



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. 2 of 11 January 2023 on the Candidacy of Ilie MĂMĂLIGĂ,
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 11 January 2023. The members participating were:

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

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

The facts

Ilie MĂMĂLIGĂ, an attorney, was on the list of candidates submitted by the Parliament of the Republic of Moldova to the Commission on 23 June 2022 for evaluation for the position of member of the Superior Council of Magistracy.

On 27 December 2022 the Commission sent a request to the candidate for completing and submitting by 3 January 2023 the Declaration of assets and personal interests for the past 5 years (hereinafter “5-year declaration”) as required by art. 9 para. (2) of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter “Law No. 26/2022”). Attached to the message were two examples for filling in the required forms: a 5-year declaration and a National Integrity Authority Declaration of assets and personal interests (hereinafter “annual declaration”), according to Annex I to Law No. 133/2016 on declaration of assets and personal interests (hereinafter “Law No. 133/2016”) completed according to the requirements of Section 8 of the declaration, using fictitious data for illustration.

The candidate was also informed by the Commission’s message that, according to Section 7 of the 5-year declaration, candidates who were not previously required to submit annual declarations according to Law No. 133/2016 were required to complete an annual declaration for any of the years between 2017 and 2021 for which an annual declaration had not previously been submitted. Also, according to art. 9 para. (2) of Law No. 26/2022, the 5-year declaration, including any annex required in an individual case, was to be submitted to the Commission within 7 days of the request. The Commission calculated that term by calendar days, including weekends and public holidays, starting from the day following the submission to the candidate of the application for the completion of this declaration form. (Article 1 para. (2) Evaluation Rules of the Independent Evaluation Commission for assessing the integrity of candidates for the position of members in the self-administrative bodies of judges and prosecutors, pursuant to Law No. 26/2022.)

In the Commission's message, the deadline for returning the 5-year declaration was clearly explained: the deadline was considered met if the e-mail with the PDF file(s), signed with the electronic signature was returned before midnight on the 7th day, i.e., before midnight on 3 January 2023. The candidate was also informed that, according to art. 9 para. (2) of Law No. 26/2022, "the failure to submit the information in time constitutes a basis for the finding by the Commission of the non-promotion of the evaluation".

On 28 December 2022, the candidate asked the Commission's Secretariat to provide him a template for the electronic signature. The same day, the Secretariat replied that the candidate could sign the declaration either with a mobile signature (which can be obtained from any mobile operator) or with an electronic signature (obtained from STISC).

On 30 December 2022 the candidate submitted a declaration, without an electronic signature.

On 31 of December 2022, the Secretariat confirmed to the candidate that it had received his message but warned him that the statement received was not signed with an electronic signature and that he should resubmit it signed electronically. This message also informed the candidate that annual declarations for the years 2017-2021, as required by section no. 7 of the 5-year declaration, were not attached. The candidate was reminded that annual declarations were available on the website of the National Integrity Authority and that he was to complete and submit them to the Commission following Law No. 133/2016 for each year between 2017-2021 in which they had not previously been submitted to National Integrity Authority.

The candidate confirmed receipt of this message the same day.

On 3 January 2023, the candidate submitted annual declarations on income (declarations containing only income, not declarations on income and personal assets) and asked the Secretariat to confirm receipt of his 5-year declaration, signed with electronic signature.

The same day, the Secretariat confirmed receipt of the income declarations, but not receiving his 5-year declaration signed with the electronic/digital signature.

The candidate confirmed the receipt of this message the same day.

On 4 January 2023, the candidate resubmitted his 5-year declaration, purportedly signed with electronic signature. The Secretariat checked the documents and notified the candidate that the declaration was still not signed electronically. The Secretariat reminded the candidate of the ways to obtain an electronic signature. Shortly after this, the Secretariat sent the candidate another message noting that the candidate had not submitted annual declarations for the years 2017-2021, as required. This message further informed the candidate that he had the opportunity to submit the required annual declarations, signed with an electronic signature, only until 12:00 on 6 January 2023.

