



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. 20 of 23 January 2023 on the Candidacy of Natalia CLEVADÎ,
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 23 December 2022 and 23 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

Natalia CLEVADÎ, judge at the Chișinău district court (“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 for five years on 28 February 2011 to serve in the Bălți district court. The candidate was appointed as a judge until the retirement age on 17 March 2016 to serve in the Bălți district court. From January 2015 until 18 February 2017 the candidate served in the Chișinău district court, Rîșcani office, based on six-month transfers by Superior Council of Magistracy’s decisions. On 29 March 2017 the candidate was appointed, by transfer, to serve in the Chișinău district court.

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 2022 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.

Written communication with candidate:

On 17 August 2022 the Commission sent to the candidate a request for clarifying information, containing 10 questions, including 26 sub-questions and seven requests for further documentation. The candidate replied within the requested time period on 21 August 2022 and provided information and documentation to most questions. The candidate sent additional information on 26 August 2022 and on 5 September 2022.

On 18 November 2022, the Commission sent a second round of six questions and 17 sub-questions, which included one request for further documentation, to clarify some issues that came out during the evaluation. Instead of responding to the Commission's questions, the candidate sent the following email to the Commission on 21 November 2022.

"Dear Pre-Vetting Commission,

On your questions for round 2, I can communicate that I have previously sent to the Commission all the documents, contracts, and checks I had. I do not have other documents. The renovation in the [2015 Chişinău apartment] was done by my father with my brothers. My father is a professional builder and all his life he worked in constructions and a seller at the market. I have no confirmatory documents. The home technique and furniture in the apartment were purchased from the second hand. I have no papers and checks. The chandeliers in the rooms were brought from those that were left by my grandmother. I do not have confirming documents. When I came from Bălţi to Chişinău, we agreed with my brother to live in his apartment until the renovation of the [2015 Chişinău apartment] is done. I liked living in this small apartment and we agreed with my brother that I will continue staying here, and he takes the rent from the [2015 Chişinău apartment]. I did not draw up any documents. The understanding was verbal. I did not perceive the help received from the parents for the purchase of the apartment as a donation within the meaning of the Civil Code. After the Commission's questions I understood that if we would have to sell the apartment to help the brother suffering from an incurable disease - he would have to

declare the money as a donation.

Pursuant to Article 12 paragraph (3) of the Pre-Vetting Law, I respectfully request the evaluation of my application in my absence, based on the documents presented so far.

I have full confidence in the Commission, and I will not challenge the Commission's decision.

With respect,
Judge Natalia Clevadi”

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.

Pursuant to the candidate’s request, in accordance with art. 12 para. (3) of Law No. 26/2022, the Commission’s meeting was held in the candidate’s absence and the candidate was evaluated based on the information gathered by the Commission.

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, 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 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 Commission evaluated the following financial and ethical integrity issues in accordance with art. 12 para. (3) of Law No. 26/2022 based on the information gathered by the Commission:

1. Imbalance of wealth in 2016

a. The facts

The Commission established the following incoming and outgoing financial flows for 2016 for the candidate:

Income MDL 2016		Expenses MDL 2016	
Savings from 2015	24,346 MDL	Payment of instalment	197,892 MDL
Salary	123,618 MDL	CEP ¹	33,828 MDL
Interests from bank deposit	341 MDL	Savings in 2016	299,742 MDL
Donation from parents	197,892 MDL		
Total	346,197 MDL	Total	531,462 MDL
Difference	-185,265 MDL		

The above calculation is done in line with the “Annex: Unjustified wealth” of the Commission’s Evaluation Rules. The Commission calculated the consumption expenditures for population as per para. 3.5 of said Annex.

According to information from the State Fiscal Service, in 2016 the candidate had income from her activity as a judge in the net amount of 123,618 MDL. According to the candidate’s 2016 annual declaration submitted to the National Integrity Authority (hereinafter “annual declaration”), the candidate had additional interest income of 341 MDL on her bank savings and a donation from her parents in the amount of 197,892 MDL. The candidate declared f 24,346 MDL as savings from 2015.

