



Independent Evaluation Commission for assessing the integrity of candidates
for the position of member in the self-administration bodies of judges and prosecutors

Comisia independentă de evaluare a integrității candidaților la funcția
de membru în organele de autoadministrare ale judecătorilor și procurorilor

*Decision No. 6 of 29 December 2023 on the Resumed Evaluation of Tatiana CHIRIAC,
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 28 November 2023 and 29 December 2023. The members participating were:

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

Nadejda HRIPTIEVSCHI was recused from this matter and did not participate.

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

I. The procedure

Tatiana CHIRIAC (“the candidate”), was on the list of candidates submitted by the Parliament to the Commission on 9 June 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge on 16 June 1997 to serve in Calarasi court where she served until her resignation on 8 April 2008. On 29 May 2008, the candidate received her law license and served as a lawyer until 4 June 2013. On 5 June 2013, the candidate was appointed head of the evidence and procedural documentation section in the Calarasi court. On 1 October 2014, the candidate was appointed chief of secretariat of Calarasi court where she served until her resignation on 10 May 2016. Since 23 July 2020, the candidate has served as the CEO of N.L. LLC.

The candidate was initially evaluated by the Commission (hereinafter “initial evaluation”) starting on 27 December 2022. The candidate submitted the voluntary ethics questionnaire on 5 July 2022. On 3 January 2023, the candidate submitted a completed Declaration of assets and personal interests for the past five years as required by art. 9 para. (2) of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter “Law No. 26/2022”), which includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. During the initial evaluation, the Commission collected information from

multiple sources.¹

The candidate also responded to written questions and requests for information from the Commission.² The candidate did not request access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022 and therefore did not receive the materials. On 1 March 2023, the candidate participated in a public hearing before the Commission. The candidate provided further documentation and explanation after the hearing on the candidate's initiative. The Commission issued its decision failing the candidate on 24 March 2023.

On 3 April 2023, the candidate appealed the Commission's decision to the Supreme Court of Justice (hereinafter "SCJ") pursuant to art. 14 para. (1) and (2) of Law No. 26/2022. On 1 August 2023, the SCJ special panel for examining the appeals against the decisions of the Commission (hereinafter "SCJ special panel") issued its decision accepting the candidate's appeal, annulling the decision of the Commission and ordering the re-evaluation of the candidate.

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

The candidate received the statement of facts and serious doubts from the Commission on 7 November 2023. On 10 November 2023 the candidate requested access to the resumed evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022 and an extension of the deadline to respond to the statement of facts and serious doubts. The candidate was given access to the resumed evaluation materials on 14 November 2023. The candidate responded to the statement of facts and serious doubts on 17 November 2023, and submitted an additional document on 24 November 2023. The candidate requested a public hearing. On 28 November 2023, the candidate appeared at the hearing before the Commission.

II. The law relating to the evaluation and resumed evaluation

Law No. 180/2023 for the interpretation of certain provisions of Law No. 26/2022 on some measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors and Law No. 65/2023 on external evaluation of judges and candidates for the position of judge at the Supreme Court of Justice of 7 July 2023 (hereinafter "Law No. 180/2023"), states that, for the purpose of art. 3 para. (2) and art. 4 para.

¹ The sources from which information was obtained concerning evaluated candidates generally included the National Integrity Authority, State Fiscal Service, General Inspectorate of Border Police, financial institutions, public institutions, open sources such as social media and investigative journalism reports and reports from members of civil society. Not all sources produced information concerning each candidate and not all of the information produced by sources about a candidate was pertinent to the Commission's assessment. All information received was carefully screened for accuracy and relevance.

² The Commission sent two rounds of questions to the candidate, including 21 questions, 63 sub-questions and 34 requests for further documentation.

(2) of Law No. 26/2022, the Commission is not a public authority under the Administrative Code. The SCJ special panel concluded that Law No. 180/2023 consolidated the understanding that the Evaluation Commission is a public authority specific in its way, i.e. is not a legal entity of public law. The SCJ special panel further stated that, pursuant to art. 72 para. (6) of Law No. 100/2017 regarding the normative acts, an interpretative normative act shall not have retroactive effects, except for cases when the interpretation of sanctioning provisions would create a more favorable situation. The SCJ special panel ordered a resumed evaluation, which took place after the entry into force of Law No. 180/2023; thus, Law No. 180/2023 applies to the resumed evaluation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For lawyers, the *Code of Ethics of Lawyers from the Republic of Moldova*, adopted by the Congress of Lawyers on 20 December 2002, with amendments adopted by the Congress of Lawyers on 23 March 2007 and 1 July 2016, was applied over the period of time covered by the evaluation.

The *Public Servant's Code of Conduct*, adopted by Law No. 25/2008, last amended by Law No. 305/2017, was applicable over the period of time covered by the evaluation.

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

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

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

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

- a) compliance by the candidate with the tax regime in the part related to the payment of taxes when using the means and income derived from the property held, as well as taxable income and the payment of import duty and export duty;
- b) compliance by the candidate with the regime of declaring assets and personal interests;
- c) the method of acquiring the property owned or possessed by the candidate or persons referred to in art. 2 para. (2) as well as the expenses associated with the maintenance of such assets;
- d) the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2);
- e) existence or not of loan, credit, leasing, insurance, or other contracts capable of providing financial benefits, in which the candidate, the person defined in art. 2 para. (2) thereof, or the legal entity in which they are beneficial owners, is a contracting party;
- f) whether or not donations exist, in which the candidate or the person established in art. 2 para. (2) has the status of donor or 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 outcome¹⁷ and there is, in principle, no right under the Convention to hold a public post related to the administration of justice.¹⁸ As a matter of principle, States have a legitimate interest in regulating public service positions.¹⁹ In adopting Law No. 26/2022, the Moldovan Parliament required

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, ECHR 2004-VIII.

