



Independent Evaluation Commission for assessing the integrity of candidates  
for the position of member in the self-administration bodies of judges and prosecutors

Comisia independentă de evaluare a integrității candidaților la funcția  
de membru în organele de autoadministrare ale judecătorilor și procurorilor

*Decision No. 40 of 9 June 2023 on the Candidacy of Olesea VÎRLAN ,  
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 24 May 2023 and 9 June 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*

Olesea VÎRLAN, prosecutor interim deputy of the Chief Prosecutor in the Ialoveni District 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 on 13 January 2023, for evaluation for the position of member of the Superior Council of Prosecutors.

The candidate was appointed as a prosecutor on 7 October 2005 to serve in Rezina District Prosecutor's Office. On 28 February 2019 the candidate was appointed as prosecutor in Ialoveni District 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 the Commission sent a request to the candidate for completing and submitting by 30 January the Declaration of assets and personal interests for the past 5 years as required by art. 9 para. (2) of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter “Law No. 26/2022”). The declaration also includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. The candidate submitted a completed declaration to the Commission on 30 January.

The Commission obtained information from numerous sources in order to assess the candidate's financial and ethical integrity. The sources from which information was obtained concerning evaluated candidates generally included the National Integrity Authority, State Fiscal Service,

General Inspectorate of Border Police, financial institutions, public institutions, open sources such as social media and investigative journalism reports and reports from members of civil society. Not all sources produced information concerning each candidate and not all of the information produced by sources about a candidate was pertinent to the Commission's assessment. All information received was carefully screened for accuracy and relevance.

To the extent that issues were raised from the candidate's declaration and questionnaire and collected information, those issues were raised in written questions with the candidate and during the public hearing.

*Written communication with candidate:*

On 19 April 2023 the Commission sent to the candidate a request for clarifying information, containing eight questions, including 26 sub-questions and 17 requests for further documentation. The candidate replied within the requested time period on 26 April 2023 to all questions and provided most of the requested documents. The candidate sent additional information on 27 April 2023.

On 28 April 2023, the Commission sent a second round of 13 questions, including 36 sub-questions and 18 requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 5 May 2023 to all questions and provided most of the requested documents. The candidate sent additional information on 19 May 2023 and 23 May 2023.

On 11 May 2023, the Commission sent a third round of two questions, including 11 sub-questions and two requests for further documentation, to clarify some issues that came out during the evaluation. The candidate replied within the requested time period on 14 May 2023 to all and provided most of the requested documents.

The candidate did not request access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022 and therefore did not receive the materials.

On 24 May 2023, the candidate took part in a public hearing of the Commission.

*II. The law relating to the evaluation*

The Commission's evaluation of candidates' integrity consists of verifying their ethical integrity and financial integrity (art. 8 para. (1) of Law No. 26/2022).

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

- a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer;
- b) there are no reasonable suspicions that the candidate has committed corruption acts, acts related to corruption or corruptible acts, within the meaning of the Law on Integrity No. 82/2017;
- c) has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

A number of versions of ethical codes applied to 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 public hearing about the following financial and ethical issues:

#### *1. Issues involving compliance with the legal regime of declaring assets and personal interests*

##### *1.1. Non-declaration of husband's income and transfers to husband in 2012 – 2015 annual declarations*

###### *a. The facts*

In response to questions from the Commission about income and expense imbalances in certain years, the candidate stated that some expenses had been covered by minimal income from her then husband, who worked periodically as a day laborer in construction. The candidate was married from 2011 to 2017. According to the information regarding her ex-husband's income from the State Tax Service (“STS”), he did not receive any taxable income in the years between 2011 and 2015. In response to the Commission's questions, the candidate did not provide estimates of the numbers of days her husband had worked or the amounts of income he earned and she did not provide any confirmation documents. The candidate explained that she and her husband did not have the best relationship, that he did not communicate any information about his work and he did not tell her how much he was paid; therefore, the candidate did not know his yearly income during that period. The candidate stated that her then husband never contributed to the family income with specific amounts of money, only fulfilling his obligations by providing foodstuffs for the family and clothing for the child. The candidate did not declare any income earned by her husband in her annual declarations on income and property for the period 2012 – 2015 submitted to National Integrity Commission (hereinafter “annual declaration”).

