



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

Redacted version for publication

*Decision No. 44 of 4 July 2023 on the Candidacy of Vasile PLEVAN
Candidate for the Superior Council of Prosecutors*

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 May 29, 14 June and 4 July 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

Vasile PLEVAN, currently holding the position of the interim Deputy Prosecutor of the Anticorruption Prosecutor’s Office (“the candidate”), was on the list of candidates submitted by the Superior Council of Prosecutors to the Commission on 7 April 2022, as updated 13 January 2023, for evaluation for the position of member of the Superior Council of Prosecutors.

The candidate was appointed as prosecutor in the Straseni District Prosecutor’s Office in March 2014. [REDACTED]

[REDACTED] From 2019 to October 2022, the candidate was a prosecutor of the Anticorruption Prosecutor’s Office. On 24 October 2022 the candidate was appointed Interim Deputy Prosecutor of the Anticorruption Prosecutor’s Office.

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 23 January 2023 the Commission sent a request to the candidate for completing and submitting by 30 January 2023 the Declaration of assets and personal interests for the past five 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 30 January 2023.

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, ethics questionnaire and collected information, those issues were raised in written questions with the candidate and during the public hearing.

Written communication with candidate

On 10 April 2023 the Commission sent to the candidate a request for clarifying information, containing nine questions, including 31 sub-questions and 19 requests for further documentation. The candidate replied within the requested time period on 14 April 2023 to all questions and provided most of the requested documents. The candidate sent additional information on 19 April 2023.

On 28 April 2023, the Commission sent a second round of four questions, including seven sub-questions and five requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 3 May 2023 to all questions and provided most of the requested documents.

On 5 May 2023, the Commission sent a third round of two questions, including 10 sub-questions and seven requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 11 May 2023 to all questions and provided most of the requested documents.

On 16 May 2023, the Commission sent a fourth round of one question and four sub-questions, one of which contained request for further documentation. The candidate replied within the requested time period on 17 May 2023 and did not provide the requested document.

On 18 May 2023, the Commission sent a fifth round of two questions and five sub-questions, three of which contained request for further documentation. The candidate replied within the requested time period on 22 May 2023 to all questions and submitted one document.

Following the candidate's request, on 23 May 2023 the candidate was granted access to the

evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022.

On 29 May 2023 the candidate took part in a public hearing of the Commission.

Pursuant to the candidate's request under art. 12 para. (2) of Law No. 26/2022, the Commission determined to conduct a part of the hearings in a closed meeting and met with the candidate in a closed session.

On 6 June 2023 the Commission sent a sixth round of one question and four sub-questions, which included three requests for further documentation, to the candidate. This round of questions concerned a petition received by the Commission on 22 May 2023, just three days before the initial hearing date, from the president and vice-president of Political Party „Partidul Schimbării”. The petition was related to the alleged non-enforcement of the Supreme Court of Justice's decision on a land plot adjustment to the National Hotel in Chisinau and alleged attempted illegal demolition of this hotel. The candidate replied within the requested time period on 9 June 2023 to the question but did not provide the requested documents because, according to him, the case remains pending before the investigative judge and he had no authorization to share case materials with the Commission.

On 13 June 2023 the Commission sent to the candidate a seventh round of one question and one sub-question, to clarify some issues that came out during the evaluation, in particular the matter related to the National Hotel. The candidate replied within the requested time period on 13 June 2023 to the question and provided the excerpts from one document.

On 13 June 2023 the Commission sent a question to the authors of the petition who confirmed that the case is currently pending before an investigative judge.

In view of the pending proceedings in the case concerning the National Hotel, the Commission determined not to pursue this matter in the present decision.

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 prosecutors over the period of time covered by the evaluation. The codes were *Prosecutor's Code of Ethics*, approved by the Prosecutor General order No. 303/35 of 27 December 2007, *Prosecutor's Code of Ethics*, approved by the Superior Council of Prosecutors' decision No. 12-3d-228/11 of 4 October 2011, *Prosecutor's Code of Ethics and Conduct*, approved by Superior Council of Prosecutors' decision No. 12-173/15 of 30 July 2015 and *Prosecutor's Code of Ethics*, approved by the General Assembly of Prosecutors' decision No. 4 of 27 May 2016, amended by General Assembly of Prosecutors' decision No. 1 of 22 February 2019.

Opinion No. 13 (2018) of the Consultative Council of European Prosecutors (CCPE) on the "Independence, accountability and ethics of prosecutors", adopted on 23 November 2018 ("CCPE (2018) Op. No. 13") 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 of 2 May 2022, pursuant to Law No. 26/2022, (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. Ethical violation concerning the investigation of a criminal case of alleged rape [REDACTED]

a. The facts

In April 2015, the Criminal Investigative Unit of a Police Inspectorate registered a complaint from a victim’s mother about an alleged series of rapes of her daughter committed by the victim’s father between September 2014 and March 2015. [REDACTED]

On 30 April 2015, criminal investigation officer of this Unit of the Police Inspectorate concluded a pre-investigation inquiry and issued a report proposing not to initiate a criminal investigation (hereinafter “report of 30 April 2015”) on the complaint because the elements of a crime were not present. This report contains descriptions of statements of the victim provided through gestures, with the help of her mother. The victim stated that her siblings were at home when she was sexually abused by her father, but they were in another room and she didn’t know whether they saw or heard what was happening. The report also refers to the statement of the victim’s mother who indicated that [REDACTED]

The conclusion of the report of 30 April 2015 not to initiate a criminal investigation was based on the following grounds:

1. Medico-Legal Expert Report of 22 April 2015 (hereinafter “Expert Report of 22 April 2015”),

2. No elements of the crime of rape were identified in the actions of the victim’s father, which excludes criminal prosecution.

The report of 30 April 2015 was approved by order of the prosecutor of 3 May 2015. According to this order, the criminal investigation was not initiated because the complaint of the victim's mother lacked "objective confirmation, while other evidence to overturn this conclusion [of the criminal investigation officer] has not been accumulated". The prosecutor's order contains descriptions of statements of the victim provided [REDACTED], reiterating the facts provided in the report of 30 April 2015. This order referred to a statement by the family doctor [REDACTED]. It also relied on the conclusion of the Expert Report of 22 April 2015 [REDACTED].