In response to the Commission’s first round of written questions, the candidate provided an investment contract from 2015 and proof of payments on this investment contract for an apartment in Chişinău (hereinafter “2015 Chişinău apartment”). According to the documentation, in 2016 the amount of 197,892 MDL was paid on the contract. The Consumption Expenditures

¹ Consumption expenditures for one person based on National Bureau of Statistics (NBS) data.

for Population (CEP) level for 2016 was 33,828 MDL. In her 2016 annual declaration the candidate declared 12,600 EUR (est. 277,830 MDL) and 1,100 USD (est. 21,912 MDL) as savings. The amount of declared expenses in 2016 were 531,462 MDL. The amount of savings available to the candidate and her income for 2016 totalled 346,197 MDL. Therefore, the candidate's total expenses appeared to have exceeded her total income and savings by 185,265 MDL.

The Commission asked the candidate to confirm the calculations made by the Commission or to provide the information/amount that the candidate claimed as correct. The Commission also asked the candidate if she had used any other sources of funds in 2016 to pay expenses. The candidate did not provide answers to these questions (round two of questions).

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues as per art. 8 para. (4) lit. b) of Law No. 26/2022.

Art. 8 para. (5) lit. d) of Law No. 26/2022 provides that in order to assess the candidate's financial integrity, the Commission is required to verify the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

The Evaluation Rules state that 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 (art. 6 para. (1)). The rules also provide that the Annex to the Evaluation Rules defines the method for calculating undeclared wealth. (art. 6 para. (2) of Evaluation Rules).

Art. 12 para. (3) of Law No. 26/2022 provides that in case of candidate's refusal to attend the hearings, the meeting shall be held in his/her absence and the respective candidate shall be evaluated on the basis of information gathered by the Commission.

c. Reasoning

The Commission is required to verify that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues and the sources of income of the candidate.

According to the information available to the Commission, the candidate's total expenses appear to have exceeded her total income and savings by 185,265 MDL (est. 8,700 EUR) in 2016. In the second round of written questions, the candidate was presented with the amounts on which the calculations were based and the candidate was asked if she agreed or contested the numbers and

to explain the difference between the amount of expenses and the declared income that the Commission had identified. The candidate did not respond. This difference raises serious doubts about the candidate's expenses for 2016 corresponding to her declared revenues and about the sources of income of the candidate, which have not been mitigated by the candidate.

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 integrity as per art. 8 para. (4) lit. b) and para (5) lit. d) of Law No. 26/2022 with respect to the imbalance of wealth for 2016, which have not been mitigated by the candidate.

2. Purchase of an apartment in Chişinău municipality at preferential price/Failure to disclose funds received from parents in the manner prescribed by law

a. The facts

In 2015, the candidate purchased a 72 sq.m. apartment in Chişinău municipality (2015 Chişinău apartment) for 559,409 MDL (est. 24,565 EUR) through an investment contract dated 29 April 2015. The apartment was purchased through the program offered for justice system workers to benefit from housing at a preferential price, for the purpose of improving living conditions of judges.

The decision to allow the candidate to participate in the program was made by a working group at the District Court of Râşcani in Chişinău on 27 April 2015. During the meeting of the working group, the distribution of housing space for judicial workers at the District Court of Râşcani in Chişinău was considered. The candidate, judge at the Râşcani Court at that time based on renewable six-months transfers, had submitted an application for granting the right to contract an apartment in Chişinău municipality (2015 Chişinău apartment), because at that time she only owned an apartment in Bălţi municipality and did not own any property in Chişinău.

On 21 March 2018 the candidate received this apartment under the acceptance act. In her annual declarations for 2019-2021, the candidate declared income from a rent contract of 9 September 2019 for this apartment. According to the contract, the apartment is rented to third party for a monthly rent of 3,900 MDL. In response to the first round of written questions, the candidate told the Commission that her close relative, under a power of attorney, is managing the apartment.

In the second round of questions, the Commission asked the candidate how the purchase of this apartment helped her improve her living conditions, since from the day she received it, she never lived in it and from 9 September 2019 she has been renting the apartment to a third party. The candidate did not answer this question.

The Commission asked the candidate about the source of 559,409 MDL paid to the construction company that built the apartment building. In response to the first round of written questions, the

candidate stated that the purchase price of the apartment was paid in instalments by her parents, from savings made throughout their life, as she did not have such financial resources. The candidate provided the investment contract and proof of the payments made. According to this documentation, the following payments were made: in 2015 - 296,399 MDL; in 2016 – 197,892 MDL; in 2017 - 51,492 MDL and in 2018 – 13,626 MDL. Total payments - 559,409 MDL.