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 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

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

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

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 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

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

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

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

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

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

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

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 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

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.

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.

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 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

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.

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.

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 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

1. Failure to submit declarations on income and property at appointment and release from office

a. The facts

The candidate assumed the position of head of the evidence and procedural documentation section at the Calarasi court on 5 June 2013. At that time, the existing legislation mandated that state dignitaries, judges, prosecutors, civil servants, and individuals in prominent roles submit a declaration on their income and property (hereinafter "declaration") within 20 days of their appointment or election to office. However, according to the National Integrity Authority (hereinafter "NIA"), there is no record of the candidate having submitted such a declaration upon her appointment. Previously, the candidate served as a judge between 16 June 1997 and 8 April 2008.

On 10 May 2016, the candidate, who at the time held the position of head of Secretariat at the Calarasi court, resigned. The law stipulated that subjects of declaration were required to submit a declaration on income and property upon leaving their position - within 20 days from the end of their mandate or termination of their activity. However, according to the NIA, there is no record of the candidate having submitted a declaration upon her resignation. Notably, annual declarations on income and property (hereinafter "annual declaration") of the candidate were submitted on an annual basis for the years 2013, 2014, and 2015 to the National Integrity Commission (hereinafter "NIC") – the institution preceding NIA.

During the initial evaluation, the candidate responded to written inquiries from the Commission about whether she had submitted both a declaration upon appointment and a declaration upon leaving office. She explained that she distinctly recalled submitting her declaration upon appointment to the head of the court's Secretariat, who was then to forward it to NIC. Regarding her declaration upon leaving office, she affirmed its submission, emphasizing her dedication to legal compliance and her efforts to prevent potential vulnerabilities that could later be exploited. However, due to prior disputes with the former court president, she believed that the president might have intervened to prevent the proper filing of her declaration. The candidate did not furnish any corroborative documents.

At the hearing during the initial evaluation, the candidate reiterated that she had submitted both declarations. She offered background information, explaining that she had returned to the Calarasi court at the request of the court president due to urgent needs within the evidence and procedural documentation section. According to her, the declaration upon assuming office was submitted to the head of the secretariat, and she received a certification confirming its submission. The declaration upon leaving office was submitted to the evidence and procedural documentation section at the Calarasi court since there was no head of Secretariat at that time, which made confirmation not available.

In response to questions about the potential interference by the Calarasi court president in the submission of her declarations, especially considering her litigation with the president beginning in 2016, the candidate contended that the president had displayed an aversion towards her from the outset, even disapproving of her return to work at the court. When asked about the presence of her 2013, 2014 and 2015 annual declarations on file, despite the alleged interference, the candidate stated that annual declarations of staff members were filed collectively, making it conspicuous if any of them were to disappear. Addressing why she did not retain a copy or any record of her declaration upon leaving office given her concerns about the president's interference, she mentioned that she never anticipated a return to a court or public institution and felt less cautious since she believed she had done nothing wrong.

The candidate also informed the Commission at the hearing during the initial evaluation that she had submitted her 2016 annual declaration to the evidence and records unit at the Straseneni court in 2017 because the head of secretariat was not present at the court. She distinctly remembered seeing a stamp on the document. She noted there was a different president judge for the combined Calarasi and Straseneni courts at that time. However, there is no 2016 annual declaration of the candidate on file with the NIA. After the hearing during the initial evaluation, the candidate submitted a copy of her 2016 annual declaration to the Commission, indicating that she had located it upon searching her records. The declaration is dated 11 April 2017, and bears stamps from "Judecătoria Straseneni" dated 12 April 2017, referencing "Intrare nr. 3699 și nr. 3700".

During the examination of the case before the SCJ, the candidate pleaded that she submitted both a declaration upon appointment and a declaration upon leaving office. The candidate provided

the following evidence: (1) a copy of the Calarasi court Register of declaration on personal interests No. 1; (2) a copy of the Calarasi court Register of declarations of assets and personal interests No. 1; (3) a copy of the candidate's personal dossier excerpt nomenclature of documents contained in section 8; and (4) a copy of the written explanation of a senior specialist in the evidence and procedural documentation section within the Calarasi courts, who, at the time, was in charge of collecting declarations submitted by subjects of declarations working at the court.

The Strasenii court responded to the candidate's inquiry about records of her NIA declarations by providing the copies of the registers and the personal dossier excerpt and a written response in which the Strasenii court informed the candidate that the copies of the declarations on income and property for 2013 and 2016 "were not sent by the Calarasi court to the Strasenii court". The copy of the personal dossier of the candidate prepared by Strasenii court has a first entry dated 13 March 2014 and the final entry dated 4 April 2016. The two copies of the registers certify that on 7 June 2013 Tatiana Chiriac submitted the declarations upon appointment for which she signed. Correction marks are apparent on the documents presented by the candidate to the SCJ - the year "2014" had been written and subsequently altered to "2013" using a white correction pen.

