



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 the member Vitalie MIRON, relating to Decision nr. 21 on the candidacy of Alexei PANIȘ, Candidate for the Superior Council of Magistracy, adopted by the Commission on 24 January 2023.

Having examined the dossier of candidate judge Alexei PANIȘ, candidate for the position of member to the Superior Council of Magistracy (hereinafter "CSM") the Commission, by decision No. 21 of 24 January 2023, ruled:

"Based on art. 8 para. (1) and (2) lit. c), para. (4) lit. a), lit. b) and para. (5) lit. b), lit. c), lit. d) and lit. e) and art. 13 para. (5) 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 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".

However, examining the materials of the dossier, the evidence submitted by the candidate and her explanations during the written rounds of questions and those during the public hearing, I came to the conclusion not to support the Commission's decision and to formulate a dissenting Opinion.

I certify that the conclusion found in the reasoned decision regarding the finding of candidate's failing the evaluation includes in itself the existence of serious doubts regarding the candidate's compliance with both ethical and financial integrity criteria. Consequently, separately, I will express myself on both aspects, as follows:

1. Source of funds for a 300,000 MDL loan and money used from his father's salary card

According to his 2021 annual declaration on assets and personal interests (hereinafter "annual declaration") submitted to the National Integrity Authority (hereinafter "NIA"), the candidate declared a loan of 300,000 MDL contracted from his father. The candidate's father, who was required to file annual declarations as a subject of declaration, being public servant, also declared this loan in his annual declaration for 2021.

When asked during the public hearing about the manner in which this contract was drawn up, the candidate stated that the said legal act was concluded by the parties verbally.

Being asked about the date when this contract was drawn up, the candidate stated that starting with the first months of 2021 this money was received in instalments, and reimbursements were made in cash.

Another relevant aspect is that during 2022, the candidate used his father's salary card. According to the information available to the Commission, in the first six months of 2022, the candidate used 58,927 MDL from this source.

It is worth mentioning that on 22 June 2020, NIA initiated a procedure on controlling the assets and personal interests of the candidate's father for the period 2012-2020. As a result, on 8

September 2021, NIA issued a statement of findings No. 280/11, according to which a discrepancy in the amount of 1,658.640 MDL was found between the wealth acquired by the candidate's parents and the revenues received by them during the period 28 March 2012 – 1 August 2016. Also, NIA found a discrepancy in the amount of 269,451 MDL between the wealth acquired and the income made by the candidate's parents between 1 August 2016 and 7 June 2020. Overall, a discrepancy in the total amount of 1,928.091 MDL was found in the relevant periods.

On 6 December 2022, NIA published a press release on its web page, stating that the Chisinau Court of Appeal upheld the findings of NIA. It should be noted that the said court judgment is not final and irrevocable.

Based on the fact that the candidate knew about the existence of a control procedure initiated "no later than August 2020", a fact confirmed during the public hearing, the Commission qualifies as concerning the fact that the candidate did not accept any responsibility regarding the verification on the lawfulness of the financial sources used.

Consequently, the Commission has serious doubts about the compliance of the candidate with the criteria of financial and ethical integrity as per art. 8 para. (2) lit. a), para. (4) lit. a) and b), para. (5) lit. c), d) and e) of Law No. 26/2022 with respect to the source of funds for the 300,000 MDL loan and the salary card of the candidate's father used by the candidate in 2022 while his father was the subject of the control proceedings.

Considering the stated circumstances, I attest that the Commission's concerns were generated by the Statement of findings No. 280/11, issued by NIA on 8 September 2021, and this was pointed out in order to impute certain suspicions to the candidate.

Upon the assumption that the unfavourable decision is not irrevocable and may be challenged with an appeal at the Supreme Court of Justice (hereinafter "SCJ"), there is a probability that the Court, having examined the said appeal, would adopt one of the decisions provided for in art. 248 of the Administrative Code, including there is a likelihood that the decision of the Chisinau Court of Appeal will be partially or fully quitted and another decision, favourable to the candidate's father, will be issued by the CSJ or will refer the case to the appellate court for re-examination.

Additionally, I note that according to the statement of findings issued by NIA, the control proceedings of candidate's father assets and interests were carried out for the period 28 March 2012 – 7 June 2020, while the loan agreement that triggered the serious doubts of the Commission was executed in 2021.

It is of relevance to note that the 2020 annual declaration of the candidate's father denotes the existence of an income in the amount of 335,312 MDL, consisting of salary/pension/medical leave, which in no way can raise doubts regarding the source and the legality of these funds, topped up with an amount of 526,581 MDL obtained from the lease of agricultural land. Or, according to the information from the real estate register, the candidate's father is the owner of 651 agricultural land plots with an area of 510 ha, which constantly generates official income registered in his name.

