



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. 1 of 21 July 2022 on the Candidacy of Judge Gheorghe BALAN, Candidate for the Superior Council of Magistracy, the Board for the Selection and Career of Judges, the Board for the Evaluation of the Performance of Judges and the Disciplinary Board

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 21 July 2022. The members participating were:

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

Mrs. Tatiana RĂDUCANU was recused from this matter and did not participate.

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

The facts

Judge Gheorghe BALAN, Chișinău district court, Buiucani office (“the candidate”) is a candidate for the position of member of the Superior Council of Magistracy, the Board for the Selection and Career of Judges, the Board for the Evaluation of the Performance of Judges and the Disciplinary Board. On 8 July 2022 the Commission sent a request to the candidate for completing and submitting the Declaration of assets and personal interests for the past 5 years as required by Article 9 para. 2 of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter “Law No. 26/2022”). The declaration also includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. The candidate’s declaration was to be returned to the Commission by 15 July 2022.

On 8 July 2022, the Commission received the following message from the candidate:

“I hereby inform you that, due to the excessive workload (the need to draft several court documents) and [REDACTED], I am absolutely unable to present by the end of 15 July 2022 the declaration of assets and personal interests for period of 5 years sent to my address.

Starting with 1 August 2022, I will be on annual leave and will present the declaration of assets and personal interests for the requested period of 5 years, as well as I will answer, if necessary, all the questions that will be asked.”

On the first following business date, 11 July 2022, the Secretariat for the Commission responded as follows:

“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”) has received your email informing the Commission about your intention not to submit the 5-year assets and personal interests’ declaration (declaration) as per art. 9 para. 2 Law No. 26/2022, within 7 days of the Commission’s request, which is 15 July 2022.

The Commission hereby draws your attention to the fact that the deadline of 7 days for filling in and submitting the declaration is prescribed by law (art. 9 para. 2 Law No. 26/2022) and the law does not foresee the possibility of an extension.

To facilitate the process, the Commission shared the draft template of the declaration on 2 June 2022 with all candidates via email and the [Commission’s Facebook page](#), so that candidates could start collecting and preparing all necessary data, as of 3 June 2022, raise any significant concern/question and be ready to fill out the declaration within the deadline provided by law when the Commission sends its request. Moreover, at the Commission’s press conference and online meeting with candidates on 16 June 2022, the Commission informed the candidates that the declarations would be sent out early July 2022, with the candidates for the Superior Council of Magistracy as priority for evaluation. The Commission took all measures it could to provide the candidates a reasonable time to prepare to complete the declaration as required by Law No. 26/2022.

The Commission also draws your attention to the fact that according to art. 9 para. 2 of Law 26/2022, “failure to submit this information (the declaration) on time constitutes a ground for the Commission to find that the candidate failed the evaluation”.”

As noted in the Secretariat’s letter to the candidate, the Commission sent candidates a draft declaration form on 2 June 2022 to allow them to start collecting data and to raise any issues or concerns. The draft and final versions of the declaration form were almost identical in terms of the data needed to be declared. The only addition was a few columns added to the section of the declaration form relating to candidates’ travel, in order to obtain greater detail about travel.

The Commission did not receive a declaration from the candidate on 15 July 2022. On the first following business day, 18 July 2022, the Secretariat notified the candidate by email that no declaration was received. On the same day, the candidate replied as follows: “At 08.07.2022 I sent to the Commission a request with the following content:” with a copy of his 8 July 2022 message, cited above, attached.

The Commission sent requests for the submission of asset declarations to twenty-seven candidates for the Superior Council of Magistracy on 8 July 2022. All twenty-six others than the candidate complied satisfactorily with the 15 July 2022 deadline.

The law

Article 9 para.2 of Law No. 26/2022 provides that, when starting the evaluation procedure, the Commission shall request that the candidate submit a declaration of assets and personal interests and a declaration concerning the list of close persons in the judiciary, prosecution and public service. “The aforementioned declarations shall be submitted within 7 days of the request. Failure to submit this information on time constitutes ground for the Commission to find that the

candidate failed the evaluation.”

Decision

Based on Article 9 para.2 of Law No. 26/2022, the Commission concludes that the candidate failed the evaluation based on the candidate’s failure to timely submit the declaration.

Article 9 para.2 of Law No. 26/2022 does not identify any bases to excuse a late filing. In the view of the Commission, a showing of extraordinary cause would be necessary to excuse a late filing, specifically circumstances of such a nature that, if not taken into consideration, would amount to gross injustice to the candidate. The reasons given by the candidate for not complying with the deadline, and instead notifying the Commission only that his declaration would be presented on an unspecified date the following month, were “excessive workload (the need to draft several court documents) and [REDACTED]”. Neither reason was further elaborated or substantiated. In the view of the Commission, those reasons do not amount to extraordinary circumstances justifying a late filing of the required declaration. The need to draft several court documents amounts to the regular press of court business for a judge and was likely a circumstance that many candidates faced. Candidates were furnished a draft of the declaration form more than six weeks before the deadline to allow sufficient time to assemble information and prepare the declarations. All of the other candidates (26) that were sent the asset declaration form for completion by the 15 July 2022 deadline, were able to do so. Similarly, with six weeks to prepare the asset declaration, [REDACTED] cannot be deemed an extraordinary cause preventing the candidate from submitting the declaration by the deadline.

Appeal and publication of the decision

Article 14 para.1 of Law No. 26/2022 provides that a candidate is entitled to appeal a decision of the Commission within 5 days from receiving the decision.

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

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

Done in English and translated into Romanian.

Signature:



Herman von HEBEL
Chairman of the Commission