions of Unconstitutionality of some provisions of Law No. 26 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 42/2023, 6 April 2023; see also Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 15 and 39.
[17] See, *Kudła v. Poland* [GC], no. 30210/96, para. 157, ECHR 2000-XI, *Hilal v. the United Kingdom*, no. 45276/99, para. 78, ECHR 2001-II, *Andronicou and Constantinou v. Cyprus*, 9 October 1997, para. 201, *Reports of Judgments and Decisions* 1997-VI.
[18] See, *Grzęda v. Poland* [GC], no. 43572/18, para. 270, 15 March 2022, *Denisov v. Ukraine* [GC], no. 76639/11, para. 46, 25 September 2018 and *Dzhidzheva-Trendafilova v. Bulgaria* (dec.), no. 12628/09, para. 38, 9 October 2012.
[19] See, *Naidin v. Romania*, no. 38162/07, §49, 21 October 2014, and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, para. 52, ECtHR 2004-VIII.
[20] *Xhoxhaj v. Albania*, no. 15227/19, para. 352, 31 May 2021.

onto the applicant in the vetting proceedings after the IQC [Independent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file". Interpreting doubts to the detriment of the person who has not provided the required information has been a standard in national integrity-related legislation in the Republic of Moldova.[21] Art. 13 para. (5) of Law No. 26/2022 expressly requires the Commission to adhere to this approach since the law states that "a candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the requirements laid down in art. 8, which the evaluated person has not mitigated".

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

In this context, for example, one cannot conclude from the fact that a candidate never received a disciplinary sanction or has not received a decision of the National Integrity Authority regarding his/her wealth or annual assets declarations that the candidate has complied with the integrity criteria. Disciplinary enforcement in the justice system has been weak in the Republic of Moldova. The Group of States against Corruption (GRECO) noted "the view that the SCM did not react to reported misconduct of judges in a sufficiently determined manner. Numerous cases are reported in the media and are allegedly not acted upon by the SCM. Decisions are reportedly not well explained, available sanctions are not used to their full extent and the GET [GRECO Evaluation Team] was given examples of judges being allowed to resign at their own request instead of being dismissed, in order to be entitled to legal allowances and social benefits. This sends out unfortunate messages that misconduct and lack of diligence are tolerated with no effective deterrents".[22] A joint report of four Moldovan CSOs mirrors these findings and

[21] See, for example, art. 33 para. (9) and (10) of Law No. 132/2016 on the National Integrity Authority.
[22] GRECO's Fourth Evaluation Report, Republic of Moldova, 1 July 2016, para. 135.

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

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

It has thus become a key element of the functional independence of the Commission that it "shall not depend on the findings of other bodies competent in the field concerned" (art. 8 para. (6) of Law No. 26/2022). This approach requires the Commission to make its own evaluation, based on the documents and information collected from the candidates and third parties (including public and private persons – art. 10 paras. (2) and (3) of Law No. 26/2022) and not merely rely on the previous facts, including disciplinary proceedings or the absence thereof. The Venice Commission did not raise a concern about this approach in connection with Law No. 26/2022.[28] For comparison, a similar provision is included in item 1.5.3 in the Methodology (2021) of the Ukrainian Ethics Council, referred to by the Venice Commission as an example regulating the

[23] Transparency International, and others, State Capture: the Case of the Republic of Moldova, 2017, p. 21.
[24] GRECO's Fourth Evaluation Report, Second Interim Compliance Report, Republic of Moldova, 24 March 2023, para. 43, 49, 60.
[25] OECD, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, Moldova, 2022, p. 51
[26] International Commission of Jurists, The Undelivered Promise of an Independent Judiciary in Moldova, 2019, p. 35.
[27] GRECO's Fourth Evaluation Report, Republic of Moldova, 1 July 2016, para. 101.
[28] See Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022 and Joint Opinion of the Venice Commission and DGI on the Draft law on the external assessment of judges and prosecutors, 14 March 2023, para. 49-50.

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

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

One crucial component in the evaluation process is asset declarations. The main objectives of asset declarations include monitoring wealth variations of individual politicians and civil servants, in order to dissuade them from misconduct and protect them from false accusations, and

[29] See Venice Commission Opinion No. 1109/2022 on the draft law on amending some legislative acts of Ukraine regarding improving procedure for selecting candidate judges for the Constitutional Court of Ukraine on a competitive basis, 19 December 2022, para. 54.
[30] See Section 128 of the Constitutional Court Decision Concerning Exceptions of Unconstitutionality of some provisions of Law No. 26 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 42/2023, 6 April 2023. See also the Constitutional Court Judgment No. 9 of 7 April 2022 on the constitutional control of Law No. 26/2022.
[31] *Biao v. Denmark* [GC], no. 38590/10, para. 89, 24 May 2016; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, para. 61, ECHR 2010; *Burden v. the United Kingdom* [GC], no. 13378/05, para. 60, ECHR 2008
[32] *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, para. 81, ECHR 2013 (extracts), *Thlimmenos v. Greece* [GC], no. 34369/97, para. 44, ECHR 2000-IV.
[33] *Timishev v. Russia,* nos. 55762/00 and 55974/00, para. 57, 13 December 2005.
[34] *Fábián v. Hungary* [GC], no. 78117/13, para. 121, 5 September 2017; *Advisory opinion on the difference in treatment between landowner associations "having a recognized existence on the date of the creation of an approved municipal hunters' association" and those set up after that date*, 13 July 2022, para. 69.