As for the income registered in 2021, I note that the official registered income of the candidate's father was 1,193.959 MDL, and that of the mother was 662,043 MDL. Thus, we can mention that the candidate's parents, cumulatively, registered an official income in the amount of over 1,800,000 MDL, the origin of which is justified in the established manner.

In the light of the above-mentioned circumstances, in the absence of an irrevocable court judgment on the case, considering that the loan agreement was executed in 2021, as well as the fact that the candidate's parents received revenues outside the period subject to the controlling carried out by NIA, I conclude that there is no serious doubt regarding the source of these funds or that the candidate's parents would not have had the capacity to own such funds, even if the candidate's father had been previously targeted in a control procedure of assets and personal interests.

As for the aspect regarding the use of the salary card in 2022, taking into account the above arguments, given that this card is used as a checking account to which are transferred exclusively the salary payments of a civil servant, paid from the public budget, there can be no serious doubts regarding the source of funds used by the candidate in the reporting period.

2. Regarding the sale of the Kia Sorento model car (2017) and cash investments in the house located in Chisinau (2018)

In regard of this issue the Commission has serious doubts about the compliance of the candidate with the criteria of ethical integrity as per art. 8 para. (2) lit. c), and the criteria of financial integrity as per art. 8 para. (2) lit. c), para. (4) lit. a) and b), para. (5) lit. b), c), d) and e) of Law No. 26/2022 with respect to the accuracy of the information and lack of documentation regarding the declared sales price of the car and cash expenditures in the amount of 300,000 MDL, which have not been mitigated by the candidate.

In the undersigned's view, there are no circumstances that would question the legality of the car re-registration procedure carried out by a national public institution.

Regarding the amount of 300,000 MDL, used according to the declared use, I attest that the candidate, in support of the stated position, provided the Commission with a series of permissive documents. The respective documents indicate that during the reporting period the property in question has undergone several interventions. Both the authorization for demolition of January 17, 2019, the urbanism certificate no. 081/9 of September 17, 2019, the building permit 174-c/19 of April 12, 2019, and the final reception report no.01. of March 25, 2021 denote an evolution in which several interventions were made to the building owned by the candidate. Objectively, such type of works cannot be carried out without funds.

Deriving from this reasoning, I determine that the Commission's doubts on this issue have been mitigated and removed by the candidate.

3. Regarding Public Statement of the Candidate on 19 January 2022

On January 14 2022, Eugeniu Rurac, in the capacity of head of the General Directorate within ~~the Security and Intelligence Service of the Republic of Moldova (hereinafter "SIS")~~, submitted

the referral No. 2/124, addressed to the SCM, by which it informs this authority that the General Prosecutor's Office (hereinafter "GPO") and the National Anti-Corruption Center (hereinafter "NAC") were notified with reference to the reasonable doubt of excess of duties by the candidate, an offense provided for in art. 328 para. (3) of the Criminal Code, as well as to the reasonable doubt of usurpation of official quality committed by the candidate in complicity with other persons, an offence provided for in art. 351 para. (1) of the Criminal Code.

On January 17 2020, Eugeniu Rurac in the capacity of head of the SIS General Directorate, (in addition to referrals No. 2/122,123,124 of 14 January 2022) submitted the referral No. 2/149, addressed to the NAC, GPO and SCM, by which he requested these authorities to clarify the circumstances related to the examination by Alexei Panis, judge in the Chisinau Court (Rîșcani seat) and the adoption of the court judgement of 31 December 2021, by which he ruled the reinstatement of Vladislav Clima in the administrative position of president of the Chisinau Court of Appeal.

These referrals were obtained and widely covered by certain mass media.

On 19 January 2022, the candidate commented on these requests launched in the public space, which also bring criminal charges against him.

After the candidate's comments, presented in the media space, the Plenary of the Disciplinary Board of the SCM examining the actions attributed to the candidate in the referral addressed against him, by Decision No. 16/4 of 22 April 2022, found that the candidate committed a disciplinary offense provided for by art. 4 lit. p) from Law 178/2014 regarding the disciplinary liability of judges, applying a disciplinary sanction in the form of a "warning".

It is worth mentioning that in accordance with the provisions of art. 6 of Law 178/2014, from the range of disciplinary sanctions that may be applied to judges, verbal "warning" is the mildest sanction. The candidate challenged the decision by which he was disciplined, that is still pending, or, at the moment there is no final decision on the challenge on Decision No. 16/4 of 22 April. Thus, there is a probability, that this decision, of applying the disciplinary sanction in the form of a "warning", could be overturned or amended.

Although the candidate's appeal against the disciplinary sanction decision in the form of a "warning" for this conduct is still pending, the findings of the Disciplinary Board contribute to the Commission's serious doubts on this issue.

The Commission did not accept that comments on the presence or absence of a conflict of interest on the part of the candidate and whether it was right for him to examine the case, do not constitute comments on an aspect of the case in the sense of prohibiting judges from commenting on pending cases.