At the hearing, the candidate conceded that she had not declared her former husband's income although it was required by law. The candidate reiterated that her relationship with her former husband was not the best and that he never wanted to disclose his income. The candidate knew he was working as a day laborer in construction, but it was never constant, daily or weekly, and it was only upon request. Her then husband never brought home income in the form of cash, instead providing the family with food and clothes for the child. The candidate was aware that her spouse was earning some minimal income, but she never knew exact amounts that could be

declared in her annual declarations to National Integrity Commission (hereinafter “NIC”). She stated that she did not want to put something erroneous in her annual declarations.

During the period of 2013 – 2014, the candidate’s then husband also received eight bank transfers from abroad totaling approximately 11,500 EUR. The bank transfers, in two different currencies, came from three different people in the same foreign country. In written communication with the Commission, the candidate explained that she did not know about the transfers and found out about them only when the Commission asked her about them. After asking her then husband about the bank transfers, the candidate stated that he had received them at the request of a former college colleague living abroad, in order to pass them along to the colleague’s parents who were elderly and sick and did not have the opportunity to receive a bank transfer. The three senders were the former colleague, his brother and the brother’s concubine. The candidate did not declare these bank transfers because she did not know about them. Her husband was a courier and not the final beneficiary of the funds.

At the hearing, the candidate stated that, if the Commission had information about the bank transfers, she did not contest the validity of the information. She could not provide any information in addition to her previous written answers. She also referred to the improbability of obtaining more information from her ex-husband due to their relationship following their divorce in 2017.

### *1.2. Non-declaration of seven agriculture land plots in 2018 annual declaration*

#### *a. The facts*

Between 2014 and 2016, the candidate inherited 12 agriculture plots of land located outside of Rezina district. She declared the plots appropriately in her 2014 – 2017 annual declarations. In the candidate’s 2018 annual declaration, she declared only five of the 12 plots of land. In her 2019 annual declaration, the candidate declared income of 70,000 MDL from the “sale of plots”. All 12 plots were sold on 25 April 2019 for the sum of 71,060 MDL and according to STS information, the candidate had paid taxes on the capital increase.

In written communication with the Commission and at the hearing, the candidate stated that the omission to declare the plots of land in her 2018 annual declaration was probably a mechanical mistake, was not intentional and that she only noticed it upon being asked about it by the Commission.

### *1.3. Misdeclaration of rights over Toyota Aygo car and failure to state value for three years*

#### *a. The facts*

On 12 August 2017, the candidate was empowered by a notarial power of attorney to possess, use

and transfer ownership of a Toyota Aygo car, m./y. 2007. In her 2017 – 2020 annual declarations, the candidate declared rights of possession and usage over the Toyota Aygo and listed the value of the car as 0 MDL. On 19 July 2018, the candidate concluded a sale-purchase agreement, according to which the owner of the car represented by the candidate sold the Toyota Aygo to the candidate at the price of 8,000 MDL. Starting with her 2021 annual declaration, the candidate indicated ownership rights over the car and listed the value as 60,000 MDL. In written communication with the Commission, the candidate explained that the actual price paid for the car was 60,000 MDL. In response to written questions and at the hearing, the candidate stated that she did not declare ownership rights over the car in her 2018 – 2020 annual declarations submitted to National Integrity Authority (“NIA”) “because the declarations were taken from previous years and [she] did not draw attention to the heading “way of acquiring” that it had to be changed”.

#### *1.4. Failure to declare 300,000 MDL loan guarantee in annual declarations*

##### *a. The facts*

On 12 August 2019 the candidate signed a contract of guarantee with a microfinancing company. According to the provisions of the contract, she became guarantor for a loan of 300,000 MDL due in 60 months at an annual interest rate of 20% contracted by a third person on the same date. The candidate ceased being a guarantor for this loan on her own initiative on 24 January 2022, before the loan was fully paid back by the debtor. The candidate did not indicate this guarantee obligation in her 2019 and 2020 annual declarations.