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

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

Art. 19 of the Rules of Procedure of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administrative bodies of judges and prosecutors of 2 May 2022, pursuant to Law No. 26/2022, as amended 6 September 2023 (hereinafter "Rules of Procedure") sets forth the procedures for the resumed evaluation of candidates. The rules permit the candidate to present new evidence regarding the issues that were addressed by the SCJ and referred to the Commission for re-evaluation and only if the candidate was in the impossibility to present previously at the evaluation stage and before the SCJ and the candidate provides sufficient justification to the Commission. The Commission may send questions and requests for documents and information to the candidate to the extent necessary to clarify the issues derived from the SCJ decision. Unless the Commission has issued a decision passing the candidate, it will present a statement of facts and serious doubts to the candidate and a request for the candidate to indicate whether the candidate wishes to participate in a public hearing. Access to the materials collected during the resumed evaluation will be given to the candidate. The Commission may also determine, in accordance with a SCJ decision, either at the request of a candidate or *proprio motu*, to hear a person in a public session to address an issue

[35] OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing, p. 12.
[36] Eastern Partnership-Council of Europe Facility Project on "Good Governance and Fight against Corruption", Practitioner manual on processing and analyzing income and asset declarations of public officials, Tilman Hoppe with input from Valts Kalniņš, January 2014, section 7.5.1.3.
[37] OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing, p 14.

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*

During the initial evaluation, the candidate repeatedly requested that the Commission hear his parents about the issue of his parents' transfers of funds to the candidate's bank account. The Commission did not accommodate this request as it did not consider the hearing of the candidate's parents required for the candidate's evaluation. In its decision of 1 August 2023, the SCJ special panel criticized the Commission for not hearing the candidate's parents in the context of a multi-faceted, complete and objective investigation of the candidate. During the resumed evaluation, the candidate reiterated his request for his parents to be heard. The Commission acceded to this request and the candidate's parents were heard during the resumed evaluation hearing.

*1. Failure to disclose bank account and transfers from his parents in the manner prescribed by law and sources of funds for such transfers*

*a. The facts*

The candidate has been obliged to submit annual declarations on assets and personal interests (hereinafter "annual declaration") since 2012, initially as an employee of the Ministry of Internal Affairs and since 2016 as a judge.

On 12 October 2010, the candidate opened a (EUR) bank account in his name in a Moldovan bank which he closed on 19 January 2022. The candidate did not declare this bank account in his annual declarations submitted to the National Integrity Commission for 2012 - 2015. During this period, the candidate had received transfers to this account from his parents, who were working abroad, in the amount of 74,660 EUR. The candidate's mother has lived and worked in Italy since May 2007, his father since February 2009. Of the 74,660 EUR transferred between 2012 - 2015, only 30,667 EUR was declared in the candidate's 2014 annual declaration as a deposit under "Column IV. Financial Assets". Funds in the account were used by the candidate's parents in 2015 to purchase an apartment in Chisinau municipality. The remaining amount of 43,993 EUR was not declared by the candidate.

In its initial evaluation decision of 20 January 2023, the Commission concluded that it had serious

doubts about the compliance of the candidate with the criterion of financial and ethical integrity with respect to the non-disclosure of this EUR bank account and the funds deposited to that account and with respect to the sources of these transfers made during the years 2012 - 2014, which had not been mitigated by the candidate.

On 10 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.

In the annexes to his five-year declaration submitted to the Commission at the start of the initial evaluation, the candidate provided information about his parents income, consisting of documents issued by Italian authorities, demonstrating that the candidate's mother had an official income in Italy since 2009 and his father since 2014. The candidate did not provide any information about unofficial income of his parents as of the moment his parents lived and worked in Italy.

In written rounds of questions from the Commission during the initial evaluation, the candidate was repeatedly asked about the source of the funds that his parents transferred to his EUR bank account, while they were working in Italy. In his responses, the candidate stated that the funds transferred are "the result of the work of the parents who later used this money". According to the candidate, the money was always transferred by his mother, as "she was the only one who had an account open in Italy at the time of sending the money, though the money sent represents the labour of both parents". He also stated that when his parents started worked in Italy, they worked unofficially. The candidate did not provide any further information or supporting documentation in his written responses relating to his parents' unofficial income.

During the initial evaluation hearing, the candidate stated that the funds transferred to his account were used to purchase an apartment in Chisinau municipality: "I withdraw from the account that amount in August 2015 and on 1-2 September 2015 I purchased an apartment that the mother already registered in her name, because the origin of money was her work, done by [my] mother". The candidate also stated that "[... is money that my parents earned by working abroad, in Italy". The candidate emphasized that the fact that the funds came from legal sources of income of his parents carried great importance for him. The candidate repeated that initially his parents lived and worked in Italy illegally, but that they later legalized their status and started paying taxes. During the initial evaluation hearing, the candidate did not provide any further information or supporting documentation relating to the unofficial income of his parents in Italy.

In a post-hearing round of questions during the initial evaluation, the Commission provided to the candidate a table of the transfers made by the candidate's parents to the candidate's EUR bank account during the period 2009 - 2017. The candidate confirmed the correctness of the amounts and dates of the transfers made and indicated that these funds had been used to pay for his studies as well as living and education costs of a close relative living abroad. In addition, some funds had been used to purchase his parents' apartment in 2015. The candidate also stated that the funds

sent by his parents to his account "were declared in Italy, jurisdiction in which the parents have their tax residence and where declarations were made and taxes paid". The candidate added that his parents' income statements were attached to his five-year declaration submitted to the Commission, "as proof of the legal origin of funds investigated under the current procedure".

The following table provides an overview of the transfers made to the candidate's EUR bank account and his parents official income during the period 2009 - 2015. Although the candidate was only obliged to declare the bank account as of 2012, the table includes three years prior to 2012 which show that the candidate's parents transferred more money to the candidate's EUR bank account than their declared income in those years as well.