The Commission concluded that even if the candidate's remarks did not constitute comments on a pending case, the scope, tenor and basis for the remarks about individuals were problematic from an ethics standpoint. Even when freedom of expression is permitted to respond to slanderous allegations, such expression is to be measured and reasonable, as requires the Judge's Code of

Ethics and Professional Conduct (approved by Decision No. 8 of the General Assembly of Judges of 11 September 2015).

In light of above circumstances, the Commission has serious doubts 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 his public statement on 19 January 2022, which have not been mitigated by the candidate.

With regard to this issue, I express my disagreement with this conclusion of the Commission, or, in the view of the undersigned, the actions of the candidate denote a reaction regarding some allegations concerning this person, which have become public and which in essence are defamatory.

Relevant in this sense are the provisions of art. 9 para. (5) of the Judge's Code of Ethics and Professional Conduct (2015), which expressly provide that the magistrate may express his/her opinion through public statements, realizing his/her right to reply, to refute any false or defamatory statements.

Art. 9 para. (1) of the Judge's Code of Ethics and Professional Conduct regulates the judge's freedom of expression, in terms of the principle of confidentiality and transparency, establishing that the judge enjoys the right to freedom of expression in compliance with the following provisions: shall not divulge, comment and use for personal purposes classified or confidential information that s/he became aware of in the exercise of his/her duties. Para. (4) of the same article limits the judge in making public comments, including in the mass media, on the cases pending in the court until the adopted decisions enter into force.

With reference to this case, I find that in exposing comments or opinions in the media, the candidate did not disclose, comment and use information of which he became aware in the exercise of his duties as a judge.

In the part related to the Commission's findings regarding the ethical violations of the candidate, manifested by the statements regarding the judge Dorel Musteață, I believe that these allegations do not constitute a serious violation of the rules of ethics and professional conduct of judges.

Although the provisions of art. 8 para. (6) of Law No. 26/2022, expressly provide that: "In assessing the criteria provided for in para. (2) - (5) and in making decisions on them, the Evaluation Commission does not depend on the findings of other bodies with competence in the respective field", in the perception of the undersigned, the very fact that during the disciplinary procedure, the Plenum of the CSM Disciplinary Board did not retain in this part any disciplinary deviations or aspects contrary to the ethics of the judge, is important in order to determine the fault attributed to the candidate.

Therefore, the situation concluded by the Commission, in the view of the undersigned, does not fall within the provisions of art. 8 para. (2) lit. a) from Law No. 26/2022. Moreover, a candidate shall be 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.

In the opinion of the undersigned, the exercise of a right of reply by a judge may not be deemed a serious violation of the rules of ethics and professional conduct.

Relevant legislation:

Art. 8 para. (1) of Law No. 26/2022 provides that for the purposes of this Law, the evaluation of candidates' integrity shall consist in verifying their ethical integrity and financial integrity.

Art. 8 para. (5) of Law No. 26/2022 provides that to assess the candidate's financial integrity, the Evaluation Commission shall verify:

- b) compliance by the candidate with the legal regime of declaring assets and personal interests;
- d) the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2);
- g) other relevant aspects to clarify the origin and justification of the candidate's wealth.

Art. 8 para. (6) of Law No. 26/2022 provides that in assessing the criteria referred to in para. (2)-(5) and in deciding on them, the Evaluation Commission shall not depend on the findings of other bodies competent in the field concerned.

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: 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.

Art. 13 para. (5) of Law No. 26/2022 provides that 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 requirements laid down in art. 8, which have not been mitigated by the evaluated person.

Art. 12 para. (4) of Law No. 26/2022 provides the candidate's right to submit in writing additional data and information, which s/he deems necessary, in order to remove suspicions about his/her integrity.

Point 9 para. (5) of the Judge's Code of Ethics and Professional Conduct, provides that the judge may express his/her opinion through public statements, realizing his/her right to reply, to refute any false or defamatory statements, including published in the mass media, against him/her. If s/he makes public statements, s/he will be guided by criteria of reasonableness and measure.

Point 9 para. (1) of the Judge's Code of Ethics and Professional Conduct provides that the judge enjoys the right to freedom of expression in compliance with the following provisions: shall not divulge, comment and use for personal purposes classified or confidential information that s/he became aware of in the exercise of his/her duties.

Point 9 para. (4) of the Judge's Code of Ethics and Professional Conduct limits the judge in making public comments, including in the mass media, on the cases pending in the court until the adopted decisions enter into force.

Conclusion:

In the light of the above, given the fact that I disagree with the decision proposed and supported by the majority of Commission members, I voted against the adopted decision and submitted this dissenting opinion, deeming that the candidate Alexei PANIȘ, candidate for the position of member of the SCM, meets the integrity criteria found in art. 8 of Law 26/2022, as a consequence, he would pass the evaluation.

Signature:

A handwritten signature in blue ink, appearing to read 'Vitalie MIRON', written in a cursive style.

Vitalie MIRON
Member of Commission