The order of 3 May 2015 was quashed by the order of the superior prosecutor of 29 December 2015 (the First Deputy Prosecutor General) and the case was sent back for additional investigation. The superior prosecutor's order refers to case-law of the European Court of Human Rights (hereinafter "the Court"), including judgments rendered against the Republic of Moldova, concerning the positive obligations of states under Article 3 of the European Convention on Human Rights (hereinafter "the Convention") to ensure effective investigation in cases of violence committed by private individuals. Specific emphasis was placed on the obligation to effectively investigate sexual crimes and punish perpetrators of such crimes. The superior prosecutor stated that the prosecutor signing the order of 3 May 2015 had acted "contrary to the standards of the European Court".

The superior prosecutor relied on the following omissions as grounds for annulling the order of the prosecutor of 3 May 2015:

- Some of the factual circumstances of a violent sexual nature were not addressed in the order;
- A doctor, who examined the victim [REDACTED] was not identified and questioned;
- The forensic doctor, who carried out the expert examination of 22 April 2015, was not heard [REDACTED];
- A [REDACTED] examination was not carried out [REDACTED].

The superior prosecutor concluded that the prosecutor "when adopting the decision to refuse to initiate the criminal investigation of 3 May 2015, improperly assessed the circumstances of the case, admitted legal and factual mistakes, which deprived [the prosecutor] of objectivity in

assessing the factual situation and which excludes the legal nature of the given procedural decision”.

On 22 April 2016, criminal investigation officer of the Criminal Investigative Unit of the Police Inspectorate issued a report again proposing to refuse the initiation a criminal proceeding of alleged rape. This report is almost identical to the report of 30 April 2015. During the further investigation, the mother of the victim was interviewed again. She repeated her previous statements concerning the case, as well as restating [REDACTED]. In addition, the report referred to an additional statement from a close relative of the victim’s family affirming the facts of the case. Reference was again made to the fact that the victim’s siblings were at home, but in another room and the victim did not know if they saw or heard what was happening. The report also refers to the fact that, on 25 January 2016, the mother of the victim had retracted her previous statements concerning the alleged rape, instead claiming that she had made false statements against her husband in 2015 when she submitted the complaint to the criminal investigative body because “she had wanted to hurt” him. During questioning, the family doctor had repeated her account [REDACTED].

[REDACTED]. In addition, the Report of 22 April 2016 refers to the fact that, in February 2016, an [REDACTED] examination was requested as part of the investigation. [REDACTED] (hereinafter “Expert Report of February 2016”) [REDACTED].

On 4 May 2016, the candidate refused to initiate the criminal proceedings reiterating the statements contained in the criminal investigation officer’s Report of 22 April 2016. The order of 4 May 2016 refers to the statements of the victim, her mother, the family doctor and to the Expert Report of 22 April 2015. The order reiterated the exact content of the order of 3 May 2015, adding a reference to Expert Report of February 2016. The order of 4 May 2016 concluded that no elements of crime were identified and that the criminal case should be dismissed because:

[REDACTED]

The order of 4 May 2016 was upheld by the superior prosecutor’s order of 24 November 2017. On 2 February 2018, the investigative judge annulled the orders of 4 May 2016 and 24 November 2017. Subsequently, on 15 February 2018, the criminal investigation into the alleged rape of the victim was instituted. On [REDACTED] 2021, the victim’s father was sentenced to 17 years in prison [REDACTED]. The case is currently pending [REDACTED].

In his written communication with the Commission, the candidate specified certain procedural aspects of the case and provided documents that were available to him. The candidate noted that the “starting of the prosecution does not mean pressing charges against a person, but rather a procedural stage that allows, within an unlimited timeframe (not 30 days, as it is in criminal proceedings) the carrying out of a number of prosecution actions”. At the hearing the candidate confirmed that, unless a criminal investigation is initiated, there is only a narrow spectrum of procedural actions that can be undertaken.

In his written responses to the Commission, the candidate noted that his 4 May 2016 order relied on the following evidence: statements of the victim’s mother, who in January 2016 denied that her daughter had been raped [REDACTED] and had wrongly accused her husband of rape; statements of the victim, [REDACTED], which did not qualify as evidence under art. 90 para. (3) item 1 of the Criminal Procedure Code (“CPC”); statements of the family doctor [REDACTED]; statements of the suspect, who denied the alleged rape and invoked the alibi of being abroad, which was not refuted by the victim’s mother; the forensic examination report, [REDACTED].

The candidate was asked to explain the order of 15 February 2018 on the initiation of the criminal investigation in view of his order of 4 May 2016. The candidate claimed that the reason for these contrary decisions was the fact that the victim’s mother had changed her statements during the consideration of the case by the investigative judge and again stated that the rape took place. Furthermore, in February 2018, when the case was considered by the investigative judge, the [REDACTED] Evaluation Report of the victim, conducted at the request of her lawyer, became available.

At the hearing, the candidate stated that he [REDACTED] had no personal involvement in the case before May 2016. He confirmed the accuracy of the facts outlined by the Commission as it concerns the first pre-investigation inquiry (April – December 2015). The candidate also stated that the alleged rape had taken place in 2014 and had been reported a year later. The candidate confirmed that obtaining the Expert Report of February 2016, referred in his order, had been one of the instructions indicated in the superior prosecutor’s order of 29 December 2015. The candidate also confirmed that neither the Report of 22 April 2016 nor his order of 4 May 2016 contained information about two other instructions given by the superior prosecutor, specifically, about the doctor, who had apparently examined the victim [REDACTED], and about the forensic doctor, who had carried out the expert examination of 22 April 2015.

In response to the Commission's questions, the candidate stated that all the deficiencies identified by the superior prosecutor's order of 29 December 2015 had been addressed before he issued his 4 May 2016 order. The candidate explained that both he and the superior prosecutor had the authority to instruct the criminal investigation officer to perform any investigative action if there was an omission. As to whether the investigative measures had been performed with a view to identifying the doctor [REDACTED], the candidate stated that "as far as I remember, those measures were undertaken". The candidate claimed that the victim's mother had been taken to the [REDACTED] Hospital to identify the doctor [REDACTED]. The candidate was certain that the information from the hospital [REDACTED] was available in the criminal file. The candidate stated that he did not recall if the forensic doctor (who performed the expert examination of 22 April 2015) had been interviewed. He claimed that "perhaps that action was carried out as well, but I cannot say clear yes or no to that" and he was unable to verify this information. The candidate wished he had had access to the case file, in order to submit a copy of it to the Commission.