Table 1. (figures in EUR)

| Year | Transfers from abroad on bank account candidate | Candidate's mother declared income | Candidate's father declared income | Candidate's parents total declared income | Amount by which the transfers exceeded the declared income of parents |
|---|---|---|---|---|---|
| 2009 | 0 | 7,687 | - | 7,687 | n/a |
| 2010 | 16,000 | 9,848 | - | 9,848 | 6,152 |
| 2011 | 17,150 | 13,583 | - | 13,583 | 3,567 |
| **2012** | **18,750** | **13,662** | **-** | **13,662** | **5,088** |
| **2013** | **22,168** | **14,174** | **-** | **14,174** | **7,994** |
| **2014** | **20,084** | **14,208** | **2,522** | **16,730** | **3,354** |
| **2015** | **13,658** | **14,327** | **5,234** | **19,561** | **n/a** |
| **Total 2009-2015** | **107,810** | **87,489** | **7,756** | **95,245** | **26,155** |
| **Total 2012-2015** | **74,660** | **56,371** | **7,756** | **64,127** | **16.436** |

According to the data available during the initial evaluation, between 2009 and 2015 the candidate's parents transferred 107,810 EUR to the candidate's EUR bank account, while his family's official income totalled 95,245 EUR. Between 2012 and 2015 (when the candidate was obliged but failed to declare his EUR bank account and the funds transferred to that account) the candidate's parents transferred 74,660 EUR to that account, while their official income totalled 64,127 EUR. The Commission notes that in five consecutive years, 2010 - 2014, the transferred amounts considerably exceeded the candidate's parents' declared income. (In 2010, the amount of funds transferred exceeded the parents' declared income by 6,152 EUR, in 2011 by 3,567 EUR,

in 2012 by 5,088 EUR, in 2013 by 7,994 EUR and in 2014 by 3,354 EUR.) Over these five years, the total amount of funds transferred exceeded the parents' declared income by 26,155 EUR.

In response to written questions during the initial evaluation and to the statement of facts and serious doubts document during the resumed evaluation, the candidate explained that one of the reasons he had not declared the EUR bank account, was that the funds in the account "were exclusively from the work of my parents abroad" and that the candidate has "never behaved like a de facto owner of these funds, moreover, all the actions thereto were coordinated with the parents". At both the initial evaluation hearing and the resumed evaluation hearing, the candidate admitted that the bank account was in his name only, was not a joint account with his parents and that legally the funds in these accounts belonged to him. The candidate also admitted that the provisions of art. 4 para. (1) lit. d) of Law No. 1264/2002 on declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force until 1 August 2016) required the subject of declarations to declare all financial assets, including bank accounts, even if there was a zero balance in the account at the time of submission of the declaration. The candidate admitted that not declaring the bank account was a mistake and omission on his part. He noted that, after becoming a judge in 2016, he became more familiar with the relevant legal provisions and understood that it should have been declared.

In its 1 August 2023 decision, the SCJ special panel observed that the Commission ignored the candidate's submission of documents justifying his parents' income in Italy and ignored the explanations of the candidate that his father had also earned income from unofficial employment. The SCJ special panel accepted the calculations according to which the parents had made transfers totalling 74,660 EUR between 2012 and 2015, exceeding the parent's official income of 64,127 EUR by 10,533 EUR and determined that the difference could be explained by the unofficial income of the father. Before the SCJ special panel, the candidate submitted declarations of two Italian citizens, dated 23 March 2023 and 3 April 2023, reflecting that his father had worked for these two individuals. That information was not presented by the candidate to the Commission during the initial evaluation.

The declaration submitted by P.F. on 23 March 2023 was not notarized and stated: "I declare that during the period from 2012 – 2014 and more [the candidate's father] (…) came to me five hours a week, he earned 200 EUR monthly, in three years he had earned 7200 EUR". The second statement, notarized by Z.M. and dated 3 April 2023, declared that the candidate's father "during the period between 2012 and 2014 lived free of charge at the home" of the declarant's mother and that she knew that her mother paid the candidate's father "weekly sums of money amounting to 70,00 EUR or 80,00 EUR for the performance of services". The SCJ special panel considered that these documents "are capable of removing doubts regarding the source of income obtained by both parents".

During the resumed evaluation, the Commission asked the candidate to provide further information about his father's work and income in Italy during the years 2012 - 2015. In his

response to the Commission, the candidate stated that his father had worked informally in Italy prior to 2014 and was officially employed in July 2014. The candidate stated that it had not been possible to find other persons who were willing to confirm that his father had worked for them. In relation to the work done by his father for the mother of Z.M., the candidate explained that "the payment for the services rendered [by the candidate's father] was made weekly, which varied between 70 and 80, and the working period was year-round, except for the leave period lasting no more than 1 month. As such, the working period was no less than 45 weeks a year. Thus, for one year of work, my father was being paid about 3375 euros (75x45), and for the period 2012 – 2014 he was paid more than 10 000 Euros ". The candidate also stated that his father's work for the mother of Z.M. was not a full-time job and that he had worked in other places as well, including for P.F., as demonstrated by the latter's declaration. The candidate further stated that his father was able to live for free in the house of Z.M.'s mother, and continued to work for her and P.F. after he started to work officially as of July 2014. According to the candidate, his mother lived and worked near his father, taking care of elderly people.

In addition to the candidate's EUR bank account to which his mother transferred money, the candidate's father had a deposit bank account in USD in the Republic of Moldova, opened on 30 April 2013. During the initial evaluation, the candidate confirmed that this deposit account was used by his father and that, as of 2016, whenever his father came to Republic of Moldova, he would deposit money into this account. During the resumed evaluation, the Commission received information from the bank about the amounts of money deposited into this account, according to which the candidate's father deposited money only during the years 2013 - 2015. Although the account remained open afterwards, no deposits were made into this account after 2015.

Table 2. deposits into account held by the candidate's father (in USD)

| Year | Deposited money | Interest | Total |
|---|---|---|---|
| 2013 | 6,500 | 221.16 | 6,721.16 |
| 2014 | 3,172 (plus 6,721 from 2013 ) | 358.44 | 10,030.44 |
| 2015 | 12,950 (plus 10,030 from 2014) | 572.06 | 23,522.06 |

The candidate's father deposited a total of 22,622 USD (est. 16,614 EUR) into this account during the years 2013 - 2015.

