



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. 19 of 20 January 2023 on the Candidacy of Ion CHIRTOACĂ
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 15 December 2022 and on 6 and 20 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:

I. The procedure

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

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

On 21 June 2022 the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 5 July 2022. The candidate submitted the completed questionnaire to the Commission on 5 July 2022.

On 8 July 2022 the Commission sent a request to the candidate for completing and submitting by 15 July the Declaration of assets and personal interests for the past 5 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”). The declaration also includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. The candidate submitted a completed declaration to the Commission on 15 July 2022.

The Commission obtained information from numerous sources in order to assess the candidate’s financial and ethical integrity. 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.

To the extent that issues were raised from the candidate's declaration and questionnaire and collected information, those issues were raised in written questions with the candidate and during the public hearing.

Written communication with candidate:

On 15 August 2022, the Commission sent to the candidate a request for clarifying information, containing 12 questions, including 23 sub-questions and six requests for further documentation. The candidate replied within the requested time period on 19 August 2022 to all questions and provided most of the documents. The candidate sent additional information on 26 September 2022.

On 15 November, the Commission sent a second round of six questions and 12 sub-questions, which included two requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 18 November 2022 to all questions and provided most of the documents.

On 29 November 2022, the Commission sent a third round of three questions including seven sub-questions and eight requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 1 December 2022 to all questions and provided most of the documents.

On 5 December 2022 the Commission sent to the candidate a fourth round of four questions and eight sub-questions, which included three requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 7 December 2022 to all questions and provided all the documents.

Following the candidate's request, on 12 December 2022, the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022.

On 15 December 2022, the candidate took part in a public hearing of the Commission.

On 21 December 2022 the Commission sent to the candidate a fifth round of one question and three sub-questions, which included two requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 22 December to the question and provided some of the documents.

II. *The law relating to the evaluation*

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).

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 for the purpose of assessing judicial integrity issues.

Also, 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 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 behavior and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. N° 3") provides further guidance.

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

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

Art. 2 para. 2 of Law No. 26/2022 provides that the evaluation of candidates includes a verification of the assets of persons close to candidates, as defined in Law No. 133/2016 on 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 is not to 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).

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 above-listed requirements which have not been mitigated by the evaluated person (art. 13 para. (5) of Law No. 26/2022). As noted in the recent Venice Report on vetting in Kosovo, "In 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". 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), §§10,9.

Shifting the burden of proof to the candidate, once the evaluating body has identified integrity issues, has been found permissible by the European Court of Human Rights, 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*, no. 15227/19, §352, 31 May 2021 the Court stated that “it is not per se arbitrary, for the purposes of the “civil” limb of Article 6 § 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”.

Under art. 5 para. (1) of the Evaluation Rules 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, pursuant to Law No. 26/2022, of 2 May 2022 (hereinafter “Evaluation Rules”), only if a candidate fully meets all of the indicators set for the in art. 8 para. (2)- (5) of Law No. 26/2022 does the candidate satisfy the criterion of “ethical and financial integrity.”

III. Evaluation of the candidate

The candidate was asked at the hearing about the following financial and ethical issues.

1. Failure to disclose bank account and transfers from his parents in the manner prescribed by law

a. The facts

The candidate did not declare an active (EUR) bank account, which he opened on 12 October 2010 and closed on 19 January 2022, in his declarations of assets and personal interests submitted to the National Integrity Commission (hereinafter “annual declaration”) for 2012-2015. During this period, the candidate had received transfers from his parents, who were working abroad, in the amount of 74,660 EUR. The candidate has been obliged to submit declarations beginning in 2012.