For 2015, the candidate was required to declare in her annual declaration all income obtained during the declaration period, including those in the form of donations from family members. From 2016 on, the candidate was obliged to declare all income, however, with respect to gifts received from the members of the family, parents, brothers or sisters, only gifts whose individual value exceeded 10 average salaries per economy were required to be declared. In 2016, 10 average salaries amounted to 50,500 MDL. For 2017 and 2018 the support received from the candidate's parents did not exceed the threshold required by law to be declared.

The candidate did not declare in her annual declarations for 2015 and 2016 the money received from her parents to pay the installments for the apartment. The candidate's mother, who has been a judge since 1991, also did not declare any donations made to the daughter in 2015 and 2016. The Commission asked the candidate why she did not declare in her annual declarations for 2015 and 2016, the money received from her parents to pay for the apartment. The candidate did not provide an answer to this question.

b. The law

Art. 8 para. (2) lit. a) of Law No. 26/2022 provides that the candidate shall be deemed to meet the criterion of ethical integrity if s/he 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.

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. (5) lit. d) of Law No. 26/2022 provides that in order to assess the candidate's financial integrity, the Commission is required to verify the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

The Evaluation Rules state that 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 (art. 6 para. (1)). The rules also provide that the Annex to the Evaluation Rules defines the method for calculating undeclared wealth (art. 6 para. (2) of Evaluation Rules).

According to art. 4 para. (1) of Law No. 1264/2002 on declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force in 2015), the person making an income and asset declaration is required to declare “income obtained together with family members” during the declaration period. Art. 2 of Law No. 1264/2002 defines income 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 art. 4 para. (1) lit. a) of Law No. 133/2016 on declaration of assets and personal interests (in force since 1 August 2016), the subject of the declaration is to declare income obtained by the subject of declaration together with the family members, the concubine/concubine in the previous fiscal year. Art. 2 of Law No. 133/2016 defines income as „ any financial benefit, regardless of the source of origin, obtained by the subject of the declaration and by the family members, its concubine / concubine both in the country and abroad”. Art. 4 para. (3) of Law No. 133/2016 provides that are excepted from declaration gifts received by the subject of declaration free of charge from the members of his family, from his parents, brothers, sisters or children, whose individual value does not exceed 10 average salaries per economy. According to Government decision No. 879/2015, the average monthly salary per economy, forecasted for 2016, was 5,050 MDL. Ten average salaries were 50,500 MDL.

According to art. 15 para. (1) lit. g) of Law No. 544/1995 on the status of judges as well as art.13 para. (1) of Law No. 82/2017 on integrity, judges are obliged to submit their declaration of assets and personal interests in accordance with the provisions of Law No. 133/2016 on declaration of assets and personal interests.

The 2015 Judge’s Code of Ethics and Professional Conduct states in art. 5 para. (1) that 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”. In para. (5) it provides that 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, according to art. 6 para. (2) of the same Code, a judge “must refrain from any behavior, action or manifestation that could prejudice the public's trust in the judicial system”.

According to Principle 3.1 of the Bangalore Principles of Judicial Conduct of 2002, “A judge shall ensure that his or her conduct is above reproach in the view of the reasonable observer”. And Principle 3.2. states that “[t]he 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”.

According to 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.

Art. 12 para. (3) of Law No. 26/2022 provides that in case of candidate's refusal to attend the hearings, the meeting shall be held in his/her absence and the respective candidate shall be evaluated on the basis of information gathered by the Commission.

c. Reasoning

The very purpose of the preferential program is to use public means to improve living conditions for employees in the judicial system. In this instance, the candidate applied for and received housing at a preferential price that she has never lived in and rented out a year after its acceptance. The purpose of the program to improve the living conditions of the candidate was not realized. Instead, the apartment received at preferential price actually served as an investment for the candidate rather than a means for the improvement of her living conditions.

In the second round of written questions, the Commission asked the candidate to explain how this apartment has helped her improve her living conditions, but the candidate did not provide an answer.

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests and is required to verify sources of income and methods of acquiring assets by the candidate, family members and close persons to the candidate.