The information included in table 1 and table 2 provides the following overview as to the difference between the amounts of money transferred or deposited by the candidate's parents and their total official and unofficial income:

Table 3. figures in EUR.

| Year | Bank transfers (account candidate) | Bank deposits (account father) | Total transfers and deposits | Declared income parents | Unofffical income father | Total income parents | Difference |
|---|---|---|---|---|---|---|---|
| 2010 | 16,000 | - | 16,000 | 9,848 | - | 9,848 | (-6,152) |
| 2011 | 17,150 | - | 17,150 | 13,583 | - | 13,583 | (-3,567) |
| 2012 | 18,750 | - | 18,750 | 13,662 | 5,775 | 19,437 | (+687) |
| 2013 | 22,168 | 4,901 | 27,069 | 14,174 | 5,775 | 19,949 | (-7,120) |
| 2014 | 20,084 | 2,304 | 22,388 | 16,730 | 5,775 | 22,505 | (+117) |
| 2015 | 13,658 | 9,409 | 23,067 | 19,561 | - | 19,561 | (-3,506) |
| Total 2012-2015 | 74,660 | 16,614 | 91,274 | 64,127 | 17,325 | 81,452 | (-9,822) |
| Total 2010-2015 | 107,810 | 16,614 | 124,424 | 87,558 | 17,325 | 104,523 | (-19,901) |

Based on the information provided by the candidate to the SCJ and to the Commission during the resumed evaluation, the candidate's father appears to have had informal income during the years 2012 - 2014 of 5,775 EUR per year (2,400 EUR from work for P.F. and 3,375 EUR from work for the mother of Z.M.). As demonstrated by table 3 above, over the years 2012 - 2015 the total income of the candidate's parents was 81,452 EUR, whereas the total amount of bank transfers to the candidate and deposits to the father's bank account was 91,274 EUR, that is, 9,822 EUR more than their income. For the years 2010 - 2015, the total income of the candidate's parents was 104,523 EUR, whereas the total amount of bank transfers and bank deposits was 124,424 EUR, that is, 19,901 EUR more than their income. In four of six years during this period (2010, 2011, 2013 and 2015), the amounts of bank transfers and bank deposits exceeded the parents' total official and unofficial income by 6,152 EUR, 3,567 EUR, 7,120 EUR and 3,506 EUR, respectively.

In his response to the statement of facts and serious doubts, the candidate argues that his father worked informally during the years 2009 - 2014 and that his "father worked in several places throughout that entire period, and that some of the former beneficiaries of my father's work either did not want to confirm it or they died." He also argued that only his father's unofficial income for the period 2012 - 2014 could be proven and that the Commission incorrectly only took into account an income of 5,775 EUR a year, where he had explained to the Commission "that the candidate's father worked in several places, therefore he had much higher income"

In relation to the differences between the candidate's parents' total income and the amounts of money transferred to the candidate's EUR account and to his father's deposit account, the candidate argued that it "cannot be regarded as an implausible and suspicious income". In support

of this argument, the candidate submitted four new declarations relating to the income of his parents, one submitted by his parents and three by other persons.

One declaration was submitted by V.B., a Moldovan citizen, who also worked in Italy during the years 2004 to 2020. During the period 2010 - 2015, this person was in contact with the parents of the candidate and replaced the candidate's mother when the latter was on holidays. According to this statement, the candidate's mother worked for 12 extra hours on weekends and received an additional informal income of 450 EUR per month. Also according to this statement, the candidate's father worked 20 extra hours on weekends for which he received informal income of 600 EUR per month. According to this person, "I confirm these figures from their words, during our communication".

Another statement was submitted by M.M., an Italian national, who declared that she knows the candidate's parents and states that, according to the candidate's parents, the candidate's mother worked unofficially on weekends for which she was paid 450 EUR in cash and that the candidate's father worked informally 20 hours per week for which he received 600 EUR in cash.

A third statement was submitted by E.L., a Moldovan citizen, who also worked in Italy. According to this statement, the candidate's mother worked 12 hours extra each week and "from what she told me then", was paid 450 EUR per month in cash. The candidate's father worked 20 hours per week and was paid 600 EUR per month in cash.

In the declaration submitted by the candidate's parents, it is stated that the candidate's mother worked for an additional informal 12 hours per week: 8 hours on Saturdays and 12 hours on Sundays and that she received an unofficial income of 450 EUR per month for this extra work. It is also stated that the candidate's father received an informal income from three different sources, amounting to a total of 1,150 EUR per month. 200 EUR per month was received from P.F., 600 EUR per month from the mother of Z.M. and 350 EUR from the same person for which the candidate's mother worked. The candidate's parents emphasized in their statement that these figures explain "the difference in the amounts, there is a surplus of income declared with the amount [of money] transferred to the Republic of Moldova". The declaration concludes by stating: "Because of this, for 2009 - 2015, there are differences between the money that was legitimately earned and is reported to the National Institute of Social Security and the unreported money (from informal employment), which represent the surplus for the years 2009 – 2015".

During the resumed evaluation hearing, the candidate was asked why he submitted declarations from Italian nationals about his father's unofficial income for the first time before the SCJ special panel and four additional declarations about his parents' unofficial income only in response to the statement of facts and serious doubts during the resumed evaluation. The candidate responded that he provided information in order to address the doubts expressed by the Commission. When the Commission expressed doubts about the capacity of his parents to transfer money to his EUR bank account, he produced information to address that concern. When the Commission expressed

doubts about the capacity of his parents to both transfer money to his EUR account and of his father to deposit money in the latter's account, he produced information to address those concerns. In addition, the candidate confirmed that the information submitted during the initial evaluation about the income of his parents of 64,127 EUR related only to his mother's official income. He continued by stating that "my father wasn't earning less than my mother monthly, in that period of time", but this income was unofficial. The candidate also stated that the income of both his parents over the years 2012 - 2015 was about 30,000 EUR more than the amount they sent to Moldova. The candidate also stated that in the five-year declaration that he submitted to the Commission at the start of the initial evaluation, he had submitted all documents about the income of his parents from Italy: when they worked there, what period of time they worked legally or not legally and information from the Italian Tax authorities.

During the resumed evaluation hearing, at the renewed request of the candidate, the candidate's parents were heard. In response to questions by the candidate, the candidate's father stated that he worked unofficially in the period of 2012 - 2014 and that he earned on average about 1,000 EUR to 1,100 EUR per month. This was confirmed by the candidate's mother. The candidate's mother also confirmed that all transfers made to the candidate's EUR bank account and to the candidate's father's deposit account was money earned by the parents while living and working in Italy.