In response to written questions from the Commission asking why he had not declared this bank account and at the public hearing, the candidate explained that, at the time of drawing up his annual declarations, there had been no funds in the bank account and therefore, it had not been necessary to declare it. The candidate told the Commission that he had started declaring zero balance accounts beginning in 2016, as soon as he had become more familiar with the legal requirements. The candidate also noted that funds in the accounts held by him until becoming a judge had come exclusively from his parents’ income while they were working abroad, and he had “never been a *de facto* owner of these funds, moreover, all the actions thereto were coordinated with the parents”. At the public hearing, the candidate admitted that the provisions of art. 4 para. (1) lit. d) of Law No. 1264/2002 concerning the declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force until 1 August 2016) required the subject of declarations to declare all financial assets regardless of the value. He noted that, after becoming a judge in 2016, he became more familiar with the relevant legal provisions and understood that it should have been declared. The

candidate stated that the fact that the amounts were coming from legal sources of income of his parents carried great importance for him and his family and they were ready to appear before the Commission to testify. The candidate also told the Commission that initially his parents illegally stayed and worked abroad. Later they managed to legalize their status and started paying taxes.

After the hearing the candidate was asked about the bank transfers to this account made by his mother during the period of 6 January 2012 – 6 July 2017 totaling **83,684 EUR**, with the indicated purpose "cash deposit/transfer" according to the following table:

Year	Transfers from abroad	Candidate's parents' declared income	Amount by which the transfers exceeded the parents' declared income
2009	0	7,687 EUR	n/a
2010	16,000 EUR	9,848 EUR	6,152EUR
2011	17,150 EUR	13,583 EUR	3,567EUR
2012	18,750 EUR	13,662 EUR	5,088 EUR
2013	22,168 EUR	14,174 EUR	7,994 EUR
2014 ¹	20,084 EUR	16,730 EUR	3,354 EUR
2015	13,658 EUR	19,561 EUR	n/a
2016	3,808 EUR	21,706 EUR	n/a
2017 ²	5,216 EUR	25,512 EUR	n/a

In his post-hearing answers to the Commission, the candidate confirmed the correctness of the amounts and dates of the foreign transfers and indicated that these funds had been used to pay for his studies as well as the education and costs of living abroad of his close relative. In addition, accumulated resources had been used to purchase his parents' apartment in 2015, for which the candidate submitted the sales-purchase contract. According to the candidate, the funds in the account belonged to his parents, and they made the decisions as to their use. The candidate also stated that the source of these transfers had been legal, that his parents had declared these amounts to the relevant authorities of one of the European countries and had paid taxes. The candidate stated that in total (between 2009-2021), his parents had earned 243,000 EUR, of which 83,684 EUR had been transferred to this bank account. The candidate further stated that between 2012 and 2015, as the only family member remaining in Moldova, he had been entrusted to manage funds sent by his parents in the interest of the family and according to their instructions.

The candidate stated that, out of 83,684 EUR, approximately 56,808 EUR had been used by his parents and 5,216 EUR had been used by himself. The remaining amount, about 21,660 EUR, had been used to cover the family's current expenses (including expenses related to various

¹ The candidate declared 30,667 EUR in his 2014 declaration as a deposit

² The candidate declared 4,800 EUR as a donation

events) as well as for his close relative's education and living expenses abroad (approximately 12,000 EUR).

The candidate further stated that he had declared 30,667 EUR in his 2014 declaration under the "Column IV. Financial Assets" as a deposit. In 2015, the deposit was not declared as it had been withdrawn to purchase an apartment. In 2016, nothing was declared as there was no money in the account. The candidate also explained that 3,808 EUR received in 2016 had been spent for the repair of the parental house in a village. As to the transfer of 5,216 EUR in 2017, the candidate stated that the funds transferred had been declared in his annual declaration for 2017 as a donation (declared amount is 4,800 EUR) and had been spent on personal needs. The candidate provided specifics of those expenses.

During the evaluation process, the candidate submitted supporting documents issued by the authorities of one of the European countries attesting to the taxable income received by his parents. More specifically, the documents concerning his mother's income covers the period from 2009. The candidate did not submit supporting documents on the official incomes of his father during the period of 2009 - 2013. According to the available data, between 2009 and 2015 the candidate's parents transferred 107,810 EUR to the candidate's bank account, while their official income totalled 95,245 EUR. Between 2009 and 2011 the transferred amounts totalled 33,150 EUR while the candidate's parents' official income was 31,118 EUR. Between 2012 and 2015 (when the candidate failed to declare his EUR bank account and all the funds transferred to his account) the candidate's parents transferred 74,660 EUR to the candidate's bank account. During the same period their official income amounted to 64,127 EUR (see the table above).

b. The law

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

Pursuant to art. 8 para. (5) lit. c) and d) of Law No. 26/2022, in order to assess the candidate's financial integrity, the Commission is also required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2022 and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2). Pursuant to art. 8 para. (2) lit. c) para. (4) lit. a) and para. (5) lit. b) and f) 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 under art. 8 para. (2) lit. c).