During the resumed evaluation, the Commission made an independent inquiry of the Strasenii court to obtain copies of the registers for the years 2013 and 2014, containing the candidate's proof of submission. The Strasenii court furnished copies of specific sections of the Register of declarations of assets and personal interests No. 1, verifying the candidate's submission of declarations on 7 June 2013, 14 March 2014, and 8 October 2014. Moreover, excerpts from the Register of declarations of personal interests No. 1 were provided, confirming the same submission dates. The copies submitted by Strasenii court bear the same correction marks as the copies submitted by the candidate to the SCJ.

In addition to the declaration upon appointment and the annual declaration for 2013, the candidate had submitted an additional declaration in October 2014 upon transferring from the role of head of the evidence and procedural documentation section to head of secretariat. The copies of the registers indicate that a declaration was submitted on 7 June 2013 (correction of initial entry 2014), but there is no evidence of submission of a declaration upon leaving office. The copies of the personal dossier of the candidate do not contain any evidence of the submission of either a declaration upon appointment or a declaration upon leaving office.

In responding to the statement of facts and serious doubts, the candidate addressed the issue concerning the prominent correction of the registers of Strasenii court by sending another request for clarification to the Strasenii court. The court's response, as presented by the candidate, offered assurance that no tampering with the registers had occurred. The court conveyed its willingness to provide the original files for examination and expert analysis at the Commission's request. The candidate argued that confirmatory documents, submitted during the examination of the appeal by the SCJ, establish that her declaration on income and property and declaration of personal interests in 2013 were submitted on 7 June 2013 and that the 2016 declaration was not registered

due to hostility of the human resources officer. The candidate asserted that she submitted declarations in 2017, as supported by evidence from the Straseni court. She disputed the Commission's questions about the corrections in the copies.

At the hearing during the resumed evaluation, the candidate emphasized once again that she had duly submitted both the declaration upon appointment and the declaration upon leaving office. Regarding the submission of the annual declaration in the spring of 2017, the candidate clarified that she recalled the obligation to submit an annual declaration. Therefore, seizing the opportunity when she was near Straseni court, she promptly submitted the annual declaration at the court's counter. When questioned about the absence of her declaration upon leaving office in any official Register of the court or with NIA, the candidate consistently pointed to a possible conflict with the individual responsible for collecting declarations as a potential (most probable) reason. The candidate could not recollect any instances where declarations from other individuals were not registered in accordance with the law. Furthermore, she expressed limited interest in the declarations of individuals who left after her resignation, emphasizing her diligent adherence to the required procedures.

The candidate appeared perplexed about the implication that the absence of her declaration in the registers of the court suggested a lack of financial integrity on her part, because she neither transferred nor acquired any real estate or vehicles and did not engage in any significant transactions in 2016. The candidate emphasized that she had no other reason to not submit the declaration upon leaving office.

b. The law

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

Pursuant to art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 a candidate's failure to declare 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. 8 para. (1) of Law No. 1264/2002 concerning the declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force from 1 March 2012) (hereinafter "Law No. 1264/2002"), provided that the declaration on income and property shall be submitted within 20 days from the date of appointment or election to office. Paras. (3) and (4) provided that at the end of their mandate or upon termination of their activity, the persons referred to in art. 3 shall be obliged to submit a new declaration on income and property they hold on that date and that the failure to submit the declaration, for imputable reasons, within 20 days from the termination of the activity, leads to the ex officio initiation of the control procedure. Para. (5) provided that the subjects of declaration

were obliged to submit the declaration after the expiry of one year from the termination of the activity until 31 March of the following year.

Art. 1 para. (2) of Law No. 1264/2002 (in force from 1 March 2012), states that the purpose of this law is to establish measures to prevent and combat the unjust enrichment of persons with positions of public dignity, judges, prosecutors, civil servants and persons with management positions.

Art. 6 para. (1) of Law No. 1264/2002 (in force from 1 March 2012), provided that the declaration on income and property is a personal and irrevocable act, which is made in writing, on the declarant's own responsibility, and which may be rectified only under the conditions of art. 10 para. (2).

Art. 9 para. (3) lit. a), b) and f) of Law No. 1264/2002 (in force from 1 March 2012), provided that persons responsible for collecting declarations were required to receive and register the declarations in a special register of a public nature, called the Register of declarations on income and property, immediately issue to the declarant a proof of receipt, according to the model provided in annex No. 3 and keep a copy of the declaration received, which was required to be annexed to the declarant's personal file (para. (3) lit a), b) and f)).

Art. 6 of Law No. 133/2016 on declaration of assets and personal interests (in force from 1 August 2016) on deadlines for submission of the declaration reads as follows:

Para. (1) The declaration is to be submitted annually, until March 31, indicating the income obtained by the subject of declaration together with the family members, his/her cohabitant in the previous fiscal year, also the assets held and the personal interests provided in art. 4 para. (1) lit. b) – m) on the date of submission of the declaration.

Para. (2) In case of employment, mandate validation or appointment, as the case may be, the declaration shall be submitted within 30 days from the date of employment, mandate validation or appointment, indicating the income obtained by the subject of declaration together with the family members, his/her cohabitant in the previous fiscal year, as well as the assets and the personal interests held provided in art. 4 para. (1) lit. b) – m) at the date of submitting the declaration.

Para. (3) In the event of a change of position within the same entity, by promotion or appointment to another position, no new declaration shall be submitted.

Para. (4) After termination of the mandate or employment or service relations, the subject of the declaration is obligated to submit the declaration within 30 days from the date of termination of the mandate, employment or service relations. The declaration shall indicate the income obtained by the subject of the declaration together with the family members, his/her cohabitant in the

current fiscal year, as well as the assets and the personal interests held under art. 4 para (1) lit. b) – m) on the date of its submission.