*b. The law*

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets, personal interests and existence of donations as per art. 8 para. (4) lit. a) and para. (5) lit. b) and f) of Law No. 26/2022 and that his/her wealth acquired in the past 15 years corresponds to declared revenues, pursuant to art. 8 para. (4) lit. b) of Law No. 26/2022.

Pursuant to art. 8 para. (5) lit. c) and d) of Law No. 26/2022, in order to assess the candidate's financial integrity, the Commission is also required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2022 and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2). Pursuant to art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 a candidate's failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

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

"Close persons", as defined in Law No. 133/2016 on declaration of assets and personal interests,

are: "husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as any person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and any person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law)".

According to art. 4 of Law 1264/2002 on declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (applicable for 2012 - 2015 declarations), the declarant is required to declare "income obtained together with family members" during the declaration period. Income is defined in that law as "any increase, addition or extension of the patrimony, regardless of the source or origin, expressed in patrimonial rights or in any other patrimonial benefit, obtained by the subject of the declaration or by the members of their families during the reference period both in the country and abroad". According to art. 4 para. (1) lit. d) of Law No. 1264/2002 on declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force until 1 August 2016), the subject of the declaration was obliged to declare financial assets, i.e. bank accounts, investment funds, equivalent forms of saving and investing, investments, bonds, cheques, bills of exchange, certificates of exchange, other documents incorporating property rights of the declarant or their family members, direct investments in national currency or foreign currency made by them or by their family members, as well as other financial assets.

Instruction in the mode of completing the declaration of income and property approved by Ordinance of the President of National Integrity Commission No. 5 of 8 February 2013 states that the subject of the declaration was obliged to declare as financial assets under "Column IV. Financial Assets" of the declaration all bank accounts, investment funds, equivalent forms of saving and investing, investments, bonds, cheques, bills of exchange, certificates of exchange, other documents incorporating property rights of the declarant or their family members, direct investments in national currency or foreign currency made by them or by their family members, as well as other financial assets.

*c. Reasoning*

In its decision, the SCJ special panel noted that the candidate had submitted documents justifying the official income earned abroad by his parents, and in particular the candidate's mother, and had provided explanations about the unofficial income of both parents, which the Commission had ignored. The SCJ special panel criticized the Commission for not hearing the candidate's parents notwithstanding the latter's willingness to be heard. The SCJ special panel also noted that "[...] the fact that the amounts were officially transferred through banking institutions, which further proves that the applicant did not intend to hide the existence of the bank account, nor the source of the amounts entered into the bank account, but that the bank account was not declared, being rather an unintentional ignorance of the legislation in force […]". The SCJ special panel concluded that "As a result, even if under the law, failure to declare the bank account constitutes

a formal violation of the legal regime, it cannot be considered as a serious doubt that would lead to the candidate's disqualification, given that the source of income from which transfers were made through this bank account was also confirmed/justified". Finally, the SCJ special panel found that the Commission applied double standards and referred to other instances where candidates passed the evaluation notwithstanding issues of non-declaration of bank accounts in their evaluations.

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. During the resumed evaluation the Commission received additional information and identified additional evidence which the Commission found of particular significance for the resumed evaluation decision.

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests. The Commission is also required to verify sources of income and the method of acquiring assets of the candidate, family members and close persons to the candidate, which includes candidate's parents.

The candidate has been obliged to submit annual declarations since 2012, initially as an employee of the Ministry of Internal Affairs and since 2016 as a judge. Between 2012 - 2015, the candidate did not declare a EUR bank account opened in 2010 in a Moldovan bank to which 74,660 EUR was transferred by his parents from Italy. Out of 74,660 EUR transferred between 2012 - 2015, only 30,667 EUR was declared in his 2014 annual declaration and only then as a deposit under the "Column IV. Financial Assets".

During both the initial evaluation and the resumed evaluation, the candidate provided contradictory statements and explanations about the non-declaration of the EUR bank account. The candidate regularly argued that the law did not oblige him to declare the funds transferred by his parents as these funds did not belong to him and that the funds reflected in the account "were exclusively from the work of my parents abroad" and that the candidate has "never behaved like a *de facto* owner of these funds, moreover, all the actions thereto were coordinated with the parents" and had only been a temporary holder of these funds. At the same time, during both the initial and resumed evaluation hearing, the candidate admitted that the bank account was in his name only, was not a joint account with his parents and that the funds in these accounts legally belonged to him. The candidate then also admitted that pursuant to Law No. 1264/2002 on declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force until 1 August 2016), he had been required to declare all financial assets, even if there was zero balance in these accounts at the moment of submission of his annual declaration; he also admitted that not declaring this bank account was a mistake and omission on his side, regardless of the value.

In its initial evaluation decision, the Commission did not accept some of the candidate's explanations and interpretations of the law on why he would not have been obliged to declare the EUR bank account and reiterated that observance of the legal regime of the declaration of personal assets and interests by subjects of declarations, and among them judges, aims to prevent unjustified and illicit enrichment and avoid conflicts of interest in their activity, as well as aiming to hold them accountable for such deeds.

The candidate had a clear obligation to declare the EUR bank account during the years 2012 - 2015. In 2014, he declared the amount of 30,667 EUR as a deposit, but the remainder of the 74,660 EUR transferred during these years by his parents was never declared. As the candidate did not declare this EUR bank account in four consecutive years and as the amounts of money transferred to this account were considerable, the candidate's non-declarations are necessarily of a more serious nature than a mere formal violation of the applicable legal regime.

During both the initial evaluation and resumed evaluation, the Commission was confronted with the question whether the candidate's parents had the capacity to transfer money to the candidate's EUR bank account and also to the deposit account maintained by the candidate's father at a Moldovan bank during the years 2012 - 2015.

In a number of evaluations of candidates, the Commission has addressed the issue of parents and/or family members of candidates who traveled abroad, often for considerable periods of time, in order to work in European or other countries and who sent money earned in other countries to candidates and relatives who stayed behind in the Republic of Moldova in order to improve their living conditions in Moldova. The Commission recognizes this reality that has existed for many years and continues to the present. The Commission also recognizes that those traveling abroad typically worked unofficially for periods of time and therefore were not always able to provide supporting documentation for all income obtained. What the Commission has required from candidates in such cases, is that he or she undertake all reasonable efforts to provide as much information and supporting documentation as possible and to be clear and consistent in the explanations provided to questions from the Commission relating to the work performed by relatives abroad.