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

“Close persons,” as defined in Law No. 133/2016 on declaration of assets and personal interests, are: “husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as any person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and any person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law).

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

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

c. Reasoning

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

The candidate in this case has been obliged to submit annual declarations since 2012, initially as an employee of the Ministry of Internal Affairs and since 2016 as a judge. Between 2012 - 2015, the candidate did not declare a EUR bank account opened in 2010 in his name in a Moldovan bank to which 74,660 EUR was transferred by his parents from abroad during this period. Between 2012 and 2015 on the same day or a few days after each transfer, the same amount as the transfer was withdrawn from the account. Out of 74,660 EUR transferred between 2012 - 2015, only 30,667 EUR was declared in his 2014 annual declaration and only then as a deposit under the “Column IV. Financial Assets”. The deposit was used in 2015 by the candidate’s parents

to purchase an apartment in Chisinau municipality. A copy of this contract was submitted to the Commission. The remaining amount of 43,993 EUR was not declared by the candidate.

In written communication with the Commission and at the public hearing, the candidate maintained that his parents' salary was the source of funds which had been used for the transfers, that the funds had not belonged to him and that he had only managed this account on the instructions of his parents. The Commission noted that these funds had been transferred by his parents who lived and worked in one of the European countries. The bank statements submitted by the candidate illustrate that all the transfers had been made by his mother using the same bank account. According to the available data, between 2012 - 2015, when the candidate failed to declare the EUR bank account and all the funds transferred to this account, the candidates' parents had transferred 74,660 EUR to his bank account while their declared income totalled 64,127 EUR. Therefore, the transferred amounts exceeded the candidate's parents' declared incomes by 10,533 EUR. The Commission noted that the funds transferred by the candidate's parents during the years 2012 - 2014, were substantially higher than the declared income accrued by them during the same period. Thus, in 2012, the amount of funds transferred in excess of the declared income amounted to 5,088 EUR, while in 2013, they amounted to 7,994 EUR, and in 2014, they amounted to 3,354 EUR. Only in 2015 the candidate's parents' declared income exceeded the transferred amounts. The Commission also found that between 2009 and 2011, prior to the time when the candidate became obliged to submit annual declarations, the candidate's parents transferred 33,150 EUR to his account while their official income was 31,118 EUR. During this period the amount of funds transferred in excess of the declared income amounted to 2,032 EUR. Furthermore, the candidate's parents would have incurred substantial living costs consistent with living in this European country. Taking account of these two factors, the remaining disposable income available for transfer would have been even less. The candidate did not submit any supportive documents concerning the source of income for the transfers in excess of declared income. The fact that, initially, the candidate's parents had illegally resided and worked in that European country and thus, had undeclared income, cannot be accepted as justification for the discrepancy between the earned income and the amount transferred. Nor can the parents' official total income between 2009-2021 in the amount of 243,000 EUR, be considered as a proof of sources of the transfers made in the years 2012-2014. Thus, the Commission considers that there are doubts as to the sources of funds transferred by the candidate's parents between 2012 and 2014, which have not been mitigated by the candidate.

Pursuant to the law No. 1264/2002 concerning the declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force till 1 August 2016), the subject of a declaration was required to declare income, defined as "any increase, addition or extension of the patrimony, regardless of the source or origin, expressed in patrimonial rights or in any other patrimonial benefit, obtained by the subject of the declaration or by the members of their families during the reference period both in the country and **abroad**" (emphasis added). Furthermore, the law required the subject of declarations to declare all financial assets regardless of value. The law did not differentiate between whether the funds were merely administered or formally owned by the subject of the declaration. Thus, the fact that the amounts were transferred to the candidate made him obliged to declare the EUR bank account and all received income in his annual declarations since 2012. As noted above, he once, in his 2014 declaration, declared only a portion (30,667 EUR) of the total amount as a deposit under

the “Column IV. Financial Assets”. The remaining 43,993 EUR were never disclosed.

