



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.22 on the candidacy of
Marina RUSU, Candidate for the Superior Council of Magistracy,
adopted by Commission on 27 January 2023.*

Having examined the file of candidate judge Marina RUSU, candidate for the position of member of the SCM, the Commission, by decision no. 22 of 27 January 2023, ruled:

“Based on art. 8 para. (1), para. (2) lit. a) and c), para. (4) lit. a) and para. (5) lit. b) 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 the ethical and financial integrity criteria. Consequently, separately, I will express myself on both aspects, as follows:

1. *Failure to submit assets and interest declarations for the period 2014-2016.*

According to the Decision of the Superior Council of Magistracy (hereinafter “SCM”) No. 147/4 of 4 February 2014, the candidate was suspended from the position of judge between 5 May 2014 and 2 October 2017. The suspension of the employment relationship is due to the fact that the candidate requested the granting of maternity leave. This period ended on 2 October 2017, when she resumed her work as a judge.

On 30 March 2018, the candidate submitted her annual declaration on assets and personal interests for 2017 to the National Integrity Authority (hereinafter “NIA”). According to art. 6 para. (5) of Law No. 133/2016 on the declaration of assets and personal interests (hereinafter “Law No. 133/2016”), “The subject of the declaration who, in accordance with the legislation in force, has suspended employment or service relations shall submit the declaration within 30 days after reinstatement, indicating in the declaration the income obtained together with the family members, his/her cohabitant throughout undeclared periods, also the assets and the personal interests held mentioned in art. 4 para. (1) lit. b) – m) at the date of submitting the declaration”.

In accordance with the provisions of the aforementioned rule, the candidate, within the deadline established by law, had the obligation to submit to NIA a declaration on assets and personal interests for the period 2014 - 2016. The circumstances of the case indicate that the candidate did not submit a declaration in the manner provided by the provisions of art. 6 para. (5) of Law No. 133/2016.

Both in response to written questions and at the public hearing, the candidate confirmed that she had not submitted the declaration for the period 2014 - 2016, because she did not know that she had to declare her assets and personal interests for the period in which the employment relations were suspended. Regarding this aspect, the Commission took note of the candidate's argument, according to which this omission was admitted unintentionally.

In the written communication with the Commission, being asked about the sources of income for years 2014 - 2016, the candidate explained that the income she obtained in this period added up from two sources: (1) maternity leave and childcare allowances and (2) her ex-husband's income. In confirmation of what had been declared, the candidate submitted documents confirming her husband's income registered in the period 2014 - 2016, including the amounts of childcare allowances obtained during the reference period. Regarding the monthly expenses calculated according to the consumption expenditure indicator of the population (CEP), based on the methodology of the National Bureau of Statistics, the candidate stated that compared to the monthly consumption in that period, her family would have incurred net consumption expenses lower than those established under the invoked methodology.

In light of the above-mentioned circumstances, the Commission came to the conclusion that the lack of information about the revenues and assets acquired by the candidate in the period 2014 - 2016, made it impossible to verify this issue in detail. In absence of all financial information, the Commission could not get an accurate picture of the candidate's financial situation during that period and was therefore unable to verify whether the revenues obtained were legitimate and whether the assets were acquired lawfully, as provided for in art. 8 of Law No. 26/2022.

As a consequence, serious doubts persist regarding the compliance of both the financial and ethical integrity criteria by the candidate, pursuant to art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022, which have not been mitigated by the candidate.

In this case, I determine that the candidate did not submit a declaration in the manner provided by the provisions of art. 6 para. (5) of Law No. 133/2016, for the period 2014-2016, during which her employment relations were suspended in connection with her maternity leave.

Also, in the context of the issue identified, I note that the observance of the legal regime of declaration of assets and personal interests by judges is aimed to prevent unjustified and illicit enrichment and to avoid conflicts of interest in their activity, including by holding them accountable for such deeds.

Although the provisions of Law No. 133/2016 were clear, in the view of the undersigned, the candidate's answers and position on this issue did not reveal an intention to hide the income registered in the period 2014 - 2016, during which the candidate was on maternity leave.

As for the concerns of the Commission regarding the impossibility to verify the lawfulness of the income received in the period 2014 - 2016, I consider that they have been mitigated by the provision documents that reflect the incomes obtained by her family during the reference period, including in light of the candidate's explanations on this issue.

Regarding the Commission's doubts on the impossibility of verifying the manner and legality of obtaining the assets acquired by the candidate, together with her family members, in the period 2014 - 2016, I find that, based on the information verified and collected by the Commission in order to fulfill its mandate, the persons concerned at art. 6, para. (5) of Law No. 133/2016, during the mentioned period, did not acquire any movable/immovable property. In such circumstances, I have no doubt, for the simple reason that during the period of maternity leave (2014 - 2016), some movable/immovable property was not acquired.

