

Case No. 3-21/23
2-23045152-01-3-28032023

DECISION
In the Name of the Law

SUPREME COURT OF JUSTICE

1 August 2023

Chisinau municipality

Special Panel of Judges, set up within the Supreme Court of Justice, to examine appeals filed against decisions of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors,

In the panel:

Presiding Judge of the hearing: Tamara Chișca-Doneva

Judges: Mariana Pitic
Ion Guzun

Clerk: Sergiu Sîrbu

In attendance:

With participation of the plaintiff: Valentin Caisîn

Representative of the Defendant, Lawyer: Valeriu Cernei

having examined in a public court hearing, within the procedure of administrative litigation, the appeal submitted by Valentin Caisîn against the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, seeking the annulment of Decision No. 28 dated March 21, 2023, regarding the candidacy of Valentin Caisîn for the position of member of the Superior Council of Magistracy, and ordering the resumption of the candidate's evaluation procedure,

finds:

Arguments of the parties in the proceedings:

On March 28, 2023, Valentin Caisîn submitted an appeal against the decision of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 28 dated March 21, 2023, regarding Valentin Caisîn's candidacy for the position of member of the Superior Council of Magistracy. He requested the annulment of the decision and the resumption of the evaluation procedure.

In the reasoning for his action, the appellant stated that he is a former judge at the Bălți Court and is currently a lawyer within the Lawyer's Office "Valentin Caisîn", holding license No. 3160 of June 12, 2017.

Valentin Caisîn indicated that he was included in the list of candidates submitted by the Parliament of the Republic of Moldova to Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors. This was for the purpose of evaluation for the position of member of the Superior Council of Magistracy. He submitted all the necessary documents as requested, including the declaration of assets and personal interests under Law No. 133/2016, in which all his income was reported.

On 21 June 2023, the Commission sent an ethics questionnaire to the candidate to be filled in voluntarily and returned to the Commission by 5 July 2023. The candidate submitted the completed questionnaire to the Commission on 3 July 2023.

On 27 December 2023, the Commission sent a request to the candidate for completing and submitting by 3 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 measures related to the selection of candidates for the positions of members in the self-administration bodies of the judges and prosecutors (hereinafter "Law No. 26/2022"). The appellant mentioned that all incomes for the past 5 years had been declared. The declaration also includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. Valentin Caisîn submitted a completed declaration to the Commission on 3 January 2023.

On 13 February 2023, the Commission sent a second round of three questions, including eight sub-questions and five requests for further documentation, to clarify some issues that came out during the evaluation. The commission requested the candidate to provide answers to the respective questions by 15 February 2023.

On February 15, 2023, the candidate submitted his answers to the Commission's questions for the second round, within the requested timeframe, and provided most of the requested documents.

On 21 February 2023, the Commission sent a third round of five questions, including 12 sub-questions and seven requests for further documentation, to clarify some issues that came out during the evaluation. He replied within the requested timeframe, on 23 February 2023, to all the questions and provided most of the requested documents. The candidate indicated that additional information would be provided when available.

On 24 February 2023, the Commission sent a fourth round of one question, including three sub-questions and three requests for further documentation, to clarify some issues that came out during the evaluation.

The appellant responded within the requested timeframe, on 26 February 2023, to all the questions and provided all the requested documents.

On 6 March 2023, as a candidate, he participated in a public hearing held by the Commission.

And on 24 March 2023, the Commission sent Decision No. 28 of March 21, 2023, regarding the candidacy of Valentin Caisîn for the position of member of the Superior Council of Magistracy, via electronic mail.

The appellant mentioned that according to Decision No. 28 of March 21, 2023, based on art. 8, para. (1), (2) lit. a), (4) lit. b), (5) lit. a), and art. 13, para. (5) of Law No. 26 of March 10, 2022, he did not pass the evaluation due to not meeting the integrity criteria. This is because serious doubts were raised regarding the adherence to ethical and financial integrity criteria.

He noted that in the reasoning of Decision No. 28 of March 21, 2023, the Commission focused on the non-payment of income tax for the years 2018 – 2021. Regarding this issue, Valentin Caisîn argued that the Evaluation Commission did not state in the decision issued that he failed to declare his assets to the Evaluation Commission in accordance with the current legislation, or that the assets acquired by his family in the last 15 years did not correspond to the declared income.

According to the appellant's opinion, the conclusion of the Evaluation Commission in Decision No. 28 of March 21, 2023, is not based on a comprehensive, complete, and objective multi-aspectual examination of the information presented, as stipulated in art. 10, para. (9) of Law No. 26 of March 10, 2022.

Subsequently, the appellant argued that the Evaluation Commission did not refute the difficult financial situation in Valentin Caisîn's family during the period from 2018 to June 2021, which he mentioned during the public hearing and in written communication with the Commission. However, the Commission did not take into account and did not provide an objective assessment of the income declared by the candidate during the years 2018 to 2021.

The appellant argued that indeed the estimated income amount was around 762,920 MDL. However, according to the tax declarations presented, the income mentioned is reported by the Commission without considering the expenses incurred. The Commission ignored deducting the expenses the candidate bore during the period from 2018 to 2021 from the overall income.

Therefore, he mentioned that according to the presented tax declarations, the total expenses for the period from 2018 to 2021 amount to 194,575.65 MDL. However, the Evaluation Commission did not even mention this in the appealed decision.

He indicated that, according to the asset and interest declarations submitted to the Evaluation Commission, during the years 2018 to 2021, he repaid loans and credits amounting to 309,000 MDL. This fact was also not taken into consideration in assessing financial integrity.

Referring to the asset and interest declarations submitted to the Evaluation Commission for the period from 2017 to 2021, the appellant emphasized that his wife did not work during the years 2017 to 2020. He was the sole provider for the family during this period.

In this context, he invoked that according to art. 8, para. (2), lit. a) of Law No. 26 of March 10, 2022, the candidate shall be deemed to meet the criterion of ethical integrity if: a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer. However, in the specific case, he considers it disproportionate to disqualify his candidacy for the position of member of the Superior Council of Magistracy based on alleged violations that lack gravity. The appellant concluded that he provided the Evaluation Commission with the documents available at the time of the request, and from the content of the submitted documents, there is no doubt that would raise questions about the honesty and credibility of the candidate.

In his opinion, he believes that the Commission's conclusions are based only on interpretations and doubts. However, doubts cannot arise from a lack of information but rather from the presence of truthful and conclusive information.

Furthermore, he argued that the Commission did not provide a proper assessment of all the circumstances of the case.

Another argument invoked by the appellant is that according to art. 8, para. (4) of the aforementioned Law, a candidate shall be deemed to meet the criterion of financial integrity if: a) the candidate's assets have been declared in the manner established by law; b) the Evaluation Commission finds that his/her wealth acquired in the past 15 years corresponds to the declared revenues.

However, in this case as well, the Commission did not refer to the legal grounds, correlated with the factual circumstances, on which it based the serious doubts about the candidate's integrity.