The Commission notes that serious doubts may arise in connection with bank accounts that are not declared when they involve considerable activity. Between 2012-2015 27 transfers were made to the account: seven in 2012, eight in 2013 and 2014 and four in 2015. The total amount of funds received each year was also substantial.

The candidate insisted on the interpretation of the law that he was not obliged to declare the amounts transferred by his parents as these funds did not belong to him. This explanation and interpretation of the law given by the candidate was not accepted by the Commission as a valid reason for non-declaration of this EUR bank account and transfers from his parents between 2012-2015. The candidate only conceded that, since 2012, he has been obliged to declare this bank account and that the amounts which remained on the bank account were immaterial in this regard. The Commission takes note of the fact that, when he became a judge in 2016, the candidate started declaring all the bank accounts and financial interests in compliance with the legislation. He also declared about 90% of transfers received in 2017 as a donation. The Commission reiterates that the observance of the legal regime of the declaration of personal assets and interests by subjects of declarations, and among them judges, aims to prevent unjustified and illicit enrichment and avoid conflicts of interest in their activity, as well as aiming to hold them accountable for such deeds.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criterion of financial and ethical integrity as per art. 8 para. (2) lit. c), (4) lit. a) and b) and para. 5 lit. b), c) and d) of Law No. 26/2022 with respect to non-disclosure of a EUR bank account and the funds deposited to that account and with respect to the sources of these transfers made during the years 2012 - 2014, which have not been mitigated by the candidate.

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

a. The facts

On 21 June 2017, the candidate applied for an apartment through a preferential price as part of a program for the improvement of living conditions for judges implemented by the Superior Council of Magistracy (hereinafter “SCM”). The candidate provided the Commission with a copy of his application to the SCM. According to the minutes of a meeting of the Working Group of the SCM on 30 June 2021 – Decision No. 18 – the application for the participation of the candidate in the program for the improvement of his living conditions was approved. The candidate sold a 38.4 sq.m. apartment on 29 July 2021 for the declared price of 450,000 MDL (est. 21,250 EUR) to pay for the preferential apartment. The candidate had purchased the 38.4 sq.m. apartment, located in Chisinau municipality, in 2010 with income earned by his parents. In his 2021 annual declaration, the candidate declared a payment of 322,560 MDL (est. 16,000 EUR) to Basconslux S.R.L. for a preliminary sale-purchase contract of a preferential apartment. On 21 March 2022, the candidate concluded a sale-purchase contract with Basconslux S.R.L. to purchase a 68.4 sq.m.

apartment in Chisinau for the price of 28,728 EUR. When asked by the Commission about his eligibility for the preferential price apartment program, the candidate stated that, at the time of submitting the request, he did not own living space purchased by himself. He also stated that the eligibility criteria had been exclusively determined by the Working Group and that the decision had been made at their discretion. When asked whether it was ethical not to inform the Working Group that he had owned an apartment in Chisinau, the candidate stated that he had never benefited from preferential housing before. He also stated that the Working Group had assessed the eligibility criteria and made their decision based on accurate data. The candidate further noted that “it is certain that I did not present any false, distorted data, nor did I hide any information”.

At the public hearing, the candidate confirmed the above facts. When asked whether his ownership rights were in any way limited due to the fact that the 38.4 sq.m. apartment had been bought by his parents, the candidate explained that this apartment had been purchased by his parents, and that they had allowed him to live there. The apartment had been used by the entire family, and they had stayed there when visiting Moldova. The candidate confirmed that, from a legal point of view, the 38.4 sq.m. apartment had belonged to him. The candidate sold the 38,4 sq.m. apartment urgently to pay the first instalment for the preferential apartment in the amount of 322,560 MDL (est.16,000 EUR) which was due at the time of signing a preliminary sale-purchase contract in August 2021. The parents had permitted the candidate to use the amount obtained after selling this apartment to invest in the preferential apartment in order to improve his living conditions. The candidate told the Commission that construction of the preferential apartment is 90% completed. Currently the candidate lives in an apartment bought by his parents in 2015.