The candidate stated that not all of the evidence relating to the case had been referred to in his order of 4 May 2016. As an example, he mentioned that the fact that the victim's mother had recanted her statement in January 2016 was not mentioned in the order. He also stated that superior prosecutors oversee the work of subordinate prosecutors and they check case files and indicate whether any evidence is missing. The candidate noted that "it would have been best if the Commission had had access to all the materials of the criminal investigation so that the Commission could have arrived at a conclusion as to how the investigation had been carried out".

The candidate was asked whether there had been a legal obligation to address in his order of 4 May 2016 all of the omissions identified by the superior prosecutor's order of 29 December 2015. The candidate confirmed that it was mandatory to comply with the written instructions of the superior prosecutor (if there is a disagreement, it can be appealed). However, when issuing an order to refuse a criminal investigation, he was not obliged to respond to each instruction. The candidate noted that a prosecutor's orders are drawn up on the basis of the evidence and that there is no obligation to mention in the order every piece of evidence that is included in the case file. The investigators take into account all of the materials in the case file to reach their conclusions. In response to the Commission's question whether it would have been reasonable to expect that all of the results of the investigative measures addressing the two specific instructions of the superior prosecutor's order of 29 December 2015 had been reflected in the order of 4 May 2016, the candidate explained that, in an order declining a criminal investigation, not all of the evidence is reflected except the parts that had to be contradicted. As an example, he mentioned that the statements of the alleged perpetrator had not been included despite the fact that he had been questioned. According to the candidate, this should not be regarded as an omission, as the prosecutor's orders are subject to review by a superior prosecutor and a judge who both have access to the entire criminal file. The candidate was asked how the victim could have understood what investigative actions had been conducted if they were not mentioned in the order. The

candidate noted that the victim had the opportunity to visit the prosecutor's office in order to familiarize herself with the case materials and then file an appeal.

In defense of his decision not to initiate a criminal investigation, the candidate claimed that the mother of the victim had given inconsistent statements during the two pre-investigation inquiries.

[REDACTED]

[REDACTED]. He further stated that, [REDACTED], the father of the victim had been abroad, which caused the respective authorities to question the veracity of the victim's mother's statements. Thus, according to the candidate, the only available evidence had been the statement of the victim herself, [REDACTED]. In this respect, the candidate referred to relevant provisions of the Criminal Procedural Code on the admissibility of evidence. [REDACTED]

[REDACTED]. However, because the victim's father had been abroad at the time of the alleged rape, it had become impossible to pinpoint the precise time of the rape. The candidate stressed that they relied on evidence that [REDACTED]

[REDACTED]. Thus, according to him, "a decision was made on the basis of the evidence that was legally administered at that time" (April-May 2016). The candidate disputed that it was known at the time of the pre-investigative inquiries that the siblings of the victim might have been aware of the rape. He claimed that these facts became apparent only before the investigative judge in 2018 and, as a result, the criminal investigation was expanded to include this evidence. The candidate concluded that, because of these impediments and the need to corroborate all the evidence, the investigation authorities had not been able to carry out the investigative work more expeditiously. The candidate stressed the importance of victims of rape cases providing correct and truthful information.

The candidate was asked to explain why his order of 4 May 2016 makes no reference to the victim's mother's retraction in January of that year of her earlier statements in view of the fact that the candidate had considered it as one of the main reasons for the non-initiation of the criminal case. He reiterated that he had included in the order only "the evidence that had to be counteracted". Eventually the candidate conceded that "perhaps the order would have been clearer if I had included that for an objective observer". As to why he had outlined the statements of the victim's mother in detail when she had recanted them, the candidate noted that "I left that in because they had to be disproved, to be counteracted". The candidate was confident that the evidence that had been included in the order of 4 May 2016 was sufficient to substantiate his conclusions on non-initiation of the criminal case. Furthermore, the candidate was sure that his order would be reviewed by the superior prosecutor and an investigative judge who would have access to the entire investigative file.

In connection with the victim's mother's recantation in January 2016 of her earlier allegations, the candidate was asked what consideration had been given to the fact [REDACTED]. At first, the candidate challenged that a series of alleged rapes had taken place [REDACTED]. The candidate argued that the fact that the [REDACTED] could be interpreted from different perspectives. The victim's mother might have deliberately made false statements to take revenge on her husband [REDACTED]. She might have lied that the victim had been raped, or that she had not. The candidate also stated that the victim's mother had visited the police station with her husband, holding his hand.

The candidate stated that, while he had signed the indictment and sent the case for trial, the evidence was inconclusive as to whether the accused was guilty. He further stated that the evidence should be looked at in its entirety. The fact that [REDACTED], the mother had wanted revenge, [REDACTED], there had been conflicting information [REDACTED] – should all be taken into account.

The candidate noted that cases are dismissed all the time, but are reopened when new evidence emerges, as happened in this case. As to the new evidence that emerged in 2018, the candidate mentioned that the victim's mother had changed her statement again and claimed that the rape had taken place. Furthermore, she had submitted a copy of a [REDACTED] Evaluation Report of the alleged victim that had been carried out outside of the criminal investigation, after the candidate's order of 4 May 2016 had been issued. That led the investigative judge, in February 2018, to annul the orders of 4 May 2016 and 24 November 2017. The candidate mentioned that the Prosecutor's office had not challenged the decision of the investigative judge, even though the evidentiary basis was very limited.

The candidate was also asked whether he had issued instructions to interview the siblings of the victim, who might have witnessed the alleged rape, especially since the mother had recanted her story and the victim could not communicate effectively. The candidate confirmed that they had not been identified and questioned. He further noted that no such omission had been identified by the superior prosecutor, otherwise, he would have issued instructions to question them. As far as he could remember, this information had become available later and the siblings had been questioned in the framework of the criminal investigation initiated in February 2018.