With respect to not declaring the guarantee obligation in her 2019 – 2020 annual declarations, the candidate conceded that, according to the law, she should have declared that obligation. She explained that, at the time, it did not occur to her to declare a guarantee obligation and she only realized the omission after being questioned by the Commission about it. The candidate did disclose seven loans that she had obtained as borrower in 2019 in her annual declaration for that year.

##### *b. The law*

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests, per art. 8 para. (5) lit. b) of Law No. 26/2022. Pursuant to art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 a candidate’s failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

According to art. 8 para. (5) lit. d) of Law No. 26/2022, the Commission must also verify the sources of income of the candidate and, where appropriate, of persons referred to in art. 2 para. (2).

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 .

Art. 4 para. (1) lit. a) of Law No. 1264/2002 concerning the declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in force in 2012 – 31 July 2016) requires the subject of declaration to declare income obtained together with family members during the declaration period.

“Family members”, as defined by that Law, are: the declarant’s spouse, minor children and dependents. The same Law defines “income” at art. 2 as any increase, addition or growth of the patrimony, regardless of the source of origin, expressed in patrimonial rights or in any other patrimonial benefit, obtained by the subject of declaration or by their family members during the reference period both in the country and abroad.

Pursuant to art. 4 para. (1) lit. b) of Law 133/2016 on the declaration of assets and personal interests (in force since 1 August 2016) required the subject of declaration to declare b) movable and immovable goods, including any incomplete ones, owned with right of usufruct, of use, habitation, superficies by the subject of the declaration, including as beneficial owner or by his/her family members or by his/her cohabitant or in their possession based on mandate, commission or trust agreements, as well as based on translative agreements of possession and of use.

Art. 4 para. (1) lit. e) of Law No. 133/2016 of Law 133/2016 on the declaration of assets and personal interests (in force since 1 August 2016) provides that the subject of declaration shall declare “personal debts of the subject of the declaration, of his/her family members or partner in the form of debt, bond, mortgage, guarantee, issues in the benefit of third persons, loan and/or credit, if their value does not exceed 10 average salaries per economy.

Pursuant to art. 1628 para. (2) Civil Code (in force in 2019), the suretyship is the obligation of the surety (guarantor) assumed for the benefit of a creditor with the purpose of guaranteeing the obligation that the debtor owes to the creditor (guaranteed obligation) and which arises and becomes enforceable only if the guaranteed obligation appears and becomes enforceable.

Pursuant to Government Decision No. 678/2019, 10 average salaries in 2020 amounted to 79,530 MDL (7,953 MDL\*10).

Pursuant to Government Decision No. 923/2020, 10 average salaries in 2021 amounted to 87,160 MDL (8,716 MDL\*10)

Pursuant to art. 6 para. (1). of Evaluation Rules, income or expenditures are relevant for financial integrity, insofar items have not been declared truthfully, and for ethical integrity, including but not limited to insofar as they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions. (

*c. Reasoning*

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests.

Between 2012 and 2020, the candidate made numerous omissions or misdeclarations in a number of annual declarations. The candidate's failures to properly declare involved four different types of financial interests: income (not disclosed in four annual declarations), real property (not completely disclosed in one annual declaration), a motor vehicle (misdeclaration in three annual declarations) and a loan guarantee obligation (not disclosed in two annual declarations).

Annual declarations filed with the NIC and the NIA serve a critical role in monitoring the financial and ethical integrity of prosecutors, judges and other public officials and uncovering corruption. The Evaluation Rules state that undeclared income or expenditures are relevant for financial integrity, insofar items have not been declared truthfully, and for ethical integrity, including but not limited to insofar as they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions (art. 6 para. (1)). A failure to declare income and assets and financial obligations necessarily raises concerns about financial and ethical integrity.