The candidate stated that, when submitting the application to the SCM, he never denied the fact that he owned a flat which had been purchased from income received by his parents while working abroad. He referred to his application, according to which he had requested a preferential apartment in order “to improve the living conditions” and that he had never said that he didn’t own any apartment. The candidate mentioned that, at the time of submitting the application, he had been told that the employees of the justice system who had previously not benefitted from other similar projects and need to improve their living conditions could apply. This prompted him to request an improvement to his living conditions. The candidate stated that he had become acquainted with the SCM Decision No. 5/4 of 12 December 2017, which determined the eligibility conditions for the selection of a candidate for this program, only as a part of the evaluation materials that he had received from the Commission. The candidate argued that he had complied with the eligibility criteria as the 2017 SCM decision had also provided the possibility to benefit from the program in view of “other relevant circumstances”. However, he did not provide any explanations as to what these other relevant circumstances were. The candidate considered it fully compliant with professional ethics to request preferential housing as he had intended to create a family and his existing living conditions had not been adequate for his status as a judge. The candidate expressed regret that no records of the meeting, where the issue of the preferential apartment had been discussed with him in the headquarters of the Chisinau Court, were made. Eventually, the candidate noted that, at the time of submitting the application to the SCM, he had complied with two criteria: he was a judge and he wanted to improve his living conditions.

b. The law

According to the Regulation regarding the selection of candidates enrolled in the list of employees in the judicial system who require the improvement of living conditions, approved by the Commission for selection of candidates No. 3 of 6 September 2013 (in force at the time of the submission of the application on 21 June 2017) set up by the SCM, the following people could request improvement of living conditions: a) judges from the Chisinau court who do not have housing space or have insufficient housing space, within the Chisinau municipality, b) judges that have permanent residence in Chisinau municipality, but work in other courts and they are not provided with housing at the place of work or have or have insufficient housing space, within the Chisinau municipality, c) employees in the national courts and the SCM that do not have housing space or have insufficient housing space, within the Chisinau municipality and the time of submitting the request have worked in the judicial system at least 6 months.

According to Decision No. 5/4 of 12 December 2017 of the SCM regarding the selection of candidates enrolled in the list of employees in the judicial system who require the improvement of living conditions, the following people could request improvement of living conditions: a) a judge is working, at the time of submitting the application, in the judicial system, b) the applicants do not have living space in the municipality of Chisinau, c) the applicants have not previously benefited from apartments at a preferential price granted to employees of the judicial system; d) other conditions deemed relevant by the members of the Working Group.

The 2015 Judge's Code of Ethics and Professional Conduct, approved by Decision of the General Assembly of Judges No. 8 of 11 September 2015 states in art. 5:

1. The judge shall respect the highest standards of integrity and responsibility, in order to ensure the society's trust in the courts. He/she is aware of the risks of corruption and shall not admit or create the appearance of a corrupt behavior in his/her work; shall not ask for, accept or receive gifts, favors or benefits for the fulfillment or non-fulfillment of the service duties or by virtue of the position held.

5. The judge shall conclude transactions regarding personal property in a way that does not cause doubt, or does not affect his/her independence and impartiality or trigger conflict of interest.

Also in this Code, in art. 6 para. (2) the provision is included that

The judge must refrain from any behavior, action or manifestation that could prejudice the public's trust in the judicial system.

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" (Principle 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." (Principle 3.2.)

According to the Evaluation Rules, art. 5 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 single 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.

c. Reasoning

The candidate applied to the SCM for preferential price housing in 2017. At the time, the candidate owned a 38.4 sq.m. apartment in Chisinau. The candidate has repeatedly argued that the fact that the 38.4 sq.m. apartment had been bought by his parents made him eligible to apply for a preferential apartment. When asked whether his ownership rights were in any way impacted because this apartment had been bought by his parents, the candidate submitted that the apartment had been in common use by the family and that he had been allowed to live there. In 2021, as soon as the decision about awarding a 68,4 sq.m. preferential housing had been made, the candidate sold the 38.4 sq.m. apartment in order to pay the first instalment of the preferential apartment. In response to the Commission's question, the candidate stated that he had kept all the proceeds from selling the 38.4 sq. apartment for himself and had not shared any part of it with other members of the family. This circumstance, in addition to the registration of the title of ownership under the candidate's name strongly corroborates that the 38.4 sq.m. apartment indeed belonged to the candidate regardless of the source of funding used for its purchase. The candidate finally conceded his ownership rights over this property at the hearing.