The candidate was also asked to explain why the close relative, who had corroborated the alleged rape of the victim, had not been questioned, especially if the evidence provided by the victim and her mother was challenged. The candidate responded that the relative had not been a direct witness of the alleged rape and she could only have provided hearsay evidence, which could not have been taken into consideration. However, as confirmed by the candidate, "the relative's

statement was used as a basis for the initiation of the criminal investigation. It was one of the grounds for [...] initiating the criminal investigation. Following her statements – the criminal case was open”.

In response to the Commission’s question concerning the victim’s mother’s legal representation, the candidate stated that the victim’s mother had no legal representative during the pre-investigative inquiries. Apparently, the victim was represented by a lawyer as of fall of 2017 when the case was pending before an investigative judge. Because the victim’s mother appealed the order of 4 May 2016 in November 2017, the candidate assumed that she had not been notified about his order within the 15 days deadline prescribed by law.

As to the [REDACTED] evaluation Report, the candidate confirmed that it had been conducted sometime in October 2017, at the behest of the victim’s family. The [REDACTED] Evaluation Report contradicted the results of the [REDACTED] expert Report [REDACTED]. According to the candidate, the [REDACTED] examination had greater evidentiary value, as it had been carried out by an expert [REDACTED]. The candidate explained that the criminal investigative authorities could not have commissioned a [REDACTED] evaluation from non-authorized institutions [REDACTED]. However, such an evaluation can be conducted in a [REDACTED] facility where [REDACTED] professionals are available. The candidate found that it was “bizarre how a [REDACTED] can come with such a conclusion while ... experts [REDACTED] came with a totally different conclusion”. The candidate was not aware whether the supervisory prosecutor, who had approved his order of 4 May 2016 on 24 November 2017, had had access to the [REDACTED] Evaluation Report of October 2017. The candidate was asked to explain why he had given importance to the [REDACTED] Evaluation Report in his written answers to the Commission if it had had no value compared to the [REDACTED] examination. The candidate responded that the [REDACTED] Evaluation Report did not exist in 2016 and it had come out later, before the investigative judge.

The candidate was also asked if border crossing records had ever been checked in order to determine whether the victim’s father had come back to the Republic of Moldova during the relevant time period. The candidate could not remember if this information had been checked or whether it had been reflected in the criminal case during the pre-investigation inquiry. He again referred to his lack of access to the criminal case file. As to whether this information might have been reflected in the 4 May 2016 order since it would be more reliable than either the suspect’s or the victim’s mother’s statements, the candidate recalled that even “the additional statements of the mother, who, at that time, had negated the act of rape” had not been included in the order.

The candidate also explained that he was present during the consideration of the case by the investigative judge in February 2018 and explained the reasons, including the legal grounds, for his order of 4 May 2016. Thereafter the prosecutor’s office, with the participation of the superior

prosecutor, re-assessed the case including the victim's mother's changed statement and decided to proceed with the investigation without appealing the decision of the investigative judge. The candidate stated that "all solutions had been reported and coordinated with my managers, superior prosecutors. That's how practice works".

As to whether he had been in breach of the European Court of Human Rights' standards in view of the superior prosecutor's order of 29 December 2015, the candidate stated that he had not violated any of the Court's principles. He explained that the "criminal case had been exclusively managed by the criminal investigation body, and it was not under the control of a prosecutor". He further stated that "there is a delimitation between a criminal case that is led by a prosecutor – and for which the prosecutor is responsible – and a criminal case that is managed exclusively by the criminal investigation body". Accordingly, when he received the case and studied the files, he concluded that the omissions that had been found by the superior prosecutor, to the extent possible, had been remedied. He claimed that, if there had been a violation, he would have been disciplined.

The candidate was also asked whether he would have acted differently now. The candidate replied that, in this case, there had been serious allegations against a person, which required utmost prudence. The candidate stated that he had followed all the guidelines that had existed at the time.

b. The law

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.

The *Prosecutor's Code of Ethics and Conduct*, approved by Superior Council of Prosecutors' decision No. 12-173/15 of 30 July 2015 was applicable to the candidate at the relevant time.

Pursuant to art. 2 of the Prosecutor's Code of Ethics and Conduct of 30 July 2015, the prosecutor represents the public authority which, in terms of society and the public interest, ensures the application of the law, taking into account the rights of the person and the efficiency of justice.

Art. 6.1. deals with the principle of legality. According to art. 6.1.4., the prosecutor must respect the legitimate rights and interests of the parties and participants in the proceedings, natural and legal persons.

Art. 6.2. deals with the principle of independence. According to art. 6.2.1., the prosecutor must exercise his/her duties independently, impartially, honestly, irreproachably, showing a high moral

standing and maximum fairness and to contribute to the efficient and effective realization of the act of justice. Independence is not a privilege, or a prerogative conferred on prosecutors in their personal interest, but a guarantee of a fair, impartial and effective justice that protects the public and private interest in society. Pursuant to art. 6.2.3., the prosecutor must, in taking decisions, including discretionary ones, act independently and impartially in accordance with the law, respecting the provisions of this Code and all departmental and interdepartmental acts. Pursuant to art. 6.2.4., the prosecutor must take decisions based on the impartial and objective evaluation of the evidence, taking into account all the relevant circumstances of the case, to carry out its duties without fear, favoritism or prejudices.

Art. 6.3. deals with the principle of integrity. According to art. 6.3.1., the prosecutor must comply with the highest standards of integrity and responsibility in order to ensure the society's trust in the prosecutor's office.

According to the Commission's 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.

According to art. 8 para. (6) of Law No. 26/2022, in assessing the criteria set out 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.

According to art. 51 para. (3) of the Criminal Procedure Code (in force in 2016), while exercising his/her authority in a criminal proceeding, the prosecutor is independent and is only obeying the law. He/she, also, executes the written instructions of the hierarchically superior prosecutor regarding the removal of a violation of the law or of omissions committed while conducting or while leading the criminal investigation.

According to art. 255 para. (1) of the Criminal Procedure Code (in force in 2016), within the criminal process, the criminal investigation body, by order, rules/decides on actions or procedural measures according to this Code. Para. (2) of the same article provides that the order needs to be reasoned and include: the date and time of its preparation, surname, name and the official position of the person that prepared it, the case to which it refers and the signature of the person who prepared it. An order that is not signed by the person that prepared it has no legal force and is

considered null. If the criminal investigation body considers that certain measures need to be taken, it makes reasoned proposals in the order.