Para. (5) The subject of declaration who, in accordance with the legislation in force, has suspended employment or service relations shall submit the declaration within 30 days after reinstatement, indicating in the declaration the income obtained together with the family members, his/her cohabitant throughout undeclared periods, also the assets and the personal interests held mentioned in art. 4 para. (1) lit. b) – m) at the date of submitting the declaration.

The Commission's Evaluation Rules state that undeclared income or expenditures are relevant for financial integrity, including but not limited to insofar as they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions (art. 3 para. (1)).

Annex No. 11 "The instruction regarding the management of the civil servant's personal file" (in force from 6 September 2013) in the Government Decision No. 201/2009 on the implementation of the provisions of Law No. 158-XVI of 4 July 2008 regarding the public function and the status of the civil servant, provides at item 17 that Section 8 "Declarations on income and property and personal interests" includes the nomenclature of the documents contained in section 8, as well as the following documents: *a) copies of the declarations on income and property ; b) copies of the declarations of personal interests; c) the copies of the authenticated extracts from the register of declarations.*

c. Reasoning

In its decision of 1 August 2023, the SCJ special panel concluded that the candidate's failure to submit declarations on income and property upon appointment and upon leaving office did not reach the level of seriousness to equate to the candidate's non-compliance with the criteria of ethical and financial integrity. The SCJ special panel based its conclusions on the fact that the candidate presented enough evidence to suggest the filing of the declarations, and that the candidate did not reveal an intention to hide income acquired in the declaration period. The other reason invoked by the SCJ special panel was the non-compliance of the Commission with the principle of equal treatment towards the candidate.

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

The Commission is required to verify the candidate's compliance with the regime of declaring assets and personal interests, in this instance, the declarations upon appointment and upon leaving office, which the candidate was obliged to submit according to the law. The candidate was required to submit declarations within 20 days of assumption of the position of the head of the Evidence and procedural documentation section at the Calarasi court in 2013 and upon resignation from the position of head of Secretariat at the Calarasi court in 2016. NIA does not

have records of declarations that were allegedly submitted. It is noteworthy that the candidate consistently submitted annual declarations on income and property to the NIC for the years 2013, 2014, and 2015.

a) Failure to submit declarations upon appointment

On 5 June 2013, the candidate was appointed as the head of the Evidence and procedural documentation section at the Calarasi court. Despite the legislation requiring the submission of an income and property declaration within 20 days from the date of appointment or election to office for state dignitaries, judges, prosecutors, civil servants, and certain individuals in authoritative positions, as stipulated by the NIA, there is no recorded submission of a declaration at the time of the candidate's appointment.

During the initial evaluation, the candidate was questioned regarding the non-submission of a declaration upon appointment. In response, she claimed a distinct recollection of submitting the declaration. However, the candidate failed to produce any evidence supporting her claim of submission, such as a proof of receipt for the declaration on income and property, which is issued immediately upon submission by the designated personal responsible for collecting declarations. Additionally, no extracts from the relevant court registers containing notes of submission were provided. The failure to file declarations impedes monitoring for conflict of interests and possible corrupt activities. Assuming office declarations serve a critical function in the declarations regime because they serve as the initial benchmark for that monitoring which is why they are required to be filed almost immediately upon assuming office. When an individual has not been the subject of declarations or, as here, has not been the subject of declarations since her departure from the judiciary in 2008, the failure to file the declaration upon appointment defeats their intended purpose and undermines the regulatory scheme.

Regarding the issue at hand, during the examination of the case before the SCJ, the candidate submitted (1) a copy of the Calarasi court Register of declaration on personal interests No. 1; (2) a copy from the Calarasi court Register of declarations of assets and personal interests No. 1; (3) a copy of the candidate's personal dossier excerpt nomenclature of documents contained in section 8. The candidate also furnished the Strasenii court's response to her inquiry about the declarations which clarified that copies of declarations on income and property for 2013 and 2016 were not transmitted from the Calarasi court to the Strasenii court.

The documentation reveals entries in distinct registries, specifically one for declarations on income and property and another for declarations of personal interests. Both registries feature an entry dated 7 June 2013 attributed to the candidate, with her identification details indicated, alongside a signature denoting the submission of a specific number of files. The personal dossier of the candidate does not contain information about the entry on 7 June 2013, which appears to be explained by the fact that the mandatory inclusion of the public servant's declarations in their personal dossier became compulsory after the approval in September 2013 of the Annex No. 11

“The instruction regarding the management of the civil servant’s personal file” in the Government Decision No. 201/2009 on the implementation of the provisions of Law No. 158-XVI of 4 July 2008 regarding the public function and the status of the civil servant.

In light of the new evidence that was provided by the candidate and examined during both the procedure before the SCJ and the resumed evaluation, the Commission determined that the concerns about failure to submit the declaration upon appointment to office was mitigated.

b) Failure to submit declaration upon leaving office

On 10 May 2016, the candidate, then serving as the head of Secretariat at the Calarasi court, resigned. Statutory provisions mandated that individuals subject to declaration requirements were obligated to submit a declaration on income and property within 20 days following the conclusion of their mandate or termination of their activity. However, according to NIA, there is no record indicating the candidate’s submission of a declaration upon leaving office.

