



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

Redacted version for publication

DISSENTING OPINION

submitted by member Vitalie Miron, concerning the decision no. 6, regarding the evaluation of the magistrate Angela Bostan, candidate for the position of member of the Superior Council of the Magistracy, adopted by the Commission on 09.12.2022.

Examining the case of the candidate Judge Angela Bostan, candidate for the position of member of the SCM, the Commission by decision no. 6 of 09.12.2022, ordered:

"Based on art. 8 paragraph (1), (2) letter a), (4) letter a) and b) and (5) letter b), c) and d) and art. 13 paragraph (5) from Law no. 26/2022, the Commission decided that the candidate does not meet the integrity criteria as serious doubts were found regarding compliance with the ethical and financial integrity criteria, as a result of which it was found that this candidate failed the evaluation".

At the same time, examining the materials of the case, the evidence presented and the opinions expressed, I came to the conclusion not to support this decision.

I certify that the conclusion found in the reasoned decision regarding the candidate's failing the evaluation in itself encompasses the existence of a serious doubt regarding the compliance by this candidate of both the criteria of ethical integrity and financial integrity. Consistently, separately, I am going to explain myself on both aspects, as follows:

1. *The source of funds for the financing of the candidate's mother's apartment situated in Chisinau.*

- On August 8, 2018, the candidate's mother purchased a 74.0 square meter apartment in the municipality of Chisinau at a declared price of 973,500 MDL.

- According to the affidavit submitted to the Commission on behalf of the candidate's mother, this apartment was purchased with the money obtained from 3 separate persons, mentioning the personal contribution of the candidate's mother, the contribution of a family member abroad and the contribution of a close relative of the candidate who has been working abroad for about 17 years.

- According to the same affidavit, the personal contribution of the candidate's mother was possible due to the income from the sale of an apartment located in Cahul, as well as the income obtained from her patent-based business activity.

The Commission critically assessed, as unfounded, the explanations regarding the personal savings obtained by the candidate's mother in the period prior to the purchase of the apartment concerned.

I mention that the Commission has examined a sale-purchase contract, which certainly indicates that the candidate's mother disposed of an apartment she owns, located in Cahul. The respective transaction took place on 01.08.2007, and as a result of this property transfer, the candidate's mother obtained an income of MDL 108,756 (est. EUR 6,500).

Consequently, the explanation regarding the registration of an additional income by the candidate's mother, resulting from the patent-based entrepreneur's activity, related to the

time period in which it would have been obtained, also seems to be plausible and should be taken into consideration at the stage of adoption of the decision by the Commission. In such circumstances, I believe that the candidate's mother had the financial capacity that would have allowed her to contribute to the purchase of the apartment in the municipality of Chisinau.

- Regarding the financial contribution of a family member living abroad, it has been established with certainty that in September 2016, this person made a bank transfer to the candidate's mother in the amount of EUR 6,300. Additionally, according to the affidavit received on behalf of the mentioned person, the latter, in the summer of 2017, being on vacation in the Republic of Moldova, would have personally donated the amount of USD 3,000 to the candidate's mother.

The Commission gave a critical assessment of these statements, reasoning that the affidavit is not accompanied by supporting documents that would confirm the statements communicated by the person concerned and it remains unclear whether such financial support would have been granted in the context of the purchase of the apartment in the municipality of Chisinau.

I reiterate, that according to the information held by the Commission, in 2016 the candidate's mother obtained the amount of EUR 6,300 from this person through a bank transfer. At the same time, it should be mentioned that in accordance with the affidavit, this person declared that in the absence of her own children, the candidate's mother and her family are the only close relatives. In support of this statement, being invoked the fact that previously, in connection with the death of a common relative, she renounced the inheritance share also in favor of the candidate's mother. All these aspects denote a close connection between this circle of people, and in such circumstances, I believe that this family member had the financial capacity and the necessary desire to contribute to the purchase of the apartment in the municipality of Chisinau.