According to art. 274 para. (5) of the Criminal Procedure Code (in force in 2016), when a prosecutor refuses to start a criminal investigation, he confirms this fact through a reasoned decision and informs, as soon as possible, but not later than 15 days, the person that submitted the complaint. According to para. (6) of the same article, an order refusing to initiate a criminal investigation can be appealed, by a complaint to the court, according to art. 313.

Under Article 1 of the Convention the High Contracting States are obliged to secure for everyone within their jurisdiction the rights and freedoms defined in the Convention. Article 3 requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (*M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII, *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2699, § 22; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; and *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002). Positive obligations under Article 3 of the Convention comprise, first, an obligation to put in place a legislative and regulatory framework of protection; second, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision; and, third, an obligation to carry out an effective investigation into arguable claims of infliction of such treatment (*X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, §§ 22-23; *M. and C. v. Romania*, no. 29032/04, §§ 107-11, 27 September 2011; *M.P. and Others v. Bulgaria*, no. 22457/08, §§ 108-10, 15 November 2011; and *Okkali v. Turkey*, no. 52067/99, § 54, ECHR 2006 XII (extracts)).

Children and other vulnerable individuals, in particular, are entitled to effective protection (*A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI; *M.C. v. Bulgaria*, cited above, § 150). States have an obligation to take particular measures to provide effective protection of vulnerable persons from ill-treatment of which the authorities had or ought to have had knowledge (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V, *D.P. and J.C. v. the United Kingdom*, no. 38719/97, § 109, 10 October 2002; *O’Keeffe v. Ireland* [GC], no. 35810/09, § 144, ECHR 2014 (extracts)). Persons with a mental illness are considered to be particularly vulnerable (*Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III; *Rivière v. France*, no. 33834/03, § 63, 11 July 2006; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 131, ECHR 2014). The Court has examined the States’ positive obligation to protect from ill-treatment, among others, in the contexts of domestic violence (*T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, 28 January 2014) and sexual crimes (*M.C. v. Bulgaria*, cited above).

Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that level is relative and depends on all the circumstances of the case, such as duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state

of health of the victim (*T.M. and C.M. v. the Republic of Moldova*, cited above, §35, *V.C. v. Slovakia*, no. 18968/07, §§ 101, 8 November 2011).

Where an individual claims on arguable grounds to have suffered acts contrary to Article 3, that Article requires the national authorities to conduct an effective official investigation to establish the facts of the case and to identify and, if appropriate, punish those responsible. This procedural obligation includes the requirement to investigate allegations of ill-treatment administered by private individuals (*S.Z. v. Bulgaria*, no. 29263/12, § 44, 3 March 2015).

In order to be “effective” an investigation must be adequate. The authorities must take reasonable measures available to them to obtain evidence relating to the offence in question (see *S.Z. v. Bulgaria*, cited above, § 45). They must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (*Bouyid v. Belgium* [GC], no. 23380/09, § 123, ECHR 2015). Article 3 requires investigations to be prompt and to proceed with reasonable speed. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential to maintain public confidence in their adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts (*Bouyid v. Belgium* [cited above, §121]).

The procedural obligation under the Convention requires that the investigation be accessible to the victims to the extent necessary to safeguard their legitimate interests (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 303, ECHR 2011 (extracts)). Victims should be able to participate effectively in the investigation in one form or another, in particular, by having access to the materials of the investigation. Moreover, following an investigation there should be a reasoned decision available to reassure a concerned public that the rule of law has been respected (*Buntov v. Russia*, no. 27026/10, § 125, 5 June 2012). According to the Court’s case-law, the obligation to give reasons for judgments cannot be understood as requiring a detailed answer to every argument (*Ruiz Torija v. Spain*, 9 December 1994, Series A no. 303-A, pp. 12-13, § 29). While courts are not obliged to give a detailed answer to every argument raised (*Van de Hurk v. the Netherlands*, 1994, § 61), it must be clear from the decision that the essential issues of the case have been addressed (*Boldea v. Romania*, no.19997/02, § 30, 15 February 2007). The reasoned decision is important to allow an applicant to usefully exercise any available right of appeal (*Hadjianastassiou v. Greece*, no.12945/87, 16 December 1992, § 33, Series A no. 252).

There is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable (see *A, B and C v. Latvia*, no. 30808/11, § 149, 31 March 2016, and *M.G.C. v. Romania*, no. 61495/11, § 58, 15 March 2016). The Court is not concerned with allegations of errors or isolated omissions in the investigation: it cannot replace the domestic authorities in the assessment of the facts of the case, nor can it decide on the alleged perpetrators’ criminal responsibility (*M. and C. v. Romania*, no. 29032/04, § 113, 27 September 2011). Furthermore, it is not the Court’s task to

call into question the lines of inquiry pursued by the investigators, or the findings of fact made by them, unless they manifestly fail to take into account relevant elements or are arbitrary (*S.Z. v. Bulgaria*, no. 29263/12, § 50, 3 March 2015). Nevertheless, a failure to pursue an obvious line of inquiry can decisively undermine the investigation's ability to establish the circumstances of the case and the identity of those responsible (*M.N. v. Bulgaria*, no. 3832/06, § 48, 27 November 2012).

Positive obligations on the State are inherent in the right to effective respect for private life under Art. 8; these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. (*M.C. v. Bulgaria*, cited above, § 150, *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, pp. 11-13, §§ 23-24 and 27, and *August v. the United Kingdom* (dec.), no. 36505/02, 21 January 2003).

The Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (UN Doc. A/RES/61/106), was signed and ratified by the Republic of Moldova on 30 March 2007 and 21 September 2010 respectively. The relevant provisions of that Convention are as follows:

Art. 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”

c. Reasoning

The Commission is required to determine that a candidate 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. The Commission has to determine that a candidate observed the requirements of the Convention and applied the Court's case-law when considering the criminal case at issue.