In written communications, the candidate told the Commission that her parents paid all of the instalments to purchase the candidate's apartment, from their savings. According to the legal provisions in force for annual declarations for 2015 and 2016, the candidate was obliged to declare the funds received from the parents to pay the instalments. In the second round of written questions, the Commission asked the candidate why she had not declared the funds received from her parents in her 2015 and 2016 annual declarations. The candidate did not answer the Commission's question and hence the Commission's serious doubts about the candidates' compliance with the legal regime of declaring assets and personal interests have not been mitigated by the candidate.

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 integrity as per art. 8 para. (4) lit. a) and para. 5 lit. b), and ethical integrity as per art. 8 para. (2) lit. a) and c) of Law No. 26/2022 with respect to the mode of acquiring an apartment at a preferential price in 2015 and her failure to declare the funds received from her parents in her annual declarations for 2015 and 2016, which have not been mitigated by the candidate.

3. Source of funds for a bank deposit of 38,000 EUR

a. The facts

According to the information available to the Commission, on 26 January 2011, the candidate made a cash deposit in the amount of 38,000 EUR to one of her bank accounts. On 9 March 2011, the candidate withdrew this amount and closed the bank account.

The Commission asked the candidate about the source of the 38,000 EUR. In response to the first round of written questions, the candidate stated that these funds were the proceeds from the sale of a 35.8 sq.m. apartment located in Chişinău municipality, which was purchased for the candidate by her parents under an investment contract of 20 May 2003 (hereinafter “2003 Chişinău apartment”). The candidate also stated that, in 2007 she had donated this apartment to a close relative, under the donation contract of 28 December 2007. The candidate also told the Commission that she and the close relative had a verbal agreement that, in exchange for her close relative renouncing his share in the parental home, the candidate would take care of her parents when they would no longer be able to take care of themselves and the candidate would remain living in the parental home and her apartment would be the property of her close relative.

In 2011, the candidate’s close relative sold the 2003 Chişinău apartment that was donated by the candidate to this close relative. The sales-purchase contract of 26 January 2011 indicated the sales price as 204,996 MDL (est.12,500 EUR). At the same time, the candidate had stated in her written answers to the Commission that her cash deposit in the amount of 38,000 EUR were the proceeds from the sale price of the 2003 Chişinău apartment.

In the second round of written questions, the Commission asked the candidate to explain why her close relative had given her the amount of 38,000 EUR. The candidate did not answer this question.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate’s wealth acquired in the past 15 years corresponds to the declared revenues as per art. 8 para. (4) lit. b) of Law No. 26/2022.

Art. 8 para. (5) lit. c), d) and f) of Law No. 26/2022 provides that the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2), the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2) and the existence of donations, where the candidate or the person referred to in art. 2 para. (2) has the status of donee or donor.

c. Reasoning

In assessing the financial integrity of the candidate, the Commission is required to verify that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues, 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).

In the first round of written questions, the candidate told the Commission that the 38,000 EUR deposited in her account in January 2011 were received from the sale of an apartment that she had donated to a close relative in 2007. The Commission had serious doubts about the source of these funds because (1) the sale-purchase contract price of the apartment furnished by the candidate was 204,996 MDL (est.12,500 EUR), far less than 38,000 EUR and (2) the apartment was donated by the candidate to her close relative in 2007 and it was not clear why that relative gave the candidate funds from the sale of the apartment in 2011. In the second round of written questions, the Commission asked the candidate to explain the type of agreement that resulted in her close relative giving her 38,000 EUR from the sale. The candidate did not answer this question and hence did not mitigate the Commission's serious doubts regarding the source of funds and the method of acquiring the 38,000 EUR deposited on the candidate's bank account in 2011.

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 integrity as per art. 8 para. (4) lit. b) and para. 5 lit. c), d) and f) of Law No. 26/2022 with respect to the deposit of 38,000 EUR on the candidate's bank account in 2011, which have not been mitigated by the candidate.

4. Sub-evaluation and failure to pay capital increase taxes for the sale of an apartment

a. The facts

On 28 February 2011, the candidate was appointed as judge for a term of five years, to serve at the Bălți district court. In the candidate's 2012 annual declaration, she declared a 49.9 sq.m. apartment in Bălți municipality, purchased for 129,200 MDL (est. 7,650 EUR) on 19 April 2011 (hereinafter "2011 Bălți apartment"). No confirmative documents for the purchase of this apartment were provided by the candidate.