- Regarding the financial contribution of the candidate's close relative, the Commission critically assesses the two affidavits received from this person. It should be noted that indeed, this person initially submitted a first affidavit in which he stated that the contribution for the purchase of this apartment would have constituted the amount of EUR 30,000, of which EUR 10,000 as savings and EUR 20,000, being a loan from a foreign bank. However, confronted with the fact that this loan would have been contracted 8 months after the transaction, the candidate's close relative submitted a new affidavit. According to this affidavit, the said person specified that his contribution at the stage of purchasing this apartment would have constituted the amount of EUR 30,000, as personal savings, and the loan in the amount of EUR 20,000, contracted later, would have been used for the repair of this property, including purchase of furniture and basic necessities. During the public hearings, the candidate was asked about the inconsistencies found in the two affidavits of her close relative. The explanation offered boils down to the fact that a mistake was committed in the first affidavit due to the fact that her close relative lives outside the Republic of Moldova for a long time, he would have problems expressing himself, and the first affidavit was written and sent to the candidate in a hurry. Consequently, the candidate explained during the hearings, that once the respective

mistake was identified, actions were taken to remove the latter, namely, a new affidavit authenticated with a notary, drawn up in the Republic of Moldova, was submitted, an explanation that also seems plausible.

In order to clarify the aspect addressed, it should also be mentioned that the candidate presented to the Commission an extract from her close relative's salary account. According to the information presented, this person in the period 02.05.2005 - 01.01.2022, would have obtained an income in the amount of EUR 329,466, (note: period 02.05.2005 - 01.01.2018, income obtained EUR 246,514). This information is of increased interest from the perspective of the fact that this person certainly had sufficient financial resources available that would have allowed him to contribute to the purchase of an apartment for the candidate's mother, in the amount declared.

Art. 8 paragraph (5), letter c) of Law no. 26/2022, provides that for the evaluation of the financial integrity of the candidate, the Evaluation Commission verifies the manner of acquisition of the assets in the ownership or possession of the candidate or of the persons specified in art. 2 paragraph (2), as well as the expenses related to the maintenance of these assets.

Art. 13 paragraph (5) of Law no. 26/2022, provides that it is considered that a candidate does not meet the integrity criteria if the existence of serious doubts regarding the candidate's compliance with the requirements provided for in art. 8, which were not removed by the evaluated person.

Art. 12 paragraph (4), d) of Law no. 26/2022, provides the right of the candidate to present in written form, data and additional information that he considers necessary in order to remove suspicions regarding his integrity. In the case, the candidate presented explanations and evidence, within the limits of availability, that would support what was declared in the affidavits of the persons who directly participated in the purchase of the apartment in the municipality of Chisinau.

In the light of what has been stated, I disagree with the fact that regarding this candidate there would be a serious doubt regarding compliance with the criterion of financial integrity under art. 8 of Law no. 26/2022.

2. *Ethical violation regarding participation in the General Assembly of Judges on September 27, 2019.*
 - Examining this aspect, the Commission came to the conclusion that the behavior and the role assumed by this candidate within the General Assembly of Judges cause serious doubt (art. 13 paragraph (5) of Law no. 26/2022) regarding compliance with the criterion of ethical integrity provided for in art. 8 paragraph (2) letter a) from Law no. 26/2022, a doubt that was not mitigated by the candidate.
 - In this way, I express my disagreement with this conclusion, moreover, in my perception the alleged misconduct imputed to the candidate is not found in the provisions of art. 8 paragraph (2), letter a) Law no. 26/2022.
 - In order to evaluate the behavior of this candidate, related to the aspect of ethical integrity, I consider that the presence, actions and role assumed by this magistrate in the General

Assembly of Judges held on September 27, 2019, were exercised in strict accordance with the provisions of Law 514 /1995 and do not denote an ethical misconduct.

In the light of what has been reported, considering that I disagree with the decision proposed and supported by the majority of Commission members, I voted against the drafted decision and submitted this dissenting opinion, considering that the candidate Judge Angela Bostan, candidate for the position of member of the CSM, meets the integrity criteria under art. 8 of Law 26/2022, as a consequence the Commission was to confirm the candidate's passing the evaluation.

**Member of Commission,
Vitalie MIRON**

12.12.2022