The criminal proceedings that the candidate refused to institute in May 2016 concerned a young woman [REDACTED] who was the victim of alleged rape by her father. Responding to the victim's mother's complaints, the police criminal investigation body carried out two pre-investigation inquiries in 2015 and 2016, each of which concluded with a refusal to institute criminal proceedings on the grounds that no prosecutable offense had been committed. On 29 December 2015, the superior prosecutor set aside the first order of 3 May 2015 on the non-

initiation of criminal proceedings and remitted the case for additional investigation. This served as a basis for the second pre-investigative inquiry. The superior prosecutor specifically instructed the investigation body to conduct a [REDACTED] examination and to interview the doctors who had carried out the [REDACTED] and forensic examination in 2015.

The 29 December 2015 order of the superior prosecutor referred extensively to the Republic of Moldova's international obligations arising from the Convention, which entered into force in the Republic of Moldova on 12 September 1997. The order summarized not only the general principles outlined in the case law of the Court in relation to Article 3 of the Convention, but also the case-law in relation to the Republic of Moldova.

Article 3 of the Convention prohibits torture, inhuman or degrading treatment and punishment in absolute terms -- no exceptions or derogations are possible. For a case of ill-treatment to fall within the scope of Article 3, it must involve a minimum level of severity. Severity depends on the circumstances of each particular case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of a victim. The vulnerability of the victim is a factor that is taken into consideration in determining whether the threshold of severity has been reached. Even in the absence of bodily injury or intense physical or mental suffering, treatment that arouses feelings of fear, anguish, or inferiority capable of humiliating or debasing an individual, may be characterised as degrading within the scope of Article 3. The Court considers that "any interference with human dignity strikes at the very essence of the Convention" (*Bouyid v. Belgium*, cited above, § 101).

The Member States are obliged to ensure that individuals within their jurisdiction are protected from all forms of ill-treatment, even if such treatment is inflicted by private individuals. Positive obligations under Article 3 include effective protection of, *inter alia*, an identified individual or individuals from the criminal acts of a third party, as well as reasonable steps to prevent ill-treatment which the authorities knew about or ought to have known about. Children and vulnerable persons are considered to be special subjects of protection and even more so in the context of domestic violence and sexual crimes. Persons with a mental illness are considered to be particularly vulnerable. Positive obligations on the State are inherent in the right to effective respect for private life under Article 8 of the Convention. According to the Court "effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions". The positive obligation under Article 3 of the Convention, among others, includes the obligation to carry out an effective investigation into arguable claims of infliction of such treatment. According to the applicable general principles under Articles 3 and 8 of the Convention, the States have a positive obligation to enact criminal laws that effectively punish rape, and to apply them in practice through effective investigation and prosecution (*M.C. v. Bulgaria*, no. 39272/98, §153 ECHR 2003-XII).

The State's obligations under Article 3 of the Convention, in cases of violence against persons with disabilities must be interpreted in the light of the Court's case-law and other international

instruments binding on the Republic of Moldova. For example, the United Nations Convention on the Rights of Persons with Disabilities, in force in the Republic of Moldova since 2010, states that the Member States “shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment”. It is recognized that the rate of abuse and violence committed against persons with disabilities is considerably higher than the rate for the general population, and higher for women with disabilities.

Investigation into alleged ill-treatment must be capable of leading to the establishment of the facts and – if appropriate – punishing those responsible (*S.Z. v. Bulgaria*, no. 29263/12, § 44, 3 March 2015). According to the well-established principles of the Court, the investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions in order to close their investigation or use them as the basis of their decisions. The authorities must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Failures during the initial stages of investigative measures may largely determine the outcome of a criminal case at the trial stage.

In view of the above standards, the Commission notes that several criminal investigative measures that could have shed the light on the circumstances of the case were not conducted. There was no attempt to interview the victim’s siblings. The possibility that the siblings might have been witnessed the alleged rape was mentioned in both the 30 April 2015 and 22 April 2016 criminal investigation officers’ reports, contradicting the candidate’s claim that this information only later became available before the investigating judge. The candidate noted that the superior prosecutor had not identified the need to question the siblings, otherwise, he would have instructed the investigators in that respect. The Commission notes that pursuant to art. 51 para. (3) of the Criminal Procedure Code, when exercising his/her functions, a prosecutor is independent and is only obeying the law. The possibility of a superior prosecutor’s engagement in the case does not absolve the candidate from his own responsibility to take actions in conformity with relevant Convention principles.

Further, no attempts were made to interview the close relative, who might have provided credible evidence and corroborated the alleged rape of the victim. This would have been especially important because the statements of the victim and her mother were challenged. The Commission is not convinced that the close relative could only have provided hearsay evidence, especially taking into account the role her statement played in the investigation initiated in February 2018. The Commission also notes that border crossing records of the victim’s father could have provided objective evidence of the father’s whereabouts at relevant times and shed further light on the trustworthiness of the victim’s and her mother’s statements.

In view of the Court’s case-law, the Commission also analysed the reasoning of the candidate’s order of 4 May 2016. The second order refusing to initiate a criminal investigation in this case

was delivered by the candidate on 4 May 2016, according to him, not more than four days after he was assigned to the case. The reports of the pre-investigation inquiries conducted in 2015 and 2016, both finding that no elements of a crime had been uncovered, and the prosecutors' orders refusing to institute criminal proceedings are strikingly similar. The only difference is that the 2016 report and the candidate's order added a reference to the Report of February 2016, which had been conducted in response to the instruction of the superior prosecutor on 29 December 2015. Neither the report of 22 April 2016 nor the candidate's order of 4 May 2016 declining to initiate criminal investigation referred to any of the other instructions of the superior prosecutor. The candidate contended that a thorough investigation had taken place during the course of the further pre-investigation inquiry which had concluded that the rape had not taken place. The candidate acknowledged that it was obligatory to comply with the supervisor prosecutor's instructions. He further claimed that these instructions had been followed, and that the fact that they were not referred to in either the report of 22 April 2016 or his 4 May 2016 order was irrelevant, because all of the materials were available in the case file. The candidate argued that efforts had been made to identify the doctor [REDACTED]

[REDACTED] and that this information was available in the case file. This information cannot be verified. The candidate himself admitted that it would have been better to indicate this information in his order of 4 May 2016 from the viewpoint of an objective observer. In addition, the candidate could not confirm whether the forensic doctor who had taken part in the examination that was the subject of the Expert Report of 22 April 2015 had been interviewed. This report was considered as important evidence in both orders on non-initiation of criminal investigations. Identifying the forensic doctor, who had been representing the official institution, should not have been difficult for the criminal investigative authorities. The Commission notes that including responses to the superior prosecutor's instructions in the order would have assisted the victim's mother, who hadn't benefitted from legal assistance during the pre-investigative inquires, to have better protected her daughter's rights.