On 27 March 2015, the candidate sold this apartment for 129,188 MDL (est. 6,200 EUR). In her 2015 annual declaration, the candidate declared income of 129,188 MDL (est. 6,200 EUR) from the sale of this apartment. In the same annual declaration, in the section on financial assets, the candidate declared a deposit in the amount of 36,000 EUR and 1,700 USD on 27 March 2015 (the date of sale of the 2011 Bălți apartment).

The Commission asked the candidate about the source of 36,000 EUR and 1,700 USD deposited on 27 March 2015. In response to the first round of written questions, the candidate stated that these funds were from sale of the 2011 Bălți apartment. The candidate explained that she deposited the money in the account in order to verify the authenticity of the bills and to keep the money safe. The candidate did not declare a capital increase following the sale of this apartment.

In the second round of questions, the Commission asked the candidate to explain the difference between the declared income from the selling of this apartment in her 2015 annual declaration and the real price she told the Commission that she received from the sale of the apartment (129,188 MDL vs. 36,000 EUR and 1,700 USD). The candidate did not answer this question.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues as per art. 8 para. (4) lit. b) of Law No. 26/2022.

According to art. 8 para. (5) lit. a) of Law No. 26/2022, in assessing the candidate's financial integrity, the Commission is required to verify the compliance by the candidate with the tax regime in the part related to the payment of taxes on using funds and income derived from the owned property, as well as taxable income and the payment of import duty and export duty.

Art. 8 para. (5) lit. c) of Law No. 26/2022 provides that in order to assess the candidate's financial integrity, the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2).

Art. 37 of the Fiscal Code of Republic of Moldova (in force in 2015) provided in para. (5) that the size of the capital increase resulting from the sale, exchange or other form of disposal (decommissioning) of capital assets shall be equal to the surplus of the amount received in relation to the value base of these assets. Para. (7) establishes that the sum of the capital increase in the fiscal year shall be equal to 50% of the surplus of the capital increase recognized above the level of any capital losses incurred during the fiscal year.

Art. 15 of the Fiscal Code of Republic of Moldova (in force in 2015) provided the income tax of 7% (of the annual taxable income that does not exceed the amount of 29,640 lei) and 18% of the annual taxable income that exceeds the amount of 29,640 lei.

According to art. 41 para. (1) and (2) of the Fiscal Code (in force in 2015), upon the sale, exchange or other forms of alienation of the taxpayer's primary residence, the capital increase is recognized with the exceptions provided for in para. (3). In the sense of this title, the taxpayer's primary residence is considered to be the residence that has been in his ownership for 3 years, a period that expires on the date of alienation of this residence, and which has served as his primary residence throughout this period.

According to art. 15 para. (1) lit. g) of Law No. 544/1995 on the status of judges as well as art.13 para. (1) of Law No. 82/2017 on integrity, judges are obliged to submit their declaration of assets and personal interests in accordance with the provisions of Law No. 133/2016.

c. Reasoning

In assessing the financial integrity of the candidate, the Commission is required to verify that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues, whether the candidate complied with the tax regime and 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).

In her 2015 annual declaration, the candidate declared that in 2015 she sold an apartment for 129,888 MDL (est. 6,200 EUR) and declared a deposit of 36,000 EUR and 1,700 USD. In her answers to the first round of questions, the candidate told the Commission that the source of the 36,000 EUR and 1,700 USD deposited to her account on 27 March 2015 was the sale of the apartment she had declared in the same annual declaration as sold for 129,888 MDL (est. 6,200 EUR). As a result of these discrepancies, the Commission had concerns that the candidate had sub-evaluated the sales price of the apartment in the sales-purchase contract and as a result had not paid the capital tax increase for selling this apartment. The Commission hence asked the candidate in the second round of questions to explain the difference between the declared selling price of this apartment and the real price which she told the Commission as the selling price, namely 129,188 MDL (est. 6,200 EUR) versus 36,000 EUR and 1,700 USD). The candidate did not answer this question.

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 integrity as per art. 8 para. (4) lit. b) and para. 5 lit. a) and c), and ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to sub-evaluation of the apartment sold in 2015 and failure to pay capital tax increase due to the sub-evaluated sale price, 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. a), b), c), d) and f) 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 unanimously by all participating members of the Commission.

Done in English and translated into Romanian.

Signature:



Herman von HEBEL
Chairman, Commission