With respect to the bank transfers to the candidate's then husband, the Commission found the candidate credible that she was not aware of the transfers. She and her husband did not discuss his finances and the bank transfers were made to him. Regarding the husband's nominal income from intermittent construction work, as noted in other decisions, the Commission must consider factors including the amount of income not declared, the type or source of the income, whether there is corroboration for the source and amount of the income and the reliability of that corroboration. In this instance the amount of the income appears modest based on the candidate's lifestyle and expenses. The failure to disclose her then husband's income was because the husband was not forthcoming about his income and the candidate did not know the amount. While it might have been preferable for the candidate to contact NIC for guidance, the failure to declare the husband's apparently nominal income does not appear to have involved any intent to deceive or to hide something from public scrutiny.

The candidate's failure to disclose land plots in one annual declaration and misdeclaration of the candidate's rights with respect to the automobile and its value in three annual declarations were ascribed to technical errors by the candidate. In the view of the Commission, the candidate's position was supported by the fact that these assets were properly disclosed in other years. In preparing her 2018 annual declaration, the candidate apparently was not diligent in copying the

information about the land plots from her earlier declarations. She properly disclosed the sale of all of the plots the following year and paid the taxes owed. When her rights over the car changed from right of use to ownership, she neglected to notice that the description of the car needed updating in the annual declarations. The car model, make and year were disclosed every year so there was no apparent intent to hide an asset or its value. The candidate explained that her failure to disclose the loan guarantee obligation was because she was unaware that the obligation had to be disclosed. The Commission noted that the candidate had disclosed seven loans she had taken as borrower the same year the guarantee obligation was undertaken. In the view of the Commission, all of these errors reflect a lack of care on the part of the candidate in filling out her annual declarations. Given the technical nature of the errors and their lack of significant financial import, even taken together, the Commission did not find that they rise to a level of creating doubts about the candidate's financial or ethical integrity. The Commission noted that the candidate responded forthrightly and completely when asked about the omissions. In so doing, the candidate mitigated the Commission concerns.

In light of the above circumstances, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of ethical and financial integrity as per art. 8 para. (2) lit. a), para. (4) lit. b) and para. (5) lit b) of Law No. 26/2022 with respect to non-declaration of seven agriculture plots of land in her 2018 annual declaration, non-declaration of her husband's income in her 2012 – 2015 annual declarations, non-declaration of her 300,000 MDL loan guarantee in her 2019 – 2020 annual declarations and the misdeclaration of the nature of her rights over the Toyota and omission of the value of the car in her 2019 - 2020 annual declarations.

## *2. Sub-evaluation of the purchase price of a Toyota Aygo car*

### *a. The facts*

On 12 August 2017, the candidate was empowered by a notarial power of attorney to possess, use and transfer ownership of a Toyota Aygo car, m./y. 2007. On 19 July 2018, the candidate concluded a sale-purchase agreement, according to which the owner of the car, represented by the candidate, sold the Toyota Aygo to the candidate at the price of 8,000 MDL.

In written communication with the Commission, the candidate provided copies of the power of attorney and the sale-purchase agreement and confirmed that “[she] was the owner of the car since 2018” and explained that the actual price she paid for the car was 60,000 MDL; the 8,000 MDL price was indicated in the sale-purchase agreement at the seller's request. The candidate purchased the Toyota Aygo at a car market in Chisinau municipality and the seller was a stranger to the candidate. At the hearing, the candidate confirmed that the 60,000 MDL payment to purchase was made in 2017. At the hearing, the candidate was asked why, since she was the buyer and was representing the seller through a power of attorney, she indicated an incorrect price in

the sale-purchase agreement. She acknowledged that perhaps she should not have acted that way but the seller had asked her to do so and she didn't want to make a situation out of it. "Everybody used to do it like this back in that day".