The Commission also takes into account that the order of the candidate of 4 May 2016 was appealed in November 2017. In response to the Commission's question as to why it had taken more than a year to file the complaint, the candidate responded that apparently there had been a delay communicating his order to the victim's mother. The Commission notes that such a considerable delay was contrary to the explicit 15-day deadline provided by domestic law. In this regard, the Commission recalls that the authorities are obliged to act promptly and with reasonable expedition.

The candidate conceded that an official criminal investigation would have made it possible to conduct several additional investigative measures and collect further evidence. The Commission, taking into account the well-established case law of the Court, in applications against the Republic of Moldova, among others, notes that the pre-investigation inquiry had a restricted scope and could not lead to the trial and punishment of the perpetrator, since the opening of a criminal case and a criminal investigation are prerequisites for bringing charges that may then be examined by a court. More specifically, the Court noted that "the refusal of the investigator to initiate a proper

criminal investigation of the alleged ill-treatment had... limited the opportunities for evidence-gathering and reduced the overall effectiveness of the investigation of the applicant's allegations" (*Mătăsararu and Savițchi v. Moldova*, no. 38281/08, §§ 25 and 90, 2 November 2010; *Gasanov v. the Republic of Moldova*, no. 39441/09, § 53, 18 December 2012; and *Ciorap v. the Republic of Moldova (no. 5)*, no. 7232/07, § 62, 15 March 2016). Thus, pre-investigative inquiries into the alleged rape case inherently meant that they would not be sufficient to address the complexity of the case.

Further, special diligence on the part of the investigative authorities was required in dealing with this alleged rape case. This was even more important in view of [REDACTED] and was well documented throughout the pre-investigative inquiries (*Opuz v. Turkey*, no. 33401/02, §§ 145-51 and 168§, ECHR 2009; and *T.M. and C.M. v. the Republic of Moldova*, cited above, §§ 46-49). The victim in this criminal case, [REDACTED] should have received effective protection from the State.

In summary, the Commission recognizes that the criminal investigative authorities faced a difficult task, as they were confronted with conflicting versions of the events and no direct evidence. This situation called for a context-sensitive assessment of the credibility of the statements made and for verification of all the surrounding circumstances. The Commission noted that the candidate's order of 4 May 2016 was adopted without some critical investigative measures have been undertaken, such as questioning the siblings and the close relative. The Commission reiterates, that criminal investigative authorities "must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation" (*Bouyid v. Belgium*, cited above, § 123). The Commission also noted that the 4 May 2016 order was not sufficiently reasoned to "reassure a concerned public that the rule of law has been respected" (*Buntov v. Russia*, cited above, § 125) It must be clear from the candidate's order that the essential issues of the case have been addressed. The reasoned order was also important for the victim's mother to exercise the right of appeal (see also art. 274 para. (5) of the Criminal Procedure Code of the Republic of Moldova). Thus, the candidate, in the circumstances of the case, seriously violated the rules of ethics and professional conduct of prosecutors and committed inactions, which are inexplicable from the point of view of a legal professional and an impartial observer.

The Commission finds that the candidate, as a prosecutor, had a heightened duty of protection towards the victim, [REDACTED] who lived in an environment of [REDACTED] and furthermore, had no legal representation during the two sets of the pre-investigation inquiry.

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 ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to his order of 4 May 2016, which have not been

mitigated by the candidate.

2. Sources of funds for donation and loan from the candidate's mother-in-law (2014 and 2020)

a. 3,000 USD donation from the candidate's mother-in-law in 2014

Facts

In 2016, the candidate and his wife bought a 62.6 sq.m. apartment in Chisinau municipality for 342,431 MDL (est. 15,530 EUR). The candidate estimated that repair work on the apartment had cost up to 10,000 EUR (est. 220,500 MDL). At the hearing, the candidate stated that he renovated the apartment throughout 2016 and moved there at the end of the year. One of the sources of funds to renovate the apartment was a donation from the candidate's mother-in-law in 2014 in the amount of 3,000 USD (est. 60,000 MDL in 2016). The candidate and his wife declared this amount in their 2014 declarations of income and property, submitted to the National Integrity Commission (hereinafter "annual declaration"). At the hearing, the candidate explained that he and his wife had been looking for an apartment for a number of years and that the money was kept in cash until 2016 when they purchased the apartment. The candidate stated that no donation contract had been signed between the parties.

In response to written questions and questions at the hearing about the source of funds for the candidate's mother-in-law's 3,000 USD cash donation, the candidate noted that his mother-in-law had been working abroad as a nanny based on an Entrepreneurial Patent during the period of 2009 – 2018. The candidate provided copies of the entrepreneurial patents issued in the name of his mother-in-law for 2017 and 2018 and copies of her passport confirming her exits from and entrances to the Republic of Moldova during the period of 2014 – 2019. In his written answers to the Commission and at the hearing, the candidate stated that his mother-in-law's income was estimated at 1,500 USD per month and that for each three months of work, she had one month of vacation. The candidate estimated his mother-in-law's yearly income during 2009 – 2019 at 13,500 USD for nine months of work. During the period of 2009 – 2021, the candidate's mother-in-law registered income in the Republic of Moldova of 56,003 MDL.

The candidate provided the name and the address of the family for whom his mother-in-law had worked. The candidate noted that his mother-in-law had requested confirmatory documents from this family. At the hearing the candidate confirmed that he did not submit supportive documents confirming his mother-in-law's sources of funds during the period of 2009 – 2014. The candidate noted that he provided to the Commission all of the documents available to him. He also mentioned that border crossing data, to which he has no access, would prove the accuracy of the submitted information.

b. 7,000 EUR loan from the candidate's mother-in-law in 2020.