Despite asserting that she distinctly remembered submitting the declarations during the initial evaluation, the candidate did not provide any substantiating evidence. The candidate asserted that a personal conflict with the president of the court allegedly led to interference with her submission of declarations. At the hearing during the initial evaluation, the candidate provided more context on her relationship with the court administration and staff. The candidate elaborated on her conflict with the court president and the discrimination complaint that she filed.

After the hearing during the initial evaluation, the candidate provided a copy of an annual declaration for 2016, submitted on 11 April 2017. It is noted that the candidate was no longer obligated to submit an annual declaration at that point. Moreover, the template of the declaration was outdated. These discrepancies appear to arise from the change in the law as of 1 August 2016, when Law No. 133/2016 on declaration of assets and personal interests came into effect.

Before the SCJ, the candidate presented attachments which included (1) a copy of the Calarasi court Register of declaration on personal interests No. 1; (2) a copy of the Calarasi court Register of declarations of assets and personal interests No. 1; (3) a copy of the candidate’s personal dossier excerpt nomenclature of documents contained in section 8; and (4) a copy of the written explanation of a senior specialist in the evidence and procedural documentation section within the Calarasi courts, who, at the time, was in charge of collecting declarations submitted by subjects of declarations working at the court.

The materials, which were not previously presented to the Commission, did not attest that a declaration was filed within 20 days of the candidate’s resignation. The written explanation of the senior specialist indicated that there were dissensions between the candidate and some of the court staff. It could not, however, establish intentional interference of the court staff with the process of submission of declarations by the candidate.

Although the SCJ special panel did not include a clear description of similar facts between the candidate's case and the other decision(s) it referred to, the Commission provides the following explanation concerning its treatment of failure to file declaration(s) to demonstrate the rational basis and consistency in the Commission's treatment of candidates.

In its decision, the SCJ special panel referred to a decision of the Commission in which its concerns regarding an omission in a candidate's annual declaration was mitigated by the candidate, concluding that the equality principle "forbids treatment of the same facts in an unequal manner or of unequal things in a similar manner, except when a different approach is objectively justified". As stated above, in assessing and deciding upon the criteria related to financial and ethical integrity in accordance with the provisions of the Law No. 26/2022, 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 and will treat differently persons whose situations are significantly different.

Under art. 330² para. (2) of the Contravention Code, the failure to file an annual declaration of assets and personal interests by an individual required to do so constitutes a contravention.

There were five candidates in the initial evaluations with issues raised about the failure to file annual declarations or declarations covering periods of leave absences. Four of the candidates failed the evaluation; one candidate passed. There was an objective, rational basis for distinguishing between the candidates who failed the evaluation and the one who passed the evaluation.

The only passing candidate who had failed to file declarations was a prosecutor. The time period during which declarations were not filed was 2010 – 2011. The candidate contended that prosecutors did not start filing annual declarations until 2012. The candidate submitted documentation from officials that supported that contention. The Commission necessarily took into account that it is unclear to what extent prosecutors were submitting their annual declarations in a consistent way prior to the creation of the National Integrity Commission (later National Integrity Authority) and its website in 2012. Under these circumstances, the Commission did not treat the failure to file annual declarations prior to 2012 by that candidate or any other candidate as a failure to comply with the regulatory scheme for filing declarations on income and property.

The four candidates who failed the evaluation because of a failure to file declarations included two candidates who failed to file declarations covering multiple year leaves of absence (one of these candidates also failed to file an annual declaration), one candidate who failed to file four annual declarations and one who did not have on file a declaration upon appointment and a declaration upon leaving office. One candidate claimed not to know of the obligation to file a declaration after a multiple year leave of absence. The others gave different explanations that were often inconsistent, not credible or unsupported by any evidence. The fail decisions all involved declarations covering 2016 or later. In 2016, new legislation related to the declaration

of assets and personal interests was adopted that had been debated publicly since 2015. The Commission could not accept that the subjects of declaration were unaware by the end of 2016 and afterwards of the basic rules on submission of declarations of assets and personal interests.

The Commission has consistently held that effective exercise of public functions requires transparency and accountability. The purpose of filling declarations by subjects of declaration is enshrined in art. 1 para. (2) of Law No. 1264/2002 (in force from 13 April 2012), which emphasizes the purpose of the law, specifically in preventing and combating illicit enrichment of public dignity, judges, prosecutors, civil servants and persons with management positions. The goal of the declaration upon leaving office is to ensure a complete record of the individual's financial status at the time of leaving public service.

The Commission notes that while the candidate's initial failure to submit a declaration within 20 days of her resignation in May 2016 constitutes a clear violation of the applicable law, the subsequent submission of a comprehensive annual declaration in early 2017 covering the entire year 2016 operates to significantly attenuate the potential consequences of this non-compliance. The 2017 submission demonstrates a degree of compliance with the overall spirit and intent of the declaration requirement. Additionally, the absence of significant financial changes, such as acquiring real estate, vehicles or establishing legal entities during the relevant period minimizes the risk of undetected illicit enrichment and potential conflicts of interest.

The Commission notes that the candidate failed the initial evaluation because she was missing both the declarations upon appointment and upon leaving office. During the resumed evaluation it was established that the candidate had filed a declaration upon appointment. The only declaration not filed is the declaration upon leaving office and, although not filing a declaration is a non-compliance with the declaration scheme, she filed another declaration covering that time period after leaving office. Additionally, the candidate did not engage in any significant financial transactions during the relevant time frame, further reducing potential concerns. Moreover, the candidate's filing of the 2016 declaration, even if because of her misunderstanding of the legal requirements, corroborates a lack of intent to evade the filing requirements.