Furthermore, before the Commission, the candidate's assets were declared as per the legislation, and the competent authority in this field, the State Tax Service, was neither notified nor issued any finding/sanction in this regard.

Moreover, from the text of the appealed document, it does not appear that the Evaluation Commission found that the assets acquired by the candidate in the last 15 years do not correspond to the declared income.

He emphasized that all the assets acquired by him and his family are within legal limits and are justified by corresponding documents.

In conclusion, Valentin Caisîn argued that Decision No. 28 of 21 March 2023, does not contain circumstances indicating a serious breach of ethics and professional conduct rules. Additionally, not all the presented information has been definitively examined at present, which could lead to his failing the evaluation for the position of member of the Superior Council of Magistracy.

On 5 April 2023, the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors submitted a reference in which it requested the rejection of the appeal filed by Valentin Caisîn.

In the reasoning of the defense statement, essentially, it was indicated that the appeal submitted by Valentin Caisîn is unfounded, and Decision No. 28 of 21 March 2023, is legal and does not violate the rights and legitimate interests of the appellant.

In the court hearing, the appellant Valentin Caisîn supported the appeal against Decision No. 28 of 21 March 2023, requesting its acceptance based on the factual and legal grounds stated in the appeal.

The representative of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Lawyer Valeriu Cernei, supported the arguments raised in the submitted defense statement and written explanations, requesting the dismissal of the action as unfounded.

Court assessment.

After hearing the parties and their representatives, examining the administrative and court documents in the case, the special court panel of the Supreme Court of Justice finds that the action is admissible and well-founded, for the following reasons.

The timeline for examining the action

According to art. 14 para. (7) of the Law No. 26 of 10 March 2022, by derogation from art. 195 of the Administrative Code no. 116/2018, the appeal against a decision of the Evaluation Commission shall be examined within 10 days.

The appeal submitted by Valentin Caisîn against the decision of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 28 of 21 March 2023, was registered on 28 March, 2023, and assigned to the special panel of judges of the Supreme Court of Justice composed of judges: Tamara Chişca-Doneva (rapporteur) as the president, Maria Ghervas, and Mariana Pitic.

By the ruling of 30 March 2023, of the reporting judge, a member of the special panel of judges of the Supreme Court of Justice, the present appeal was accepted for examination within the administrative litigation procedure. It was ordered to send a copy of the appeal to the respondent, with a deadline until April 5, 2023, 5 pm, for submitting the candidate's case file, reference, and opinions regarding the circumstances, accompanied by evidence, regarding the existence/non-existence of the grounds for inadmissibility justifying this option. The respondent was also required to provide their opinion and objections deemed necessary for establishing the factual and legal situation.

By the Order No. 53 of April 4, 2023, of the Acting President of the Supreme Court of Justice, "Regarding the Amendment of Orders No. 46 of March 28, 2023, No. 34 of March 2, 2023," the composition of the special panel of judges specified in point No. 1 of the Order No. 46 of March 28, 2023, of the Acting President of the Supreme Court of Justice was changed. A new composition of the special panel of judges was established to examine appeals filed against the decisions of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors. The new composition consists of Tamara Chişca-Doneva as the president, and Mariana Pitic and Ion Guzun

as judges. According to the order, Judge Maria Ghervas was designated as an alternate member.

Moreover, the parties to the case were summoned for the court hearing scheduled for April 7, 2023, at 10:00 AM.

On 5 April 2023, the Evaluation Commission submitted a defense statement regarding the appeal, which was sent to the appellant to take knowledge via electronic mail on the same date.

On 6 April 2023, via electronic mail, Valentin Caisîn submitted a request regarding the raising of the exception of unconstitutionality of certain provisions of Law No. 26 of March 10, 2022, on measures related to the selection of candidates for positions of members in the self-administration bodies of judges and prosecutors.

During the court hearing on 7 April 2023, the president of the hearing informed the parties in the trial that on 6 April 2023, the Constitutional Court issued a decision of inadmissibility regarding the exceptions of unconstitutionality raised against certain provisions of Law No. 26 of March 10, 2022. This decision also addressed the issues raised by the appellant in the appeal.

As a result of the Constitutional Court's decision, Valentin Caisîn withdrew his request for the raising of the exception of unconstitutionality, but requested the postponement of the case's examination and the granting of a deadline to take knowledge of the Constitutional Court's decision. The request for postponement was granted, and the next court hearing was scheduled for April 19, 2023, at 1:00 PM.

On April 11, 2023, the Evaluation Commission submitted a request for the recusal of Judge Mariana Pitic.

By the decision of the Superior Council of Magistracy No. 33/2 of February 14, 2023, the recusal request of Judge Maria Ghervas from the Supreme Court of Justice was accepted, and Mrs. Maria Ghervas was released from her judicial duties as of March 31, 2023.

By Order of the Commission for Emergency Situations of the Republic of Moldova No 66 of 10 April 2022 – in the context of the prompt response of the government to the issue of ensuring the operation of the Supreme Court of Justice, expressed in amendments to the regulatory framework and enshrining in it mechanisms to resolve the challenges linked to the provisional filling of judicial vacancies at the supreme judicial court, and having regard to the subsequent actions of the Superior Council of Magistracy, which – following recent legislative intervention through the Law No 65/2023 on External Assessment of Judges and Candidates for the Position of Judge of the Supreme Court of Justice, at the Plenary Meeting of the Superior Council of Magistracy on 10 April 2023 – examined the issue of announcing a competition for filling, by temporary transfer, the vacant judgeships at the Supreme Court of Justice – the specific measures in the field of justice established by the Order of the Commission for Emergency Situations of the Republic of Moldova No 64/2023 were revisited, and it was established that subitem 1.2 of item 1 of the said Order shall be repealed.

By Order No 69 of 4 May 2023 Amending Order No 29 of 29 March 2022, the Acting Chief Justice of the Supreme Court of Justice appointed Judge Ion Malanciuc as an alternate in the Special Panel tasked with the examination of appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors.

According to the recusal request distribution sheet, the examination of the request for the recusal of Judge Mariana Pitic was assigned to Judge Ion Malanciuc for May 15, 2023.

By the ruling of May 25, 2023, of the Supreme Court of Justice, the request for the recusal of Judge Mariana Pitic submitted by the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors was rejected.

The participants in the trial were summoned for the next court hearing scheduled for July 3, 2023, at 10:00 AM. During the court hearing on July 3, 2023, the case was examined on the merits, explanations from the parties were heard, evidence was examined, and pleadings were heard. According to art. 14 para. (9) of Law No. 26 of March 10, 2022, the issuance and placement of the decision on the Supreme Court of Justice's website were announced.

In this context and in the light of the above, the Special Panel notes that the failure to meet the 10-day time limit for the examination of the appeal was due to the complexity of the case, the conduct of the parties to the proceedings, including that of the defendant authority, the difficulty of the debate, the mass resignation at the Supreme Court of Justice, and to the impossibility to form a Special Panel to hear the appeal.