Even if the omission admitted by the candidate, in essence, constitutes a violation of the legal regime on declaration of financial assets, in the view of the undersigned, this derogation does not indicate the existence of a serious doubt regarding the observance of both the financial and ethical integrity criteria provided for in art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022, resulting in the candidate's failure to pass the evaluation.

2. Delays in examining 16 complaints on conditions of detention

In January 2019, the candidate was appointed as investigative judge at Cahul Court, Taraclia office. According to SCM Decision No. 444/21 of 16 October 2018, the candidate retained her competence as a judge in order to complete the examination of several pending cases at the Criuleni Court.

In the period 24 September 2019 – 7 November 2019, 16 complaints were submitted to the SCM by some convicts who were serving their prison sentences in Penitentiary No. 1 - Taraclia, based in the town of Taraclia. These convicts invoked the fact that the concerned magistrate would have admitted delays in the examination of the applications submitted in the order provided by the criminal procedural legislation, in force at the time.

The provisions of art. 473² – 473⁴ of the Criminal Procedure Code establish a mechanism for examining complaints regarding conditions of detention that seriously affect the rights of the convicts or persons held in pre-trial detention. The maximum term for examining this type of complaints has been set at three months.

Accordingly, the Commission was concerned about the insufficient diligence on the part of the candidate in terms of organizing her work schedule and her failure to prioritize important cases in accordance with ECtHR standards, which need to be examined and resolved within a reasonable time, given the rights that are affected.

As a result, 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 admission of delays in examination of 16 requests about detention conditions in 2019, which have not been mitigated by the candidate.

It is important to realize that previously, all these concerns were the subject of a disciplinary procedure initiated against this candidate.

As mentioned, in the period 24 September 2019 - 7 November 2019, 16 complaints were received by the SCM, the content of which was set out above.

On 21 February 2020, the Plenary of the Disciplinary Board through Decision No. 5/2 terminated the disciplinary procedure initiated on the basis of the complaints received. The basis of the adopted decision was the fact that, although the deadline for examining the applications by the authors of the referrals was overdue, the reasons for these delays cannot be attributed to the candidate, and therefore, no disciplinary misconduct was found in the candidate's actions.

Decision No. 5/2 of 21 February 2020 was challenged, and by SCM Decision No. 227/24 of 6 October 2020, the appeal filed was admitted and a new decision was adopted according to which a disciplinary sanction was applied to this magistrate in the form of a "warning".

Being in disagreement with such a resolution, the candidate appealed the SCM decision No. 227/24 of 6 October 2020 to the Chisinau Court of Appeal.

As a result, on 29 November 2021, by Decision No. 3-202/21, the Chisinau Court of Appeal quashed the challenged decision and the disciplinary sanction in the form of a "warning", respectively. Even if the complaints submitted by the convicts were examined late with respect to the provisions of the legislation in force, the Chisinau Court of Appeal determined that the circumstances of delays in dealing with the respective cases were not generated by reasons imputable to the candidate.

On 4 February 2022, the SCM filed an appeal against the decision of the Chisinau Court of Appeal, resulting in the decision of the Supreme Court of Justice, (No. 3ra-271/22 of 6 July 2022) by which the court declared the submitted appeal inadmissible.

Although the provisions of art. 8 para. (6) of Law No. 26/2022 provide expressly 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", in the perception of the undersigned, the findings found in the decision of the Chisinau Court are relevant and of importance in order to determine the guilt attributed to the candidate.

In this case, there is an irrevocable judgment, which subject-matter pertains to the circumstances examined by the Commission in relation to the candidate's admission of delays in the examination of 16 applications concerning detention conditions in 2019.

Thus, from the analysis of materials of the dossier and the decision of the Chişinău Court of Appeal, I can't retain the invoked basis and I consider that the candidate's actions in relation to the circumstances of the case are not indicative of serious doubts regarding the candidate's compliance with the ethical integrity criterion, provided for in art. 8 para. (2) lit. a) of Law No. 26/2022.

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. (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. (4) of Law No. 26/2022 states 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 past 15 years corresponds to the declared revenues.

Art. 8 para. (2) lit. a) of Law No. 26/2022 states 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 states 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) lit. d) of Law No. 26/2022, provides a 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.

Conclusion:

In light of the above, given the fact that I disagree with the decision proposed and supported by the majority of the Commission members, I voted against the elaborated decision and submitted this dissenting opinion, considering that the candidate judge Marina RUSU, candidate for the position of member of the SCM, meets the integrity criteria as per art. 8 of Law No. 26/2022, as a consequence, she would pass the evaluation.

Signature:



Vitalie MIRON
Member of Commission,