In light of the above circumstances on resumed evaluation of the candidate, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criteria of ethical integrity as per art. 8 para. (2) lit. c) and financial integrity as per art. 8 para. (4) lit. a) of Law No. 26/2022 with respect to the failure to submit declarations on income and property upon appointment and upon leaving office because the candidate mitigated the serious doubts about submitting the declaration on income and property upon appointment and the candidate's actions reduced the severity of the initial serious doubts regarding the submission of declaration upon leaving office.

2. Sub-estimated value of car model Honda CR-V, m./y. 2011 and use of documents for the sale of the vehicle that were not legally prepared and involved an abuse of authority

a. The facts

On 7 April 2015, the candidate acquired a car model Honda CR-V, m./y. 2011. In her 2015 annual declaration, the candidate reported the purchase price of the car as 100,000 MDL (est. 4,785 EUR). Information from the Customs Service revealed that the car was imported into the Republic of Moldova in late 2014 at a value of 180,000 MDL, and additional customs duties amounted to 31,000 MDL. At the hearing during the initial evaluation, the candidate reiterated that she was unable to provide a copy of the sales-purchase contract from the car's purchase in 2015. She stated that she had not retained a copy of the contract herself, and the Public State Agency (hereinafter "PSA") does not maintain records of such contracts for more than six years.

On 14 September 2017, more than two years after purchasing the car, the candidate sold the car. According to her 2017 annual declaration submitted to the Commission, the car was sold for the same price of 100,000 MDL (est. 4,807 EUR). However, the candidate presented a copy of the sales contract indicating a lower selling price of 50,000 MDL (est. 2,403 EUR).

When questioned at the hearing during the initial evaluation about the discrepancy between the purchase price declared in her 2015 annual declaration and the value reported by the Customs Service, the candidate explained that the information she provided was given to her by her husband. She emphasized that her husband had always handled such matters, and she had never been directly involved.

According to her husband, the car was purchased from an individual who had imported it from Sweden. He further noted that the car had extensive erosion across the entire body, necessitating significant restoration. At the hearing during the initial evaluation, the candidate acknowledged that repairs had been essential, including replacement of the gearbox. Furthermore, she confirmed her husband's assertion that the sales price in 2017 had been 100,000 MDL. She explained that the price matched the purchase price in 2015 due to several repairs and enhancements that had been undertaken, leaving the car in better condition than when it was initially purchased.

During the examination of the case before the SCJ the candidate submitted the sales-purchase contract of 7 April 2015 which was not provided to the Commission during the initial evaluation. The contract listed the purchase price of 100,000 MDL, and the seller was the person who had imported the car in late 2014. The contract listed the candidate as the buyer, and her husband signed what purports to be her signature (T. Chiriac). In her husband's written statement presented to the SCJ, he mentioned that "[a]ll the documents were drawn up and signed by [the husband] on [the candidate's] behalf: the amounts indicated in the asset declarations were also shown from [the husband's] words." The candidate did not present a copy of power of attorney granting her husband authority to act on her behalf.

During the resumed evaluation, the Commission sent a letter requesting clarification to the seller of the car model Honda CR-V, m/y 2011. The seller responded to all the questions but did not provide any of the documentation or proof requested by the Commission. The seller explained that he was introduced to the candidate's husband by someone in the car market who knew that he was looking for a more affordable car. He did not meet or know the candidate, nor did he have any relationship with either spouse after the sale of the car. The seller confirmed that he concluded the sales-purchase contract with the candidate's husband, who was working as the head of the Car Records and Registration Section in Calarasi district. Asked about the buyer's signature, the seller indicated that the candidate's husband signed the contract on behalf of the buyer, the candidate. The seller also noted that they had only just realized that the wife's name was listed as the buyer. The individual confirmed his involvement in the importation and selling of cars during the period of 2014 – 2016, stating that the car model Honda CR-V, m./y. 2011 was purchased by him for approximately 200,000 MDL, but that no supporting documents could be provided. When imported, the car was in good condition, but it developed significant issues with the gearbox and had some minor damage before being sold. No photos or ads of the car from 2014 – 2015 were available to the seller. The car was sold to the candidate's husband for 100,000 MDL in cash.

Addressing the statement of facts and serious doubts presented by the Commission, the candidate asserted her non-involvement in the vehicle purchase, supported by both her husband and the seller. Emphasizing this, she reiterated that her husband had informed her that the purchase price was reduced due to a gearbox issue, a significant and expensive component of the vehicle. The seller, facing the inconvenience posed by the faulty gearbox, opted for a swift sale and the importation of another car from abroad.

At the hearing during the resumed evaluation, the candidate was asked to explain how she could describe the technical state of the vehicle at the time of purchase. The candidate admitted that she is not knowledgeable about cars, but merely related what she had been told since she “as a third party I had not even been present at all in the given transaction”. She mentioned that besides the contract with the price agreed between the two parties, there was nothing else that she could present.

The candidate was asked at the hearing during the resumed evaluation about the signing and registration of the sales-purchase contracts for the car. The sales-purchase contract listed the candidate (including personal data) as the buyer of the car and the agreement required her signature, but the signature on the contract belonged to her husband, as confirmed by the husband and seller. The candidate was directed to Government Decision No. 104/1999 concerning the reorganization of the “Automobile” Automated Search Information System in the State Register of Transport and introduction of testing of motor vehicles and their trailers, which established the rules for vehicle registration in the Republic of Moldova. The rules provided that vehicles are registered in the name of natural persons, upon presentation of identity documents, and in case of the owner's name - a representative is presented, next to the identity documents, the documents

confirming his powers of attorney are also presented. In explaining how the car was registered in her name without her participation, the candidate said that “my husband worked as a head. [...] He was the head of the Department on record and registration of vehicles in Calarasi. He has worked 25 years [there]”. The candidate stated that she found out that the car was registered in her name towards the end of 2015.