What is more, the length of time the case was pending was conditioned, *inter alia*, by the need to ensure respect for the rights of the participants in the proceedings, which cannot be regarded as a delay in the examination of the case, because the purpose of examining the appeal was to ensure observance of the parties' guaranteed right to a fair trial, which is enshrined in Article 38 of the Administrative Code and in Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Applicability of the Administrative Code

The Special Panel notes that, during the judicial proceedings, the representatives of the Commission raised the non-application of Books I and II of the Administrative Code to the examination of cases pending before the Supreme Court of Justice, an argument that cannot be accepted in the light of the following considerations.

The Special Panel notes that the application of the Administrative Code and the limits of its application are a matter of interpretation and application of the law over which the Supreme Court of Justice has jurisdiction as a court with jurisdiction to examine administrative disputes (DCC No 163 of 1 December 2022, § 24, DCC No 2 of 18 January 2022, § 19).

It is first of all necessary to explain why the Administrative Code is applicable

not only to the evaluation procedure but also to the administrative dispute procedure.

In terms of regulatory content, the Law No 26/2022 contains rules pertaining to substantive public law, procedural law and administrative dispute.

More specifically, the legal provisions regarding the definition and conditions under which the ethical/financial integrity is to be assessed are, by their nature, rules of substantive administrative law, which form the legal basis as per Article 21(1) of the Administrative Code for the issuance of the individual administrative act by the Commission. Accordingly, the provisions of Article 8(1)-(4) of the Law 26/2022 are rules of substantive administrative law.

According to Articles 9(2) and 69(1) of the Administrative Code, the initiation of the evaluation procedure is the initiation of an administrative procedure, at the request of the candidate, for one of the positions of member of the bodies listed in Article 2(1) of the Law No 26/2022. Pursuant to Article 189(1) of the Administrative Code, the initiation of administrative dispute proceedings is conditioned on a plaintiff's claim that a right has been infringed by administrative activity.

The Special Panel thus notes that the decision of the Commission is an individual administrative act within the meaning of Article 10(1) of the Administrative Code. The individual administrative act is the final output of the administrative procedure.

The pass or fail decision adopted by the Commission completes the administrative procedure under Article 78 of the Administrative Code.

Furthermore, the authors of the law noted in the explanatory note to Law No 26/2022 the following: "as a result of its work, the Commission will issue a decision. Given that such decision is an administrative act, it may be appealed in accordance with the provisions of the Administrative Code No 116/2018 with the explicit exceptions set out in this draft."

It is the lawmaker itself that called the decision of the Commission an individual administrative act that may be challenged in an administrative proceeding.

Accordingly, the rules of the Administrative Code on administrative proceedings and the concept of the individual administrative act are applicable to the evaluation procedure, subject to the exceptions provided for by Law No 26/2022.

The Special Panel points out that the evaluation of candidates for the positions of member of the bodies listed in Article 2(1) of the Law No 26/2022 is, by its nature, a specific field of activity within the meaning of Article 2(2) of the Administrative Code.

Although the Administrative Code establishes uniform administrative and administrative litigation proceedings, its Article 2(2) provides that certain aspects may be governed by special legislative rules as long as they are not at odds with the principles of the Administrative Code.

The special rules of the Law No 26/2022 do not preclude the application of Books I and II, with the exception of certain aspects, such as, in particular, the initiation of administrative proceedings, clarification of facts on own motion,

quorum and majority, the right of the candidate to be heard, and others. The wording “certain aspects” in Article 2(2) of the Administrative Code does not mean that the Administrative Code shall not apply.

Therefore, in the circumstances of this case, it is impossible not to apply Books I and II in their entirety because of the central role and the organic link of the Administrative Code with the areas/sub-areas of administrative law.

According to Article 14(6) of Law No 26/2022, an appeal against the decision of the Commission shall be heard and determined in accordance with the procedure laid down in the Administrative Code, subject to the exceptions laid down in this Law, and shall not have a suspensive effect on the Commission decisions, elections or competition in which the candidate concerned participates.

The principles governing the administrative dispute proceedings are set out in Book I of the Administrative Code, in particular Articles 21-27 and Articles 36-43.

There is an organic and substantive link between Books I and II, and III, which governs the administrative dispute proceedings, which cannot be denied or excluded under no circumstances.

Judicial review is a control of legality, which includes checking the legality of the grounds underpinning the form of administrative procedures; whether vague legal concepts were interpreted correctly; the proportionality of equal treatment, impartiality, legal certainty, reasoning; the exercise of discretionary right; whether the authority is allowed to exercise such right; the protection of legitimate expectation etc.

For the considerations stated above, the Special Panel rejects as unfounded the contention of the representatives of the Commission that Books I and II of the Administrative Code are not applicable. If this were the case, it would be tantamount to a denial of the principles of legality, own-initiative investigation, equal treatment, security of legal relationships, proportionality, impartiality of the Commission, good faith etc.

The application of the rules of administrative dispute is conditioned on the application of the same rules that refer to the administrative procedure, such as the collection of evidence under Articles 220(1), 87-93 of the Administrative Code, referrals under Articles 223, 97-114 of the Administrative Code, impartiality under Article 25 of the Administrative Code, recusals under Articles 202, 49-50 of the Administrative Code, forms of administrative activity under Articles 5, 10-15 and 189 of the Administrative Code, the concept of party in an administrative dispute under Articles 204 and 7 of the Administrative Code, legal effects of an individual administrative act, *e.g.* the enforceable nature of the Commission decision as an individual administrative act under Article 171(4) of the Administrative Code, the validity, binding force and *res judicata* of the Commission decision under Articles 139(2)-(4) and 140 of the Administrative Code etc.

The non-application of Books I and II of the Administrative Code would be virtually the same as disqualifying the Commission decision as an individual administrative act and, consequently – the same as denying access to effective judicial review.

In this context, the Special Panel thus emphasizes that the decision of the

Commission is an individual administrative act within the meaning of Article 10(1) of the Administrative Code, because: 1) it is issued by a public authority; 2) it is a decision, order or other official output; 3) it falls within the field of public law; 4) it is a regulation; 5) it relates to an individual case; 6) it has direct legal effects.

Functionally and organizationally, the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors is a “public authority” within the meaning of Articles 7, 10, 203(a) and 204 of the Administrative Code, because it was established by law, it has public law tasks by virtue of its mandate as defined in Article 8 of the Law No 26/2022, and pursues a public interest.

The Special Panel also emphasizes that the administrative procedure of evaluation has a clarifying and guiding purpose owing to the procedural nature of the formal action of evaluating candidates for the position of member of the Superior Council of Magistracy. Respect for the basic principles, safeguards and rules of administrative procedure is therefore a requirement directly rooted in the concept of the rule of law stipulated in Article 1(3) of the Constitution of the Republic of Moldova.