Since May 2007, the candidate's mother has lived and worked in Italy. Since February 2009, his father lived and worked in Italy as well. As an annex to his five-year declaration to the Commission at the start of the initial evaluation, the candidate voluntarily provided certain information about his parents' income, consisting of documents issued by Italian authorities, demonstrating that the candidate's mother had an official income in Italy since 2009 and his father since 2014. The candidate did not provide information about any unofficial income of his parents while working in Italy during the initial evaluation.

During the initial evaluation, the Commission established that between 2009 and 2015 the candidate's parents transferred 107,810 EUR to the candidate's EUR bank account, while their

official income totalled 95,245 EUR and that between 2012 and 2015 – the years in which the candidate had to submit annual declarations – the candidate's parents transferred 74,660 EUR to the candidate's bank account, while their official income amounted to 64,127 EUR. The Commission also noted that in five consecutive years, 2010 - 2014, the transferred amounts considerably exceeded the candidate's parents' official income. These figures were confirmed by the candidate in response to post-hearing questions during the initial evaluation.

During the initial evaluation, the Commission repeatedly asked the candidate about the source of the funds transferred to his EUR bank account. The candidate stated that these funds are "the result of the work of the parents who later used this money". According to the candidate, the money was transferred by his mother, as "she was the only one who had an account open in Italy at the time of sending the money, though the money sent represents the labour of both parents". The candidate emphasized that the fact that the amounts were coming from legal sources of income of his parents carried great importance for him, that the funds sent to his account "were declared in Italy, where the parents are tax residents and where declarations were made and taxes paid" and that the income statements provided were "proof of the legal origin of funds investigated under the current procedure". Although the candidate was confronted with the fact that the official sources of income of his parents during the period 2012-2015 were insufficient to cover the amounts of money transferred to his EUR bank account and was specifically requested to explain the source of funds for these transfers, the candidate only stated that during the first years that his parents worked in Italy they worked unofficially, but did not provide any further information or supporting documentation relating to such unofficial income.

Before the SCJ special panel, the candidate submitted declarations of two Italian citizens, dated 23 March 2023 and 3 April 2023, reflecting that his father unofficially worked for these two nationals. That information had not been presented to the Commission during the initial evaluation. On the basis of responses to questions during the resumed evaluation, the Commission established that the unofficial income of the candidate's father during the period 2012 - 2014 amounted to 17,325 EUR. As the official income of his parents during the period 2012 - 2015 was 64,127 EUR and the unofficial income of his father was 17,325 EUR, the total amount of official and unofficial income (81,452 EUR) exceeded the amount of 74,600 EUR transferred to the candidate's EUR account during these years.

However, in addition to the candidate's EUR bank account to which his mother transferred funds, the candidate's father also had a deposit bank account in Moldova. During the initial evaluation, the candidate informed the Commission that as of 2016 his father would deposit money in this account whenever he came to Republic of Moldova. During the resumed evaluation, based on information from the bank, it appeared that the father did not deposit any amounts of money into this account after 2015 but that he deposited 22,622 USD (est. 16,614 EUR) into this account, during the years 2013 - 2015, i.e. during the same years that money was transferred into the candidate's EUR account.

In the statement of facts and serious doubts, the Commission presented figures to the candidate, according to which the amounts of money transferred by his parents into his EUR bank account and deposited by his father into the latter's deposit account in the years 2012 - 2015 totalled 91,274 EUR, whereas the total official and unofficial income of the candidate's parents, amounted to only 81,452 EUR, a difference of 9,822 EUR.

In response to the statement of facts and serious doubts, the candidate argued that his father worked in several places during the years 2009 - 2014 and received an unofficial income higher than calculated by the Commission. In order to support his argument, the candidate presented four additional declarations.

Three declarations, two by Moldovan nationals and one by an Italian national, stated that the candidate's mother worked for 12 extra hours on weekends and received additional unofficial income of 450 EUR per month and that the candidate's father worked 20 extra hours on weekends and received unofficial income of 600 EUR per month. The fourth declaration, submitted by the candidate's parents, states that the candidate's mother worked informally for an additional 12 hours per week (eight hours on Saturdays and 12 hours on Sundays) for which she received unofficial income of 450 EUR per month and that the candidate's father received unofficial income from three different sources totalling 1,150 EUR per month: 200 EUR per month from P.F., 600 EUR per month from the mother of Z.M. and 350 EUR from the same person for whom the candidate's mother worked. The candidate's parents emphasized that with this income there is "a surplus of income declared with the amount [of money] transferred to the Republic of Moldova".

The Commission notes that the parents' declaration provides a miscalculation of the number of hours worked by the candidate's mother: eight hours on Saturday and 12 hours on Sunday clearly do not amount to a total of 12 hours for the whole weekend, as suggested in this declaration. But the figure of 12 hours per weekend is used in all three other declarations. The declaration of the candidate's parents does not mention the number of hours the father worked unofficially each weekend, but all three other statements refer to 20 hours per weekend. All four declarations provide the same amount of unofficial income obtained by the parents. But none of the four declarations specify the time period during which this extra money was received. The three statements made by the Moldovan and Italian nationals explicitly state that the information reflected in their statements was provided by the candidate's parents. None of the statements have been notarized.

The Commission further notes that the declaration of the parents about one of the three sources of the father's unofficial income – income obtained from the mother of Z.M. – contradicts information provided earlier by the candidate in response to further questions about one of the two declarations submitted by the candidate to the SCJ special panel. According to the candidate's parent's declaration, the candidate's father received monthly unofficial income of 600 EUR, and thereby annual informal income of 7,200 EUR from this source. But in response to earlier written

questions by the Commission during the resumed evaluation, the candidate stated that his father worked for this person for no less than 45 weeks a year and that "f for one year of work, my father was being paid about 3,375 euros (75x45), and for the period 2012 – 2014 he was paid more than 10,000 Euros".