The candidate recognized the unlawful nature of the husband’s actions during the hearing: “*But now what can I do? I cannot start a criminal case against my husband*”.

At the sale of the car model Honda CR-V, the sales-purchase contract was concluded in an identical manner: the personal data of the seller referred to Tatiana Chiriac, and the candidate’s husband signed what purports to be her signature (T. Chiriac). Once again, the candidate did not participate in the conclusion of the agreement, she did not offer personal ID or conclude a power of attorney authorizing her husband to sell the car in her name. Previously, the candidate had described personal circumstances that necessitated the sale of the car, suggesting that the candidate was aware that the car would be sold, but did not take any action to ensure that the unlawful action of the husband was not repeated.

b. The law

Pursuant to art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022, the Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests in the manner established by law.

Art. 8 para. (2) lit. a) of Law 26/2022 provides that a candidate is deemed to meet the criterion of ethical integrity if, among other criteria, he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

Art. 5 para. (1) of the Judge’s Code of Ethics (2015) provides that the judge shall respect the highest standards of integrity and responsibility, in order to ensure the society’s trust in the courts. Art. 5 para. (12) provides that the extrajudicial activities of the judge shall not cast doubts as to his/her impartiality, objectivity and integrity.

According to Commission’s Evaluation Rules, art. 2 para. (2), in assessing a candidate’s ethical integrity, the Commission may take into account the gravity or severity, the surrounding context, and the willfulness, of any integrity incident, and as to minor incidents, whether there has been a sufficient passage of time without further reoccurrences. While determining the gravity, the Commission will take into account all circumstances, including but not limited to:

- a. whether the incident was a singular event;

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

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.

According to the Bangalore Principles of Judicial Conduct, "A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer" (3.1) and "The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done." (3.2.)

According to the ECtHR, the ethical conduct of public officials serves as a valuable reminder of the crucial role judges play in maintaining public trust and upholding the rule of law within a democratic society. The ECtHR "emphasizes that a situation of general informality in the country, while understandable in certain respects, cannot exempt an experienced public prosecutor or other judicial officer from conducting his or her private affairs with the greatest respect for legality and in a way that is beyond public reproach; they are to be held to a higher ethical standard".³⁸

Annex 2 "Rules for registration of means of transport" on the Government Decision No. 1047 /1999 regarding the reorganization of the "Automobile Automated Search Information System in the State Transport Register and the introduction of testing of motor vehicles and their trailers", at pt. 18, establishes that vehicles are registered in the name of natural persons, upon presentation of identity documents, and in case of the owner's name - a representative is presented, next to the identity documents, the documents confirming his authorizations are also presented.

c. Reasoning

In its decision of 1 August 2023, the SCJ special panel concluded that the Commission had not respected the principle of equal treatment towards the candidate regarding the underestimated value of Honda CR-V, m./y. 2011. The SCJ special panel indicated that there were no factual elements that indicate why the candidate was judged as not having integrity in relation to the evaluated candidates if the facts were similar.

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

³⁸ *Nikëhasani v. Albania*, no. 58997/18, para. 124, 13 December 2022.

The Commission is required to verify the candidate's compliance with the regime of declaring assets and personal interests. Furthermore, the candidate's conduct is assessed according to the rules of ethics and professional conduct for judges and prosecutors, which prohibit, in their activity, reprehensible actions or inactions, which would be inexplicable from the point of view of a legal professional and impartial observer.

a) Undervaluation of car model Honda CR-V, m./y. 2011

An apparent discrepancy exists between the value of car model Honda CR-V, m./y. 2011, declared by the candidate in her 2015 annual declaration on income and property and the official import data from the Customs Service. The 2015 annual declaration lists a purchase price of 100,000 MDL, while import records indicate a valuation of 180,000 MDL a few months earlier and additional taxes of 31,000 MDL paid. The import records do not suggest any vehicle defects or issues. This discrepancy warranted further investigation to determine the accuracy and completeness of the candidate's declaration.

During the initial evaluation, the candidate failed to provide any documentation or evidence supporting her claim that the vehicle was in a damaged condition, including the purchase contract, transaction records, statements from the seller, or other relevant documents. The candidate relied on only her husband's statements to her. In light of this, the Commission concluded that the candidate lacked sufficient evidence to substantiate her claim that the low price was due to the damaged condition of the car.

The candidate did present the purchase agreement to the SCJ. According to that document, the car purchase price was 100,000 MDL and the person that imported the car was the same person that sold the car.

During the resumed evaluation of the candidate, the Commission sent clarification questions to the seller of the car. He confirmed that importing cars was his source of income at the time. Importantly, he stated that the car was purchased from abroad for 200,000 MDL, but he did not provide any confirmation documents or photographs of the car (such as an advertisement). The seller stated that the car had developed some problems between its importation in late 2014 and the sale of the car in April 2015, which is why he decided to sell the car at a lower price. The 100,000 MDL was paid to him in cash by the candidate's husband. After the purchase, the candidate's husband allegedly invested in repairs of the lower part of the car which was corroded and in the replacement of the gearbox. No documents, transaction information or other evidence was presented to the Commission.