On 21 June 2017, when the application was submitted by the candidate, one of the preconditions laid down in a Regulation of 6 September 2013, regarding the selection of candidates for preferentially priced property to improve their living conditions was that a judge from the Chisinau Court not already have housing space within the Chisinau municipality or that the judge's housing space was insufficient. Similarly, one of the preconditions envisaged by a Regulation of 12 December 2017, regarding the selection of candidates who are employees in the judicial system and who require an improvement to their living conditions – which was in force on 30 June 2021 when the application for the participation of the candidate in the program for the improvement of his living conditions was approved – is that a judge working in the judicial system at the time of submitting the application does not have housing space within the Chisinau municipality.

In his 2017 application to the SCM, the candidate requested a preferential apartment in order “to improve the living conditions”. The candidate did not mention that he owned an apartment, nor did he elaborate on what were the conditions that required improvement or that the housing space that he had was insufficient. During the hearing, the candidate relied on another eligibility ground provided by the 2017 SCM decision that provided the possibility to benefit from the program in view of “other relevant circumstances”. However, he did not explain what those “other relevant circumstances” were. The Commission has doubts that the candidate would have been awarded

the apartment at preferential price if he had fully disclosed all relevant information relating to his apartment to the Commission that analyzed the candidates' eligibility for that program, particularly in view of the fact that, at the time of submitting the application, he was single.

It has been established that the candidate sold the 38.4 sq.m. apartment to invest into a preferential one of 68.4 sq.m. The Commission has no reason to question that the candidate, who owned the smaller apartment and intended to create a family – which he did in 2022 – would benefit from the larger apartment. Nor is there an indication that the candidate, who currently resides in his parents' apartment bought in 2015, doesn't intend to live in the preferential price apartment when it is completed. The problem is that he omitted an important piece of information from the application that was an integral part of the selection process. None of the arguments advanced by the candidate would suffice to absolve him from his responsibility for not disclosing the information about the ownership of the 38.4 sq.m. apartment in his application.

The Commission considered that the very purpose of the preferential program is to use public means to improve living conditions for employees in the judicial system. The program, which takes into consideration the special role judges play in society, also supposes that judges who benefit from the program should submit complete and truthful information to the bodies that are responsible for resolving the matter. Judges are required to display the highest standards of integrity and accountability. Judges, in their official stature, assume responsibilities that go beyond those of ordinary citizens and the public has the right to expect that judges will not try to take advantage of public programs and will comply with the highest standards of integrity in availing themselves of public programs.

The candidate's explanation that he didn't consider it unethical not to disclose the information about the ownership of the 38.4 sq.m. apartment in Chisinau in his application and that it was up to the Working Group to decide whether or not to accept his application, is unpersuasive. The Commission also did not accept his arguments that he had never benefited from preferential housing before, that he had never owned an apartment bought with his own income or that his living conditions were incompatible with his status as a judge. These rationales fall short of the higher expectations we have of the judiciary to act at all times, including in personal transactions, in a manner that is beyond reproach.

In light of above circumstances, the Commission has serious doubts (art. 13 para. (5) Law No. 26/2022) about the compliance of the candidate with the criterion of ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to the mode of acquiring the apartment of 68.4 sq.m. at a preferential price in 2022 which have not been mitigated by the candidate.

IV. Decision

Based on art. 8 para. (1), para. (2) lit. a) and c), para. (4) lit. a) and b) and para. (5) lit. b), c) and

d) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate does not meet the 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.

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 from receiving the decision.

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

This decision was adopted by a majority of five participating members of the Commission.

The dissenting opinion of Vitalie MIRON is attached to this decision.

Done in English and translated into Romanian.

Signature:



Herman von HEBEL
Chairman, Commission