The Commission is therefore unable to attach much importance to the declarations submitted in response to the statement of facts and serious doubts. It remains unclear why these statements – particularly the statement by the candidate's parents – were not submitted during the initialevaluation or at least at the early stages of the resumed evaluation. The Commission can not avoid the impression that the drafting of these three statements was coordinated, in that they provide identical details about number of hours of work and unofficial income obtained, although these events occurred at least 10 years ago, and each omits any information about the time period during which this work was allegedly done. As the candidate's parents' statement clarifies, the purpose of these statements seems to demonstrate that "there is a surplus of income declared with the amount [of money] transferred to the Republic of Moldova".

In addition, during the resumed evaluation hearing, the candidate, for the first time, stated that "my father wasn't earning less than my mother monthly, in that period of time", but that his income was unofficial. He also stated that the income of his parents over the years 2012 - 2015 was about 30,000 EUR more than the amount they sent to the Republic of Moldova and that in the five-year declaration that he had submitted to the Commission at the start of the initial evaluation, he had submitted all documents about the income of his parents from Italy: when they worked there, what period of time they worked legally or not legally and information from the Italian Tax authorities.

The Commission notes that in his five-year declaration, the candidate provided only information about the official income of his parents in Italy and that throughout the initial evaluation, the candidate emphasized that the fact that his parents' income came from legal sources carried great importance for him and that the funds transferred by his parents to his account were declared in Italy over which taxes had been paid. It was only in response to the conclusion in the Commission's initial evaluation decision that the amount of transfers to the candidate's EUR bank account during the years 2012 - 2015 was higher than the official income of his parents, that the candidate presented to the SCJ special panel for the first time statements by two Italian nationals about his father's unofficial income which sought to clarify the difference between the transfers and his parents' official income. When the candidate was confronted again during the resumed evaluation with the fact that his parents' income was not sufficient to explain the total amount of transfers by his parents in his EUR bank account and his father's deposit account during the years 2012 - 2015, the candidate presented four additional - and seemingly coordinated – declarations that sought to clarify the difference between the total of the transfers and deposits and the total official and unofficial income. The Commission also notes that the candidate did not present any information to support his new claims during the resumed evaluation hearing that his father

earned not less than his mother and that their combined total income was about 30,000 EUR more than the amount they sent to Moldova during the years 2012 - 2015.

In its decision of 1 August 2023, the SCJ special panel found that the Commission applied double standards, as in the case of another candidate judge who passed the evaluation, in relation to the issue of non-declaration of bank accounts, the Commission concluded that "it found no advantage for the candidate not to declare the two bank accounts [...]". Similarly, in the case of another candidate judge who passed the evaluation, the Commission concluded that "no suspicious transactions took place in any of the three accounts. The Commission also takes into account that the applicant acknowledged that failure to declare these bank accounts was an omission by him and a breach of the law. Moreover, the Commission found no benefit to the applicant from the non-disclosure of this bank account [...]. Although bank accounts should have been disclosed, the candidate's failure to do so in these circumstances does not cast serious doubt on the candidate's financial integrity".

During the resumed evaluation the candidate also argued unequal treatment by the Commission of his evaluation in comparison with three other evaluations, two of which involved candidates who passed the evaluation notwithstanding issues of non-declaration of bank accounts in their evaluations.

There were 13 candidates with issues raised about the failure to declare bank accounts. Five of the candidates failed the evaluation; eight candidates passed. In numerous decisions, the Commission explained how it approached instances when candidates had not fully disclosed bank accounts in accordance with the law: the Commission reviewed information about the bank accounts that had not been declared in terms of the period of non-disclosure, level of activity in the accounts, the type of account and the presence of any suspicious or unexplained transactions and whether the sources of deposits to the accounts were documented. There was an objective, rational basis for distinguishing between the candidates who failed the evaluation and those who passed the evaluation.

In each of the decisions involving candidates who failed the evaluation with an issue related to non-disclosure of bank accounts, serious doubt was raised about the source of the funds deposited to the account that the candidate did not explain or mitigate. In most instances, the amounts of money involved in transactions related to the accounts were substantial.

In contrast, the declaration errors of candidates who passed the evaluation typically did not involve substantial amounts of money and the funds were not from undocumented sources. Typically, these were salary accounts or loan accounts that did not involve other transactions. In most instances, while the bank accounts had not been declared, the income and loans in the accounts had been declared. With respect to the candidates who passed the evaluation, the Commission was able to determine that the levels of activity in the account were not substantial and the sources of transactions were documented and thus, there was no suspicious activity in the

accounts. On that basis, these errors were treated as technical and not rising to a level that warranted failing the candidates. Also, the candidates who passed the evaluation provided full and immediate cooperation in response to the Commission's inquiries and requests; they were candid and not evasive or contradictory in their responses.

In one of the two instances of non-declaration of bank accounts referred to by the candidate, (Decision No. 11 of 5 January 2023), the candidate did not declare three accounts connected to loans and salaries. However, in that case, the loans and salaries had been declared and there were no suspicious transactions, no benefits from the non-disclosure and no question about sources of income. In the other instance of non-declaration of bank accounts cited by the candidate, (Decision No. 25 of 10 March 2023), the Commission observed, amongst other issues, that the non-declaration of accounts occurred in only one year. The income deposited to three of the accounts was comprised of salary, child allowances and an educational stipend. The remaining non-declared accounts consisted of transfers from the candidate's other accounts. The sources of funds were fully documented and the amounts involved raised no suspicions. In neither of these two other evaluations was there any doubt about the sources of income and the candidates provided complete and consistent information in response to the Commission's questions. As the candidate's circumstances are distinguishable from these two other evaluations, the issue of unequal treatment does not arise.

The third evaluation decision cited by the candidate in the context of alleged unequal treatment, (Decision No. 41 of 9 June 2023), involved a candidate who declared income from her husband working in a European country a number of years earlier. According to the candidate, the Commission had demonstrated more flexibility towards that candidate than towards him. In that case, prior to the start of the evaluation process, the candidate had collected two certificates from the husband's former employer concerning the official and unofficial income of the husband at the time, which was before the candidate and her later husband were married. Throughout the evaluation process, the candidate provided complete and consistent information and the information mitigated any doubts regarding the sources of funds. As this case referred to is different from that of the candidate, the issue of unequal treatment does not arise.