In post-hearing written questions, the candidate was asked what her understanding was of the reason(s) why the candidate wanted the price in the sale-purchase contract to be stated as 8,000 MDL, rather than the real price paid of 60,000 MDL, and what exactly the seller said to her about his/her reasons. The candidate responded that she was under a pressing need for transportation, was having difficulty finding a car in her price range and was among several other potential buyers. In response to the Commission's question whether she thought it was ethical for her to put a price in the contract that was not the real price paid, the candidate stated:

"I am very sorry for the inadvertence committed in drafting the paperwork related to this car but it did not affect any values and did not have a negative impact on my ethical and financial integrity. Moreover, the fact that I did not mean to hide the actual price I paid for this car is proven by me declaring the real value of the vehicle in my subsequent income declarations."

[The candidate's misdeclaration of her right of ownership of the car and its value are discussed in Issue no. 1.]

*b. The law*

Pursuant to art. 8 para. (4) lit. b) of Law No. 26/2022, a candidate shall be deemed to meet the criterion of financial integrity if the Commission finds that his/her wealth acquired in the past 15 years corresponds to the declared revenues. In determining whether a candidate meets the criterion of financial integrity, the Commission must verify the method of acquiring the assets owned as per art. 8 para. (5) lit. c) of Law No. 26/2022.

Art. 8 para. (2) lit. a) of Law No. 26/2022 provides that the candidate shall be deemed to meet the criterion of ethical integrity if 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 capacity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal profession and an impartial observer.

According to the Preamble of the Prosecutors Code of Ethics (27 May 2016), respect for the rule of law imposes the highest ethical and professional standards in the behavior of prosecutors, both during the official duties and outside them, capable of bringing citizens' confidence in justice. Under item 6.3.1 of the Code, the prosecutor shall comply with the highest standards of integrity and responsibility to ensure society's trust in the prosecutor's office.

Pursuant to art. 5. para. 2 of the Evaluation Rules, in assessing compliance with the ethical integrity criterion, the Commission may take into consideration the gravity or severity, the surrounding context, and the wilfulness, of any ethical 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 singular 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 rules and regulations.

*c. Reasoning*

The candidate purchased a Toyota Aygo car, representing the seller through a power of attorney. In the sale-purchase contract prepared by the candidate, the price of the car was indicated as 8,000 MDL. The candidate freely admitted that the price she actually paid for the vehicle was 60,000 MDL, more than seven times greater than the amount she indicated in the contract. According to the candidate, she indicated the purchase price of the car in the contract as 8,000 MDL at the request of the seller. At the hearing the candidate stated that “everybody used to do it like this” and observed that perhaps she should not have handled it that way.

The Commission appreciates that throughout the evaluation the candidate has provided detailed information and was cooperative. The Commission cannot ignore, however, that the candidate participated in executing the sale-purchase contract for a car that stated a price that the candidate knew was not correct and was considerably lower than the real agreed upon price. The candidate’s misrepresentation of the purchase price of the car was not done to benefit her and was done at the insistence of the seller, but by participating in this arrangement, the candidate may have assisted the seller of the car avoiding paying taxes on any capital increase on the sale of the car.

Although the Commission finds it unethical to agree to the inclusion of a price in the sale-purchase contract for a car that the candidate knows is not the correct price, the Commission concludes that in light of the specific circumstances in this instance, the incident does not rise to a level amounting to a failure of the ethical integrity criteria. In this context, the Commission has taken into consideration that the candidate’s involvement in this transaction was an isolated event, occurring six years ago, which the candidate concedes she perhaps should not have handled that way. The candidate declared the real price of the car starting with her 2021 annual declaration. She produced the sales-purchase contract for the vehicle that revealed the discrepancy between the contract price and the real price the outset of the evaluation and admitted the discrepancy. The Commission also takes into consideration that the involvement in this transaction did not provide any financial benefit to the candidate.

In light of above circumstances, the Commission did not find 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) and financial integrity as per art. 8 para. (4) lit. b) and para. (5) lit. c) of Law No. 26/2022 with respect to the candidate's sub-evaluation of the price of the Toyota Aygo at the request of the seller when she was the buyer and representing the seller through a power of attorney.

#### *IV. Decision*

Based on art. 8 para. (1), (2), (4) and (5) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate is compliant with the ethical and financial integrity criteria and thus passes 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