The subsequent sale of the vehicle on 14 September 2017 exposed a significant discrepancy between the declared sales price and the contractual price. Although the candidate acknowledged being informed of the contractual price but disassociating herself from the transaction, she

explained that 100,000 MDL was the actual price received from the sale of the car, and not 50,000 MDL as indicated in the sales-purchase contract.

Law No. 1264/2002 (in force through 2012 - 2016) clearly imposes the burden of accurate declaration on the candidate. Art. 14 para. (3) further reinforces this duty by making the intentional provision of inaccurate data a criminal offense under art. 352¹ of the Criminal Code. The subject of the declaration has the responsibility to ensure that the information provided is correct, regardless of who provided it. Reliance on someone else's information does not absolve the subject of the declaration of this responsibility. The subject of declaration is ultimately accountable for the accuracy of the declaration.

Although the SCJ special panel did not include a clear description of similar facts between the candidate's case and the other decision(s) it referred to in connection with its conclusion that the Commission had not respected the principle of equal treatment, the Commission provides the following explanation concerning its treatment of failure to file declaration(s) to demonstrate the rational basis and consistency in the Commission's treatment of candidates.

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

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

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

automobiles was an issue, but the transactions were related). In the past decisions, the candidates were cooperative and forthright, even when it was prejudicial to them.

b) Fraudulent misrepresentation in concluding sales-purchase contracts and registration of the car

The Commission has doubts about the candidate's ethical integrity in light of the fraudulent misrepresentation in concluding sales-purchase contracts and registration of the car model Honda CR-V.

During the initial evaluation, the candidate acknowledged that her husband was responsible for the procurement and sale transactions related to the Honda CR-V. She disclosed the prices based on the information provided by her husband.

The introduction of the previously undisclosed copy of the sales-purchase contract dated 7 April 2015 before the SCJ raised significant concerns regarding the actions of the candidate and her spouse. This agreement, not provided to the Commission during the initial evaluation, identified the candidate as the buyer, the signature beside her name belongs to her husband, who prefaced it with the letter "T" (presumably for Tatiana). In a written statement, her husband acknowledges preparing and signing all documents on the candidate's behalf, and providing the values of the car for the asset declarations based on his own information.

The law requires cars to be registered in a person's name upon presentation of identity documents or in the owner's name by a representative if the owner's identity documents and documents confirming the representative's authorization are presented. At the hearing during the initial evaluation, the candidate stated that she did not provide an identity document, nor did she conclude a power of attorney for her husband to represent her in the purchase and in the registration of the car rights.

At the hearing during the resumed evaluation, the candidate directly admitted her husband's abuse of managerial position at the registration authority: "[my husband worked as a head. [...] He was the head of the Department on record and registration of vehicles in Calarasi. He has worked 25 years [there] [...] He acted on his own initiative, with his own authority as the head".

The candidate claimed to not have known initially that the car was registered in her name but found out in 2015.

The sale of the Honda CR-V involved a repetition of falsifying her signature in order to sell the car. Notably, the candidate was listed as the seller, with what purports to be her signature signed by the husband, raising concerns about her awareness and involvement in the preparation and submission of a false document. The candidate admitted that she knew her husband's actions were

unlawful by stating at the public hearing during the resumed evaluation “*But now what can I do? I cannot start a criminal case against my husband.*”

Even though the candidate acknowledged the illegality of her husband’s actions and his abuse of office, she failed to take any steps to rectify the situation or prevent its repetition. This raises questions about her own ethical responsibility and potential condoning of the misconduct. As the ECtHR emphasized, in a situation of general informality in the country, while understandable in certain respects, cannot exempt an experienced public prosecutor or other judicial officer from conducting his or her private affairs with the greatest respect for legality and in a way that is beyond public reproach; they are to be held to a higher ethical standard.

As a result, the Commission has serious doubts about the candidate’s ethical and financial integrity in light of the erroneous contract price indicated in the sales-purchase contract of 7 April 2015 and the inability of the candidate to demonstrate that the costs of the car were considerably reduced after it was imported in late 2014. Concerns were raised by the sales price indicated in the sales-purchase contract of 14 September 2017, which listed a price that was half the price declared by the candidate in the declaration she submitted to the Commission, as well as the candidate’s inability to explain the sales price. The evidence collected by the Commission further revealed the engagement of the candidate’s husband in illegal activity and abuse of power in the contracts for the purchase and sale and registration of the car, facilitated by his managerial position and power within the authority. After the purchase of the car, when the candidate became aware of her husband’s activity, she failed to take any action to prevent him from repeating the same conduct. This aspect further exacerbates the serious concerns regarding the ethical integrity of the candidate.

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 criteria of financial integrity as per art. 8 para. (5) lit. b) and c), and ethical integrity as per art. 8 para. (2) lit. a) and c) of Law No. 26/2022 with respect to the declaration of assets and personal interests in the manner prescribed by law, and her acquiescence in the use of documents for the sale of the car that she knew were not legally prepared and involved an abuse of authority, which have not been mitigated by the candidate..

IV. Decision

Upon the resumed evaluation of the candidate pursuant to art. 14 para. (8) lit. b) and para. (10) of Law No. 26/2022, based on art. 8 para. (2) lit. a) and c), (5) lit. b) and c), 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.)³⁹ 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.⁴⁰ 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

³⁹ *Sevdari v. Albania*, no. 40662/19, para. 87, 13 December 2022.

⁴⁰ *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 Parliament. 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 Parliament 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