The Law No 180 of 7 June 2023 reinforced the understanding that the Commission is a public authority specific in its own way, i.e. it is not a legal entity of public law, although Article 7 of the Administrative Code – which has a universal meaning – includes and defines the concept of public authority both in the sense interpreted by the Parliament of the Republic of Moldova, i.e. functionally and organizationally, and in the sense of a legal entity of public law, as the case may be or require. This conclusion also follows from the indefinite pronoun “any organizational structure” in Article 7 of the Administrative Code. A public authority – in addition to the element of any organizational structure or body, established by law or other regulatory act to pursue public interests – also falls in the purview of public regime, which establishes the tasks and remits, which gives the right to impose legal force on people with whom the public authority engages in legal relations. A different interpretation and application would mean that the work of the Commission and its decisions are not binding as individual administrative acts, but represent legal acts under private law. The Special Panel points out that a natural person can also be a public authority if they are delegated by law the tasks pertaining to public authorities and the corresponding powers to carry them out. Furthermore, according to Article 72(6) of the Law No 100 of 22 December 2017, the interpretation law does not have retroactive effect, except in cases where the interpretation of the sanctioning rules leads to a more favorable situation.

The Special Panel emphasizes that the Commission’s tasks do not pertain to the private, but to the public areas of activity, which is why it was vested, by Law No 26/2022, with powers that allow it to have a legally binding effect over those evaluated under Article 8 of the Administrative Code. The Special Panel notes, as a matter of principle, that the concept of public authority cannot be mistaken – from a functional and organizational point of view – for that of a legal entity governed by public law, for otherwise the Commission decisions would not fall within the concept of an individual administrative act.

At the same time, it holds that there was no in-depth understanding of Article 2(2) of the Administrative Code, which regulates conditions of derogation by legal provisions from the uniform nature of the Administrative Code for “certain aspects” of administrative activity. Accepting the argument that the Commission is not a public authority would mean denying the legal reality that it carries out administrative activity of public law through administrative procedure and that its decision is an individual administrative act subject to judicial review under administrative litigation procedure. Thus, the public authority concept is not limited to the concept of legal entity of public law, but has its own functional meaning under Article 7 and Article 2(2) of the Administrative Code and for the purposes of Law No 26/2022.

According to Article 10(1) of the Administrative Code, the Commission’s decision is related to the trait of “*any decree, decision or other official measure*” as a defining element of the individual administrative act. This reveals that the Commission does not perform legislative or judicial activity, but that it has a law implementation activity.

According to Article 10(1) of the Administrative Code, the Commission’s decision fits within the concept of “*public law domain.*” According to Article 5 of the Administrative Code, the individual administrative act is one of the forms of administrative activity by means of which the law is applied. The Commission’s decision applied Law No 26/2022, which regulates the substantiation of the decision, and this normative regulation falls, in its legal nature, under the substantive public law. Due to this trait, the Commission’s decision is exempt of private, criminal, contraventional, and constitutional disputes to which public authorities can be party as per Article 2(3)(a)-(c) of the Administrative Code.

According to Article 10(1) of the Administrative Code, the Commission’s decision is a “*regulation*” by means of which the defendant exercises unilaterally its substantive competence in line with Article 6 of Law No 26/2022.

The Court emphasizes that this element of the individual administrative act delimits it from other forms of administrative activity, such as the real act and the administrative contract.

According to Article 10(1) of the Administrative Code, the Commission’s decision relates to “an individual case”, which consists of the concrete situation of plaintiff’s evaluation.

This trait of the individual administrative act has the function to delimit it from the normative administrative act, which is an abstract regulation as per Article 12 of the Administrative Code.

According to Article 10(1) of the Administrative Code, the Commission’s decision meets the criterion of “*with the purpose to produce direct legal effects*”, which means to create, alter or terminate legal relationships under the public law. The Special Panel holds that the Commission’s decision produces direct legal effects in the legal sphere of the plaintiff, in her capacity of a judge that applied for the position of member in the Superior Council of Magistracy, the College for the selection and career of judges and College for the evaluation of judges’ performance. This criterion has the function to differentiate the individual administrative act from a simple administrative operation carried out under an

administrative procedure of assessing the candidate's financial and ethical integrity.

The Special Panel thus notes that the decision of the Commission is an individual administrative act whereby the administrative procedure is completed. The concepts of administrative procedure defined in Article 6 of the Administrative Code and of public authority defined in Article 7 of the Administrative Code have a universal nature, being applicable to any area/sub-area of public law. These are the reasons why the Commission had and has the obligation to apply the provisions of the Administrative Code and the procedural rules laid down in Law No 26/2022 in the part related to derogations from the uniform nature of the Code.

It is therefore unacceptable that the defendant's representatives argue that the evaluation procedure is not an administrative procedure governed by the rules of the Administrative Code, such as the principle of legality (Article 21), the principle of investigation of own motion (Article 22), the principle of equal treatment (Article 23), the principle of good faith (Article 24), the principle of impartiality (Article 25), the principle of procedural language and reasonableness (Article 26, Article 27), the principle of efficiency (Article 28), the principle of proportionality (Article 29), legal certainty (Article 30), the principle of motivation of administrative acts and administrative operations (Article 31), the principle of comprehensibility (Article 32), the principle of protection of legitimate expectations and others.

Regarding the existing judicial practice on appeals brought against the Evaluation Commission (cases numbered 3-5/2023 and 3-13/2023), where the court has established by virtue of *res judicata* that the provisions of Books I and II of the Administrative Code are not applicable to appeals against the Evaluation Commission, the special panel of judges set up within the Supreme Court of Justice notes that these cases do not form a unified judicial practice. However, the role of caselaw is to interpret and apply the law to specific cases. Respectively, not every decision that differs from another decision represents a case-law divergence.

The *res judicata* principle does not force the national courts to follow precedents in similar cases, as implementing legal coherence requires time and periods of case-law conflicts can, therefore, be tolerated without undermining legal certainty.

In these circumstances, the special panel of judges stipulates that, according to the rules of judicial organization, a judge is not generally bound by the decision rendered by another judge, nor even by their own previous decisions, as they make rulings on the specific case presented before them.

Application admissibility.

According to Article 207(1) of the Administrative Code, the court shall check of its own motion if admissibility requirements for an administrative dispute application are met.

Pursuant to Article 189(1) of the Administrative Code, every person that claims that their right has been infringed by administrative activity may file an application for administrative dispute.

According to Article 5 of the Administrative Code, the administrative activity

under the public law of public authorities includes the individual administrative act as the main form of administrative action of the authorities.

The Special Panel reasoned in the section of applicability of the Administrative Code why the Commission's decision is an individual administrative act. Therefore, in terms of application admissibility, it is emphasized that the Commission's decision is an unfavorable individual administrative act.

According to Article 11(1)(a) of the Administrative Code, individual administrative acts can be unfavorable acts – acts which impose obligations, sanctions, and burdens on their addressees or affect the legitimate rights/interests of persons or which refuse, in whole or in part, to grant the requested benefit.