Shortly after sending the second message, the Secretariat called the candidate and explained how to apply to the electronic signature and reminded him that he had to submit the annual declarations on the template available on the National Integrity Authority website. Late on 4 January 2023, the candidate submitted the 5-year declaration, electronically signed, that was confirmed by the Secretariat on 5 January 2023.

In the evening of 6 January, after the deadline, the candidate submitted annual declarations for the years of 2017 to 2021.

As further background concerning the Commission's efforts to assist candidates with the submission of the documents required in the evaluation process, on 2 June 2022, the Commission shared a draft template of the 5-year declaration with all candidates by e-mail and on the Commission's Facebook page. This was done to give candidates the opportunity to collect and prepare all the necessary data and to be prepared to complete the declaration within the deadline when the Commission sent its request for submission of the declaration.

Thereafter, on 9 December 2022, the Commission sent a notification to the candidates who had been submitted for evaluation by the Parliament of the Republic of Moldova, including the candidate, that the Commission would soon send the 5-year declaration. To give the candidates more time to prepare the information needed to complete the 5-year declaration and annual declarations and to assist them in doing so, the Commission resent the 5-year declaration form and models of the 5-year declaration and an annual declaration of assets and personal interests completed with fictitious data for illustration, similar to the message that was sent on 27 December 2022.

The law

Article 9 para. (2) of Law No. 26/2022 provides "The Evaluation Commission shall request the candidate to submit to the Commission a declaration of assets and personal interests with the updated data for the past 5 years, including the expenses of that period. The Evaluation Commission shall also request that the candidate submits to the Commission a statement on the list of persons close to him/her, within the meaning of Law No. 133/2016 on declaration of assets and personal interests, who are working or have worked in the past 5 years 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 grounds for the Commission to find that the candidate failed the evaluation. The template of the declaration of assets and personal interests and of the statement on the list of close persons in the judiciary, prosecution and public service, provided for in this paragraph, shall be approved by the Evaluation Commission".

Decision

Based on art. 9 para. (2) of Law No. 26/2022, the Commission determined that the candidate failed the evaluation due to his failure to comply with the deadline for submitting a 5-year declaration with the required accompanying annual declarations.

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 candidate did not invoke any serious reasons that would lead the Commission to excuse the late filing. The candidate apparently lacked familiarity with the use of electronic signatures but

finally submitted an electronically signed 5-year declaration. No excuse was apparent for the failure to timely submit the required annual declarations.

Candidates were informed about the requirements for submission of the documents necessary for the evaluation on 2 June 2022. Candidates were also furnished a draft of the declaration form 25 days before the deadline to allow sufficient time to assemble information and prepare the declarations. Almost all of the other candidates (10 of 12) that were sent the request for a completed 5-year declaration form and the annual declarations by the 3 January 2023 deadline, were able to do so. Similarly, with 25 days to prepare the 5-year declaration, the lack of knowledge how to apply an electronic signature cannot be considered an extraordinary circumstance that prevented the candidate from submitting the declaration by the deadline. In Commission's view, these circumstances do not constitute extraordinary circumstances justifying the late submission of the requested declaration.

The Commission took all measures it could to provide all candidates a reasonable time to prepare for and to complete the required 5-year declaration and annual declarations. The candidate was counselled by the Commission's Secretariat on the application of the electronic signature and on the documents that the candidate needed to complete. In addition to assisting the candidate, the Commission gave additional time for the proper submission of the required documents. In view of the Commission's efforts to assist the candidate, his failure to meet the deadline extended by the Commission cannot be excused.

Appeal and publication of the decision

Pursuant to art. 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.

Pursuant to art. 13 para. (7) of Law No. 26/2022 provides that The Evaluation Commission decision, edited in Romanian, shall be sent to the candidate to her e-mail and to the institution responsible for organizing the elections or competition, as appropriate. (Which in the present case is the Parliament of the Republic of Moldova).

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 of the Republic of Moldova in a depersonalized form, except for the surname and first name of the candidate that remain public.

The Commission will 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, Commission