Facts

In 2020, the candidate's wife reportedly received a loan of 7,000 EUR from her mother. The loan was not disclosed in the candidate's 2020 annual declaration but was disclosed in his 2021 annual declaration. The due date for the loan repayment is 2030. In his written answers and at the hearing the candidate admitted that he failed to disclose the debt of 7,000 EUR in his 2020 annual declaration (In the candidate's wife's 2020 annual declaration, she disclosed a loan of 7,000 EUR received in 2020 but indicate that the loan was from the candidate with a due date of 2022. In her 2021 annual declaration, the candidate's wife disclosed a loan of 7,000 EUR, received from her mother in 2020, with a due date of 2030.).

In his written answers and at the hearing, the candidate stated that the loan of 7,000 EUR was made in December 2020 for the purpose of purchasing a Ford C-Max car. The candidate mentioned that no written contract was made for this loan. The candidate also noted that the conditions for reimbursement of the loan had not been stated and the loan has not yet been repaid. At the hearing, the candidate explained that he had bought the car at a public auction and paid for it in March 2021.

In response to written questions about the source of funds for the candidate's mother-in-law's 7,000 EUR loan, the candidate provided a copy of a residence permit issued to his mother-in-law by one of the European states (valid until September 2024), financial documents confirming her income for the period of 2021 – 2022, as well as her employment contract with a starting date of January 2021. At the hearing, the candidate confirmed that he had not provided any documentation confirming the income received by his mother-in-law for the period of 2019 – 2020.

In his written answers and at the hearing, the candidate explained that between 2019 and 2020 his mother-in-law had been working without an employment contract and that her monthly income was 1,000 EUR, working three months and one month of vacation. He also stated that during that time she received her salary in cash. During the period of 2019 – 2022, she was living and working in the same country due to the COVID 19 pandemic because she could not return to the Republic of Moldova. The candidate also stated that starting from 21 January 2021, the monthly income of his mother-in-law was approximately 1,150 EUR. The candidate estimated that his mother-in-law earned 13,800 EUR during the period of December 2019 – December 2020. At the hearing, the candidate stated that the family for whom his mother-in-law had been working had provided her shelter and other living expenses. The candidate also stated that all of the information he submitted is accurate and that there is criminal liability for providing false statements.

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 para. (1) lit. f) of Law No. 1264/2002 on declaration and control of income and property of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions the candidate was obliged to declare debts (including unpaid taxes), mortgages, guarantees issued for the benefit of third parties, loans and credits.

According to art. 4 para. (1) lit. e) of Law No. 133/2016 on declaration of assets and personal interests (in force since 2016), the candidate was obliged to declare personal debts of the subject of the declaration, his/her family members or his/her cohabitant in the form of debit, pledges, mortgages, guarantees, issued for the benefit of third parties, loans and/or credits, if their value exceeds the value of 10 average salaries in the economy.

According to Government Decision No. 923/2020 on the approval of the amount of the average monthly salary in the economy, the average monthly salary per economy in 2021 was 8,716 MDL.

c. Reasoning

The Commission is required to verify sources of income and the method of acquiring assets of the candidate, family members and close persons to the candidate. The Commission must also find that the candidate's wealth acquired in the past 15 years corresponds to declared revenues.

The candidate's wife received 3,000 USD as a donation in 2014 and 7,000 EUR as a loan in 2020 from the candidate's mother-in-law. In response to the Commission's questions about the source of funds used by his mother-in-law to make the donation of 3,000 USD, the candidate claimed that his mother-in-law had lived and worked abroad during the period of 2009 – 2019. He provided proof of her border crossings for the period of 2014 – 2019 and a copy of the Entrepreneurial Patents for 2017 and 2018. The candidate noted that these were the only documents available to him. The documents demonstrate that the candidate's mother-in-law resided abroad during the mentioned periods. However, they do not show that the candidate's mother-in-law worked during the period of 2009 – 2014, which preceded the time when the 3,000 USD donation was reportedly made, or the amount of her income. In written communication and at the hearing, the candidate argued that his mother-in-law's income during the entire period of her stay in that country was estimated at 13,500 USD a year. At the hearing, the candidate confirmed that he had not submitted to the Commission any proof of his mother-in-law's income for the period of 2009 – 2014. In relation to the 3,000 USD donation, during the written communication, the candidate informed the Commission that his mother-in-law had approached the family that she had worked for requesting that they provide proof of her employment. The Commission was not updated on this matter either through written communication, at the hearing or after the hearing.

The candidate's wife reportedly received a loan of 7,000 EUR (138,180 MDL) in 2020. The candidate did not declare this loan in his 2020 annual declaration in breach of the regulatory scheme for declaring assets and personal interests. When submitting his 2020 annual declaration, the candidate was required to declare any loan exceeding the value of 10 average monthly salaries which, at the time of submission of his 2020 annual declaration in 2021, was 87,160 MDL. The candidate admitted that the loan had been omitted. As to the source of the loan, the candidate claimed that his mother-in-law had worked in one of the European States from 2019, initially without an employment contract, and that her monthly salary had been around 1,150 EUR, which she had received in cash. In 2021, the candidate's mother-in-law legalized her stay and obtained a work permit. The candidate submitted proof that corroborates this statement. However, this documentation is not relevant to the loan purportedly made by her in 2020. As to his mother-in-law's income before 2020, the candidate relied only on his own calculations; he did not mention any efforts made to obtain any proof to support his statement.

The Commission has no doubts concerning the candidate's mother-in-law's residency abroad at the relevant time. The Commission's doubt is about the source of funds used to make two monetary contributions to the candidate's wife and the reliability of the corroboration for those

contributions. In this respect, the Commission reiterates that it has been mandated to verify the source of income of the candidate, his family members and close persons to the candidate. Candidates are expected to mitigate the Commission's doubts. Thus, in respect of both monetary contributions, the candidate submitted his own estimates on the income of his mother-in-law, asking the Commission to accept this as proof. Unlike other candidates who undertook efforts including submitting affidavits from employers, official documents from the respective public authorities, bank data, etc. the candidate provided no such evidence. The Commission finds that the candidate did not mitigate the Commission's doubts regarding the source of funds of up to 10,000 EUR provided by the candidate's mother-in-law in the years 2014 and 2020.

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), para (5) lit. c), d), e) and f) of Law No. 26/2022 with respect to the sources of funds of his mother-in-law's donation of 3,000 USD in 2014 and loan of 7,000 EUR in 2020, which have not been mitigated by the candidate.

IV. Decision

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