According to art. 17 of the Administrative Code, an infringed right is any right or freedom established by law that is infringed upon by administrative activity. The special panel of judges noted that through the submitted action, applicant Valentin Caisîn asserts the violation of a right through administrative activity, in accordance with art. 189, para. (1) of the Administrative Code. Specifically, he claims that by Decision No. 21 of January 24, 2023, the Evaluation Commission violated his right to be elected to the position of member of the Superior Council of Magistracy and his right to a favorable evaluation decision for the candidate Valentin Caisîn.

By derogation from Article 209 of the Administrative Code, Article 14(1) and (2) of the Law on certain measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors No. 26 of 10 March 2022 regulated a special time frame for filing the administrative lawsuit application. Thus, the decision of the Pre-Vetting Commission may be appealed by the evaluated candidate within 5 days from the date of receiving the reasoned decision, without following the preliminary procedure

The evaluated candidate may appeal the unfavorable decision of the Evaluation Commission before the Supreme Court of Justice, which shall form a special panel consisting of 3 judges and a substitute judge. Judges and substitute judge shall be appointed by the President of the Supreme Court of Justice and confirmed by the decree of the President of the Republic of Moldova.

In this context, it is noted that the decision of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 28 of March 21, 2023, was communicated to Valentin Caisîn on March 24, 2023, via email, a fact confirmed by the email excerpt attached to the case materials (p.15). The special panel of judges concludes that Valentin Caisîn's appeal request is admissible, as the applicant complied with the provisions of art. 14, para. (1) of Law No. 26 of March 10, 2022. The request was filed on March 28, 2023, within the legal timeframe, to the Supreme Court of Justice.

With respect to the type of application for administrative litigation, the Special Panel holds the filed application as an action for injunction of a specific nature. By means of a regular action for injunction, the plaintiff, according to Articles 206 (1)(b) and 224(1)(b) of the Administrative Code, aims at the

annulment of the individual administrative act rejecting his/her request for obtaining a legal advantage of any kind and at obliging the public authority to issue the rejected individual administrative act. At the same time, the specificity of the filed action is about annulling the Commission's decision on failing the candidate and ruling for a resumption of the evaluation.

The Special Panel, in line with Article 219(3) of the Administrative Code, is not bound by the wording of the motions submitted by the parties to the proceeding, thus the appropriateness argument expressed in the statement of defense by the defendant will be appreciated in terms of admissibility.

Effective judicial review involves a full check of factual and legal matters, however it excludes the checking of appropriateness as per Article 225(1) of the Administrative Code and limits the review regarding the discretionary individual administrative act when the law provides for such a reason for issuance. Appropriateness is a matter of admissibility, not a matter of substance in an administrative litigation. The defendant's argument in the submitted statement of defense that the application has to be rejected for the reason of appropriateness is unsubstantiated, as the plaintiff based the application on legality matters, not on appropriateness.

The statement of defense and the appropriateness aspects highlighted by the defendant therein deny the right to file the application for an administrative litigation in line with Articles 39 and 189(1) of the Administrative Code. Thus, neither the Administrative Code nor Article 14(8) of Law No 26/2022 exclude the candidate's right to file an application to court. Accepting the solution suggested by the defendant is legally unsubstantiated and contrary to the rule of law. The Special Panel notes that provisions of Article 225(1) of the Administrative Code are clear and cannot be confused, as they regulate, in functional unity with Articles 36, 39, 189, 190, and 207 of the Administrative Code, only aspects related to excluding or limiting the judicial review.

The Special Panel deems the Commission's decisions issued based on Article 8 of Law No 26/2022 as a mandatory administrative act, i.e. it is not issued based on discretionary right. The Commission is obliged to issue the decision regardless of whether it is favorable or not. In case of discretionary decisions, the public authority has even the right not to act and when it decides to act under administrative law, then it has the possibility to select the legal consequences, except for the situation when discretion is reduced to zero, as per Article 137(2) of the Administrative Code.

The basis of the action in administrative litigation.

According to Article 6(1) of the European Convention on Human Rights, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

For the purposes of Article 13 of the European Convention on Human Rights, everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the

violation has been committed by persons acting in an official capacity.

According to Article 20(1) and (2) of the Constitution of the Republic of Moldova, any individual is entitled to effective satisfaction from the part of competent courts of law against actions infringing upon his/her legitimate rights, freedoms and interests. No law may restrict the access to justice.

According to Article 53(1) of the Constitution of the Republic of Moldova, any person prejudiced in any of his/her rights by a public authority by way of an administrative act or failure to solve a complaint within the legal term, is entitled to obtain acknowledgement of the declared right, cancellation of the act and payment of damages.

According to Article 114 of the Constitution of the Republic of Moldova, justice shall be administered in the name of the law only by the courts of law; they shall have the entire range of procedural mechanisms for a fair solution of a case, without unjustified limitation in actions to be carried out, so that, upon the fulfilment of the ultimate goal, the judicial decision would not become illusory.

Effective legal protection against administrative actions of public authorities implies a full judicial review of legality, which covers both factual and legal issues, as regulated by Articles 194(1), 219, 22, 36, and 21 of the Administrative Code.

Density of judicial review means clarifying the content of judicial review over the decisions of the Commission, which applies not only to the depth, but also to the scope of the review. This relates both to enforcement of the law and to establishment of the facts that are relevant for a legal and founded judicial decision.

Effective judicial review involves checking all aspects of procedural and substantive legality, particularly fairness, proportionality, legal security, reasoning, correctness of factual investigation of own motion, impartiality, misinterpretation of undefined legal notions, and others. This is the only way to reach the standard of effective protection embedded in Article 53 of the Constitution of the Republic of Moldova. To this end, Article 194(1) of the Administrative Code provides that during first-level court procedure, appeal procedure, and procedure of examining challenges against judicial decisions, the factual and legal issues shall be solved of own motion.

The court's review of the work of an administrative authority of public law requires an independent determination of relevant facts, an interpretation of relevant provisions, and their subordination. Such an administrative legality review obviously excludes, as a matter of principle, a binding of justice to factual or legal findings and determinations made by other powers with respect to what is legal in the given case.

In accordance with Article 14(8) of Law No 26 of 10 March 2022, when examining the appeal against a decision of the Evaluation Commission, the Special Panel of the Supreme Court of Justice may adopt one of the following decisions: a) reject the appeal; b) accept the appeal, if there are circumstances that could have led to candidate's passing the evaluation, and order to resume the evaluation of the candidate by the Pre-Vetting Commission (the constitutionality of this provision was checked by Decision of the Constitutional Court No 5 of 14 February 2023 on unconstitutionality exceptions of some provisions of Law No 26 of 10 March 2022

on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors (competence of the Supreme Court of Justice in case of examining appeals filed against the decisions of the Pre-Vetting Commission)).

The Constitutional Court held that the explanatory note to the draft law does not include any argument regarding the needs to limit the judicial review of Pre-Vetting Commission's decisions. Still, based on the opinion submitted by the authorities and the content of the challenged text, the Constitutional Court deduced that the legislator intended to avoid situations where the Pre-Vetting Commission decisions are annulled for some insignificant procedural irregularities and, on the other hand, it wanted to ensure the celerity of solving appeals, in order to have sooner an operational Superior Council of Magistracy. The Constitutional Court held that these legitimate goals can fit under the overall objectives of public order and guarantee of justice authority and impartiality, as provided for in Article 54(2) of the Constitution (DCC No 5 of 14 February 2023, §78).