As stated above, the Commission is fully aware of the social reality of parents and family relatives traveling to European countries to work, officially and unofficially, and send money back to Moldova to support children and family members. The Commission is also aware, that in relation to unofficial work, it is not always possible to provide full information and supporting documentation for income obtained. But the Commission is entitled to expect from candidates that they exercise due diligence in collecting as much information as possible and being consistent and transparent with the information provided. Lack of consistency may amount to lack of credibility.

In conclusion, the candidate did not include his EUR bank account in his annual declarations for the period 2012 - 2015. In response to questions about this account, the candidate explained that

he did not declare the account as at the time of submission of his annual declarations, there were no funds in the account. On this EUR bank account his parents regularly transferred considerable amounts of money from their work in Italy. Throughout the initial and resumed evaluation process, the Commission expressed its doubts about the source of income for these transfers. The Commission observes that the candidate did not exercise due diligence, did not proactively search for information, only provided information when facts established by the Commission forced him to do so, and regularly provided incomplete, inconsistent and contradictory information, thereby undermining the candidate's credibility. The candidate has therefore failed to mitigate the serious doubts expressed by the Commission in relation to the non-declaration of the EUR bank account in his 2012 - 2015 declarations and in relation to the capacity of his parents to transfer money to the candidate's EUR account and to deposit money in the father's deposit account.

In light of the above circumstances on resumed evaluation of the candidate, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criterion of financial integrity as per art. 8 para. (4) lit. a) and para. (5) lit. b), c) and d), and ethical integrity as per art. 8 para. (2) lit. c) of Law No. 26/2022 with respect to the declaration of assets and personal interests in the manner prescribed by law, which have not been mitigated by the candidate.

*2. Purchase of an apartment at preferential price – eligibility and improvement of living conditions.*

On 21 June 2017, the candidate applied for an apartment at a preferential price as part of a program for the improvement of living conditions for judges implemented by the Superior Council of Magistracy (hereinafter "SCM"). During the initial evaluation, the candidate did not provide the Commission with a copy of his application to the SCM. According to the minutes of the meeting of the Working Group of the SCM on 30 June 2021 – Minutes No. 18 – the candidate's application for participation in the program for the improvement of his living conditions was approved.

At the time of his application, the candidate was the registered owner of a 38.4 sq.m. apartment, located in Chisinau municipality, which he had purchased in 2010 with income earned by his parents.

When asked by the Commission during the initial evaluation about his eligibility for the preferential price apartment program, the candidate stated that, when he submitted his request, he did not own living space that he had purchased himself. He also stated that the eligibility criteria was determined exclusively by the Working Group and that the decision had been made at their discretion. When asked whether it was ethical not to inform the Working Group that he owned an apartment in Chisinau municipality, the candidate stated that he had never benefited from preferential housing before. He also stated that the Working Group had assessed the eligibility criteria and made their decision based on accurate data. The candidate further noted that "it is

certain that I did not present any false, distorted data, nor did I hide any information".

The candidate stated during the initial evaluation that, when submitting the application to the SCM, he never denied that he owned a flat which had been purchased with income received by his parents while working abroad. He referred to his application, according to which he had requested a preferential apartment in order "to improve the living conditions" and that he had never said that he didn't own an apartment.

At the initial evaluation, the Commission concluded that the candidate omitted to declare the ownership of the 38.4. sq. m. apartment, an important piece of information, from the application for preferential housing, that was an integral part of the selection process. The Commission had doubts that the candidate would have been awarded the apartment at preferential price if he had fully disclosed all relevant information relating to the ownership of the apartment to the Commission that analyzed the candidates' eligibility for that program.

During the resumed evaluation, the Commission requested that the SCM provide copies of all relevant documents relating to the candidate's application for preferential housing in 2017. The SCM informed the Commission that on 21 June 2017, the candidate submitted his application for inclusion in the list of persons for preferential housing. No documents were attached to this application. On 6 November 2017, the candidate submitted a new application for participation in the preferential housing program. This time, supporting documentation was attached, including a copy of the Cadaster, dated 3 November 2017, according to which the candidate was registered as owner of the 38.4 sq.m. apartment located in Chisinau municipality, Riscani sector. The decision of the Commission during the initial evaluation in relation to this issue was based on the absence of evidence that the candidate had submitted proof of ownership of the 38.4 sq.m. apartment and that it had doubts that the candidate would have been awarded the apartment at preferential price if he had fully disclosed all relevant information relating to the ownership of the apartment to the Commission that analyzed the candidates' eligibility for that program. In light of the fact that the information about the ownership of the 38.4 sq.m, apartment was included in the 6 November 2017 application, the doubts about the candidate's eligibility have been mitigated.

*IV. Decision*

Upon the resumed evaluation of the candidate pursuant to art. 14 para. (8) lit. b) and para. (10) of Law No. 26/2022, based on art. 8 para. (1), (2) lit. c), (4) lit. a) and (5) lit. b), c) and d), 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.)[38] 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.[39] A failing decision in the context of the evaluation of candidates seeking to serve on self-administration bodies in the justice system is in no way comparable in magnitude to confiscation of property orders, which have been sustained by the ECtHR on the basis of similar standards of proof.

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

[38] *Sevdari v. Albania*, no. 40662/19, para. 87, 13 December 2022.

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

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

*V. Appeal and publication of the decision*

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

Pursuant to art. 13 para. (7) of Law No. 26/2022, this decision is sent by email to the candidate and to the institution responsible for organizing the election or competition, which in the present case is the Superior Council of Magistracy. If, within 48 hours of sending the decision, the candidate does not notify the Commission of his or her refusal to publish the decision, the decision shall be published on the website of the Superior Council of Magistracy in a depersonalized form, except for the surname and first name of the candidate that remain public. The Commission will also publish the decision on its website if the candidate does not object to publication.

This decision was adopted unanimously by all participating members of the Commission.

Done in English and Romanian.

Signature: 

Herman von HEBEL
Chairman, Commission