



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

DISSENTING OPINION

*submitted by member Vitalie MIRON, concerning the decision No. 19, regarding
the candidacy of Ion CHIRTOACĂ,
Candidate for the position of member in the Superior Council of Magistracy,
adopted by the Commission on 20 January 2023.*

Examining the file of judge Ion CHIRTOACĂ, candidate for the position of member of the Superior Council of Magistracy (hereinafter “SCM”), the Commission, by decision No. 19 of 20 January 2023, ruled:

„Based on art. 8 para. (1), para. (2) lit. a) and c), para. (4) lit. a), b) and (5) lit. a) b), c), d) f) and g) 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”.

At the same time, examining the materials of the file, the evidence presented and the opinions expressed, I arrived to the conclusion not to support such a decision.

I certify that the conclusion found in the reasoned decision regarding the failure of evaluation includes the existence of a serious doubt regarding the compliance by this candidate of both ethical and financial integrity criteria. Consequently, separately, I will submit my views on both aspects, as follows:

1. *Failure to disclose bank account and transfers from his parents in the manner prescribed by law, which involves 2 aspects:*

a) Doubts regarding the source of funds transferred by the candidate's parents in the period 2012-2014, via a bank account (EUR) opened in 2010 in the candidate's name at a bank in the Republic of Moldova.

- Thus, the Commission came to the conclusion that the funds transferred by the parents to the candidate during this period were substantially higher than the income accumulated by them during the same period of time. In addition, the parents would have incurred substantial living costs in the country where they lived and worked, and this would make the remaining income available for transfer even lower.
- In the Commission's opinion, the candidate did not present any evidence that would justify the source of income for the transfers made, and the candidate's explanation that this situation was due to the fact that for a period of time his parents worked illegally, was also not taken into consideration.
- In the view of the undersigned, the explanation offered to the Commission by the candidate, related to the circumstances of the case, is a relevant one, to the extent that it can remove the suspicion regarding the source of the income obtained by his parents.
- “Off the books” and/or overtime work performed by our compatriots in the country where the candidate's parents worked, is a notorious fact and cannot be vehemently denied. The answers and information provided by the candidate regarding the annual

amounts of money transferred to Moldova by his parents, do not seem to be dubious, taking into account the level of salaries in the European Union, as well as the fact that both parents at that time were outside the borders of the Republic of Moldova

- It is important to realize that the respective sums of money were sent to the candidate by means of bank transfers, a fact that once again denotes the desire of the subjects involved in this process to use a way as transparent as possible for the flow of these financial sources.
- Based on the above, I conclude that there is no serious doubt that the candidate's parents would not have had the financial capacity to dispose of such funds.

b) Failure to declare the bank account (EUR), opened in 2010 in the name of the candidate, and the transfers obtained from his parents, in the period 2012-2014.

- The observance of the legal regime of the declaration of personal assets and interests by subjects of declaration, 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.
- Although the legal provisions regarding the obligation to declare bank accounts were clear, from the undersigned's perspective, the candidate's answers and position on this subject did not reveal an intention to hide this bank account, but rather an unintentional disregard of an obligation imposed by law in force at that time.
- Thus, taking into account the nature of this bank account, the absence of suspicious transactions, the position of the candidate expressed during the hearings, I note that there was not any intention or reason not to disclose this bank account in his annual declarations and failure to do so was an omission admitted by the candidate.
- At the same time, it should be mentioned that when he became a judge in 2016, the candidate began to declare all bank accounts and financial interests in accordance with the legislation in force.
- Even if the failure to declare the account concerned, in essence, constitutes a violation of the legal regime regarding the declaration of financial assets, in the view of the undersigned, this aspect does not constitute a serious doubt that would allow the disqualification of the candidate on this basis.
- Considering the above circumstances, I establish that the concerns regarding the failure to declare the above-mentioned account have been mitigated by the candidate, a fact that removes any serious doubt regarding the candidate's compliance with the criterion of financial integrity provided for in art. 8, para. (4) from Law No. 26/2022.

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

- On 21 June 2017, the candidate submitted a request to the SCM, through which he requested his inclusion in the list of persons who will benefit from an apartment at a preferential price in order to improve their living conditions. That request was satisfied in 2021.

- According to the conclusions of the Commission, the problem identified in this regard consists in the fact that the candidate would have deliberately omitted to indicate in the application addressed to the SCM, that he actually owned an apartment. This alleged violation would generate serious doubts regarding the principle of assigning an apartment at a preferential price to this person.
- It is important to realize that the candidate submitted an application to the SCM on 21 June 2017. Undoubtedly, that on that date the provisions of Regulation No. 3 of 6 September 2013, regarding the selection of applicants registered in the list of employees in the judicial system who require improvement of living conditions were in force and had legal effect.
- According to the provisions of point 4 of the Regulation mentioned above: "The following categories of employees from the judicial system have the status of applicants under the terms of this Regulation", letter a): "Judges of the courts in the Chisinau municipality, who do not have living space or have insufficient living space, within the limits of Chisinau municipality".
- I find that the phrase "who require improvement of living conditions" found in the content of the application submitted by the candidate to the SCM, in itself presumes and implies the existence of a living space, the conditions of which would be improved at the request of the candidate.
- In such circumstances, I consider that the omission imputed to the candidate could not be an obstacle in satisfying the request to improve the living conditions. On the contrary, it was established that the candidate sold his 38,4 sq.m. apartment and the money obtained from this transaction was invested in the apartment at a preferential price with an area of 68.4 sq.m. It is important to realize that the Commission itself concluded that there is no reason to doubt the fact that the candidate, who previously owned a small apartment and intended to create a family (a fact achieved in 2022), would benefit from a larger apartment. Including the fact that there is no indication that the candidate, who currently resides in his parents' apartment, purchased in 2015, would not intend to live in the apartment purchased at a preferential price when the latter is completed and put into operation.
- In light of the above, I consider that the candidate's actions in this procedure, as a whole, are indicative of the good faith of the person in question, to the extent that they eliminate any serious doubt regarding candidate's compliance with the ethical integrity criterion provided for in art. 8 para. (2) lit. a) from Law No. 26/2022.

Relevant legal framework:

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. (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 regime of declaring assets and personal interests;
- b) the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2);
- c) 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).

Art. 8 para. (2) of Law No. 26/2022 provides that a candidate is deemed to meet the criterion of ethical integrity if 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;

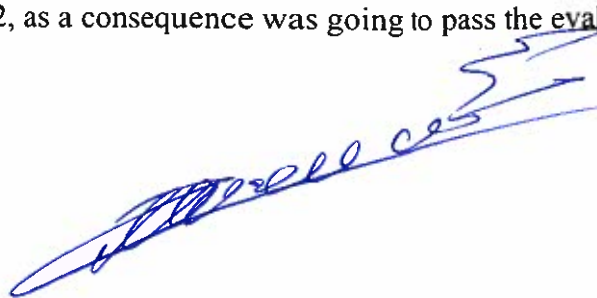
A candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the above-listed requirements which have not been mitigated by the evaluated person (art. 13 para. (5) of Law No. 26/2022).

Art. 12 para. (4), lit. d) of Law No. 26/2022, provides the right of the candidate to present in written form, data and additional information that he/she considers necessary in order to remove suspicions regarding his/her integrity.

Conclusion:

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 approved decision and submitted this dissenting opinion, considering that the candidate Ion CHIRTOACĂ, candidate for the position of member of the SCM, meets the criteria of integrity under art. 8 of Law No. 26/2022, as a consequence was going to pass the evaluation.

Signature:



Vitalie MIRON
Member of the Commission