Thus, the Constitutional Court has ruled that, until the law is amended in accordance with the reasoning of this decision, the Special Panel of the Supreme Court of Justice, when examining appeals, may order the reevaluation of failed candidates if it finds (a) that the Pre-Vetting Commission made serious procedural errors during the evaluation procedure, affecting the fairness of evaluation, and (b) that circumstances exist which could have led to the candidate passing the evaluation (DCC No 5 of 14 February 2023, §88).

Consequently, the Special Panel of Judges found that the Constitutional Court has established a double test that has to be met for the candidate's appeal against the decision of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors to be accepted, namely: 1) the Pre-Vetting Commission made serious procedural errors during the evaluation procedure, affecting the fairness of evaluation, and 2) circumstances exist which could have led to the candidate passing the evaluation.

Law No 147 of 9 June 2023, in force as of 21 June 2023, amended Article 14(8) of Law No 26 of 10 March 2022 as follows: When examining the appeal against a decision of the Evaluation Commission, the Special Panel of the Supreme Court of Justice may adopt one of the following decisions: a) reject the appeal; b) accept the appeal and order a re-evaluation of the candidates that failed the evaluation if it finds that during the evaluation procedure the Pre-Vetting Commission committed severe procedural errors that affect the fairness of the evaluation procedure and that there are circumstances that could have led to candidate's passing the evaluation.

The Special Panel highlights that Article 14(8) of Law No 26 of 10 March 2022 amended by Law No 147 of 9 June 2023 design an effective judicial review, which involves the legality of the evaluation procedure and the substantive legality of the decision to fail the evaluation.

The review of the procedural legality of the Decision will be limited to whether or not the Pre-Vetting Commission committed serious procedural errors that could affect the fairness of the evaluation procedure. The review of the

substantive legality of the Decision will be limited to whether there are circumstances that could have led to the candidate Valentin Caisin passing the evaluation.

The Special Panel of the Supreme Court of Justice notes that the Administrative Code regulates the concept of serious errors and particularly serious errors. In case of particularly serious errors, as per Article 141(1) of the Administrative Code, the individual administrative act shall be null and, consequently, it shall not produce legal effects since the moment of issuance. On the other hand, in case of serious errors, the individual administrative act is unfounded and produces legal effects until its final annulment. So, when an issue of procedural legality is invoked, it has to be analyzed through the lens of both particularly serious error and serious error.

The Commission's decision is unfounded and the plaintiff would have the right to a favorable decision, because the appealed decision is vitiated, especially from the perspective of proportionality, misinterpretation of undefined legal notions and fair treatment. The Commission is bound to follow proportionality and fair treatment when issuing decisions on the evaluation of candidates for Superior Council of Magistracy membership. Denying this would put under question not just the rule of law, but the purpose for which Law No 26/2022 was passed. The serious doubts of the Commission have to be analyzed/evaluated both in terms of proportionality and fair treatment.

As a result of the communication of the decision of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, decision no. 28 of March 21, 2023, on March 24, 2023, the applicant submitted a request for appeal on March 28, 2023, requesting the annulment of the mentioned decision and the reevaluation of the candidate.

According to art. 219, para. (1) - (3) of the Administrative Code, the court is obligated to investigate the factual situation *ex officio* based on all legally admissible evidence, being not bound by the statements made or the requests for evidence submitted by the participants. The court makes efforts to rectify formal errors, clarify unclear requests, ensure proper filing of applications, complete incomplete data, and to submit all necessary statements for the establishment and assessment of the factual situation. The court points out the factual and legal aspects of the appeal that were not discussed by the participants in the proceedings. The court does not have the right to exceed the limits of the claims in the action, but at the same time, it is not bound by the wording of the requests formulated by the participants in the proceedings.

Effective legal protection against the administrative actions of public authorities involves a comprehensive judicial review of legality, encompassing both factual and legal issues, in the context of the provisions of art. 194, para. (1), art. 219, art. 22, art. 36, and art. 21 of the Administrative Code.

The special panel of judges finds it necessary to emphasize that it will not provide a detailed response to each argument presented in the appeal against Decision No. 28 of March 21, 2023. Instead, it will only examine decisive reasons related to verifying the existence of certain circumstances and serious procedural errors that could have been committed by the Evaluation Commission, thereby affecting the fairness of the evaluation procedure, which could have led to the candidate Valentin Caisin's passing the evaluation.

With regard to the non-payment of income tax for the period 2018 – 2021, the special panel of judges will take into account the following.

Analyzing Decision No. 28 of March 21, 2023, the special panel of judges notes that regarding candidate Valentin Caisin, the Evaluation Commission identified serious doubts about the candidate's compliance with the financial integrity criterion based on art. 8, para. (4), lit. b) and para. (5), lit. a), as well as with the ethical integrity criterion under art. 8, para. (2), lit. a) of Law No. 26 of March 10, 2022, specifically concerning the non-payment of income tax during the period 2018 – 2021 within the legal deadline, and its payment only after the Evaluation Commission raised questions in this regard.

Under art. 8 para. (1) – (2) lit. a), para. (4) lit. b), para. (5) lit. a) of the Law no. 26/2022, pursuant to this law, the evaluation of candidates' integrity shall consist in verifying their ethical integrity and financial integrity. The candidate shall be deemed to meet the criterion of ethical integrity if:

- a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

A candidate shall be deemed to meet the criterion of financial integrity if:

- a) the Evaluation Commission finds that his/her wealth acquired in the past 15 years corresponds to the declared revenues.

To assess the candidate's financial integrity, the Evaluation Commission shall verify:

- a) compliance by the candidate with the tax regime in the part related to the payment of taxes on using funds and income derived from the owned property, as well as taxable income and the payment of import duty and export duty

In the reasoning of the mentioned decision, the Evaluation Commission noted that, in assessing the financial integrity of the candidate, they verified whether the candidate's acquired assets in the last 15 years correspond to the declared income and whether the candidate has complied with the tax regime. Additionally, the Evaluation Commission verified whether the candidate has adhered to the ethical standards and professional conduct norms of lawyers.

In this context, the Evaluation Commission noticed that in the candidate's annual declarations of assets and personal interests for the period 2018 - 2021, submitted to the Commission, the candidate declared an income from the law firm "Valentin

Caisîn" in a total amount of 762,920 MDL. However, according to the State Tax Service, during that period, no taxable income was registered under the candidate's name.

In his responses to the first round of questions, the candidate presented digital copies of income tax declarations for individuals engaged in professional activities in the justice sector, which he submitted to the State Tax Service on February 2, 2023, for the period 2018 - 2023. According to these declarations, the amount of income tax owed for the period 2018 - 2021 was 72,562 MDL, with calculated penalties of 2,226 MDL. The candidate explained that the penalties were calculated due to late payment of taxes. The candidate further clarified that he was unable to pay the income tax for the period 2018 - 2021 due to a difficult financial situation.

Valentin Caisîn reported that out of the total amount owed as income tax and penalties, he has already paid 43,186.52 MDL, and he stated that the outstanding income tax amount of 29,375.48 MDL, will be paid by March 3, 2023.

After the hearing on March 9, 2023, the candidate presented to the Evaluation Commission a copy of the electronic record from the personal e-office of the "Valentin Caisîn" Lawyer's Office, which reflected transactions confirming payments to the state treasury between February 24 and March 7, 2023, totaling 21,086.46 MDL.

The final balance, both for income tax and penalties, was zero.

However, the Evaluation Commission concluded that from the perspective of a legal professional and an impartial observer, the candidate's action of not paying income tax for his legal practice over a period of four years is inexplicable. Non-compliance with the law raises questions about the candidate's ethical criterion.

In this context, the special panel of judges notes the valid argument of the appellant Valentin Caisîn that the Evaluation Commission did not refer to the legal basis, correlated with the factual circumstances, on which it based its assertion of serious doubts regarding the candidate's integrity.

Furthermore, the candidate's responses on this issue did not reveal an intention to evade the payment of taxes for the income obtained from legal practice in the period 2018-2021 at the law firm "Valentin Caisîn." Moreover, a simple belated payment of income tax for the period 2018-2021 does not constitute non-compliance with the integrity criterion set forth in art. 8 para. (1), para. (2) lit. a) of Law no. 26 of March 10, 2022.

The special panel of judges considers relevant the circumstance that the candidate presented to the Evaluation Commission, before the decision was adopted, an electronic record from the personal e-office of the Lawyer's Office "Valentin Caisîn," which reflected transactions confirming payments to the state treasury from February 24th to March 7th, 2023, and in which the final balance, both for income tax and penalties, was zero.

It is necessary to emphasize that any tax obligation of an individual or legal entity arises through the issuance of an individual administrative act by the State Tax Service, as the administration of the tax obligation occurs through administrative activities. Thus, tax provisions are applied to individual cases. The candidate

promptly responded when the Evaluation Commission raised this issue, and he subsequently paid the owed tax to the state budget.

Taking these circumstances into account, the special panel of judges considers that the mentioned fact constitutes an insignificant violation that does not hinder the candidate's passing the evaluation.

Furthermore, the special panel of judges emphasizes that the questions posed in the public hearing should not serve as traps or challenges for the candidate, and they cannot exceed the questions asked in the written communication rounds. The evaluation commission was expected to exercise due diligence to obtain the information provided by the candidate during the written communication phase.

The circumstances considered by the Commission, namely the candidate's action of not paying income tax for his lawyer's activity for a period of four years, are not perceived by the special panel of the Supreme Court of Justice as a genuine breach of integrity. This is because the content of the presented documents does not indicate or raise any doubt about the honesty and credibility of the candidate. This is especially true considering that the candidate diligently complied with the evaluation commission's requests by providing all necessary documents and taking steps to remove any doubts, eventually paying the owed income tax amount.

Furthermore, before the Evaluation Commission, the candidate's assets were declared in the manner prescribed by the legislation, and the competent authority in this field, the State Tax Service, has not issued any finding or sanction decision in this regard.

Moreover, in issuing decisions regarding the evaluation of candidates for positions of members of the Superior Council of Magistracy, the independent evaluation commission is bound by the principle of equal treatment. Therefore, the serious doubts raised by the Commission must also pass through the lens of equal treatment. The general principle of equality is one of the fundamental constitutional principles and grants a subjective right. It prohibits treating the same facts unequally or treating unequal things in the same manner, except when a different approach is objectively justified.

In this case, the special panel of the Supreme Court considers that the appealed decision of the Independent Evaluation Commission is unfounded, being flawed in terms of proportionality and equality of treatment. The appellant would have the right to a favorable decision. However, the reasons for failing the evaluation determined by the Commission in decision no. 28 of March 21, 2023, do not meet the criteria that would allow it to decide the candidate's failing the evaluation for violations of ethical and professional conduct rules of serious gravity.

The special panel of judges notes as a principle of jurisprudence that social realism encompasses legal realism as well, and imputing a violation to the candidate that has been tolerated by the state authorities does not undermine the presumption that the candidate lacks financial or ethical integrity.

Furthermore, the submission of the candidate's application for the positions provided in art. 3 of Law no. 26/2022 implies the voluntary agreement to undergo integrity

evaluation and the personal conviction of each candidate that they have respected the integrity criteria in the preceding period. This is based on considerations of legal security and the social context in which they have lived and interacted with citizens and public authorities. Thus, the special panel of judges does not view the circumstances considered by the Commission as a genuine violation of financial and ethical integrity, as otherwise the principle of protection of legitimate trust in the activities of state public authorities, which had responsibilities and remit to respond to any inadvertences by administered subjects, would be undermined, along with the principle of legal security in its entirety.

Taking into account the aforementioned circumstances, the Special Panel concludes that the decision issued by the Pre-Vetting Commission contrary to Article 21 of the Administrative Code does not meet the requirements of procedural and substantive legality and that the found circumstances reveal the candidate's right to a favorable evaluation decision from this point of view.

The special panel of judges emphasizes that the terms "seriously," "wrongful," and "inexplicable" in art. 8 para. (2) lit. a) of Law no. 26/2022 are, by their legal nature, undefined legal terms (vague legal norms), which do not grant discretion to the Evaluation Commission but rather necessitate a comprehensive and rigorous interpretation of the norm in light of serious violations of ethical rules and professional conduct. However, in this case, the Evaluation Commission virtually considered that the candidate's actions could be regarded as negligent conduct.

The Special Panel finds that the Pre-Vetting Commission did not analyze and reason the legitimate purpose of the issued decision. The preamble of Law No 26/2022 provides that the purpose of the Law is to increase the integrity of future members of the Superior Council of Magistracy and its specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and overall in the justice system.

It is not clear from the appealed decision and the documents submitted by the defendant which of those goals are pursued by the decision to fail the evaluation. Any of these goals would be legitimate, however none of them were analyzed.

However, it is worth mentioning that the Commission is fundamentally free to choose its legitimate goal or goals, but this has to result from the content of the decision and be confirmed by the administrative case file documents.

According to Article 29(2)(a) of the Administrative Code, a measure is proportionate if it is suitable for achieving the established purpose based on the powers laid down in the law. Therefore, the exclusion, not just limitation of the right to be elected as a member of the bodies listed in Law No 26/2022 for the minor acts held by the Pre-Vetting Commission is in no way an adequate measure for the fulfilment of the purposes laid down in the law. Given the urgent issue of proper operation of the judicial self-administration bodies at the moment when the decision was issued, not evaluating the candidate [translator's note: they probably mean failing] does not only fail to fit the reasons of not passing the evaluation, but it constitutes an unnecessary violation of the rights of the appellant.

At the same time, according to Article 29(2)(b) of the Administrative Code, a measure is proportionate if it is necessary for achieving the established purpose. This element of proportionality means that the official measure must be the mildest means of reaching the regulatory purpose. The Pre-Vetting Commission did not carry out such an analysis in relation to this case. Thus, the Pre-Vetting Commission failed to analyze the regulatory alternatives of the individual case, which would have achieved the regulatory purpose in the same way. The disadvantages that other regulatory options have must be considered and are characterized as being a milder means. A milder means for the achievement of the desired purpose would have been the participation of the candidate in the election for membership in the Superior Council of Magistracy while making public some of the minor issues that were found and which are part of the social reality of the Republic of Moldova, also based on the constant amendment of the domestic legislation.

According to Article 29(2)(c)-(3) of the Administrative Code, a measure undertaken by public authorities is deemed proportionate if it is reasonable. A measure undertaken by public authorities is reasonable if the interference it causes is not disproportionate compared to its purpose. This requirement involves a balancing of the legally protected values. The more damage is caused to a right, the more it is required for the advantage resulting from the interference to be superior. Note that excluding the right of an appellant to be a candidate for membership in the Superior Council of Magistracy involves not just an interference, but rather an improper annulment of the right to be elected into this position. Such a solution cannot be accepted under the rule of law, as it is incompatible with the dignity of a human being. The goal of trust in the justice system can be achieved by complex means, but in no way can it be done by reducing to nothing the idea of free, transparent, and competitive election for the membership of the Superior Council of Magistracy and its bodies.

The special panel of judges notes that the purpose of Law No. 26 of March 10, 2022, is, *inter alia*, to enhance confidence in the judiciary, rather than transforming the judiciary into an inefficient branch of state power subject to political influences or dependencies.

To conclude on this legality aspect, the Special Panel finds that the decision of the Pre-Vetting Commission is also contrary to the proportionality principle.

The special panel of judges reiterates that the so-called violations of financial and ethical integrity committed by Valentin Caisîn were subjectively evaluated by the Commission in isolation from the historical and social context, which affects the security of legal relationships.

The Special Panel notes that the State has vested the Pre-Vetting Commission with the prerogative to be guided by certain standards in order to select the candidates with highest integrity for membership, *inter alia*, in the Superior Council of Magistracy, who in turn could ensure the proper functioning of the judicial system as a whole, including through the implementation of coherent policies in line with generally accepted standards.

Furthermore, the special panel of judges notes that the Venice Commission recommended that the final decision regarding the evaluation should be made by the competent court; however, the Parliament of the Republic of Moldova opted for a different legal policy on this matter. Despite this fact, the special panel of judges emphasizes that, for the sake of effective protection of rights, it is both entitled and obliged to conduct a full judicial review of legality over factual and legal matters.

Even though the Special Panel of the Supreme Court of Justice is limited in adopting a final decision, still its arguments, conclusions and findings are mandatory and enforceable for the Pre-Vetting Commission. This conclusion results directly from Article 120 of the Constitution of the Republic of Moldova, which regulates the mandatory nature of the final sentences and other judicial decisions.

The Special Panel also relies its argument on the case-law of the Constitutional Court, which stated that, even though the Special Panel of Judges of the Supreme Court of Justice cannot oblige the Pre-Vetting Commission to pass the evaluated candidate, the arguments and conclusions made by this court when examining the appeals stay mandatory for the Commission (DCC No 42 of 6 April 2023 §143).

The Special Panel notes that, for reasons of effective judicial review, as well as of the quality of the law, the Commission is not obliged, after it is ruled to resume the evaluation procedure, to inquire other circumstances than the ones underlying the acceptance of the plaintiff's appeal.

Thus, evaluation after resumption of procedure should not transform into a vicious circular argument and activity, which is contrary to the standard of effective protection of rights, separation of branches of state power, legal certainty, and mandatory effect of the final judicial decisions.

The special panel of judges highlights that the delayed fulfillment of tax obligations for the period 2018 - 2021 by Valentin Caisin does not constitute wrongful actions that would be inexplicable from the perspective of a legal professional and an impartial observer. Therefore, it cannot be categorized as non-compliance with the integrity criterion set out in art. 8, para. (1), para. (2) lit. a) of Law no. 26 of March 10, 2022.

Thus, the exclusion and not just the limitation of Valentin Caisin's right to participate and be elected as a member of the Superior Council of Magistracy for the minor actions identified by the Evaluation Commission is not, in this case, an appropriate measure to achieve the purposes outlined in the law. Considering the issue of the proper functioning of the self-administration bodies of the judiciary at the time of issuing the decision and the candidate's failing the evaluation for minor actions, not only does it not fit within the grounds for failing, but it also constitutes an unnecessary and illegal violation of the rights stated.

The special court panel reiterates that the measure undertaken by the respondent public authority is reasonable /if the interference caused by it is not disproportionate to the intended purpose. This requirement of the legislator implies a balancing of legally protected values, a weighing of the interests at stake. The more the right is

infringed, the more it is required for the advantage of integrity to be superior, which was not respected by the Evaluation Commission.

Therefore, the exclusion of the right to be a candidate for the position of a member of the Superior Council of Magistracy entails not only interference but also an improper annulment of the right to be elected to this position.

Based on the mentioned considerations, the special panel of judges concludes that in the present case there are legal grounds to annul the decision no. 28 of March 21 2023 of the Independent Evaluation Commission for the Integrity of Candidates for the position of member in the self-administration bodies of judges and prosecutors, regarding the candidacy of Valentin Caisîn.

The Special Panel holds that illegality of the appealed decision leads to the annulment of the decision and ruling of a re-evaluation of the candidate. Ruling a re-evaluation is the final and implicit results that includes a loss of validity for the decision, as per Article 139(1) and (2) of the Administrative Code (see DCC No 42 of 6 April 2023 § 143; Ramos Nunes de Carvalho e Sá v. Portugal [MC], 6 November 2018, §184 and the case-law quoted therein).

In line with Article 224(1)(b) and Article 195 of the Administrative Code, Articles 238-241 of the Civil Procedure Code, Article 14(6), (8)(b), (9) of the Law on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors No 26 of 10 March 2022, the Special Panel established within the Supreme Court of Justice to examine the appeals against the decisions issued by the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-governing bodies of judges and prosecutors

decides:

The appeal submitted by Valentin Caisîn against the Independent Evaluation Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors is accepted, concerning the annulment of decision no. 28 of March 21, 2023, regarding the candidacy of Valentin Caisîn for the position of member of the Superior Council of Magistracy. The decision no. 28 of March 21, 2023, regarding the candidacy of Valentin Caisîn for the position of member of the Superior Council of Magistracy is annulled. The reevaluation of the candidate Valentin Caisîn by the Independent Evaluation Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors is ordered. The decision is final and irrevocable.

Presiding judge of the hearing,
judge

Tamara Chişca-Doneva

judges

Ion Guzun

Mariana Pitic