

File No. 3-26/23

2-23083087-01-3-09062023

DECISION

In the name of the Law

THE SUPREME COURT OF JUSTICE

01 August 2023

Chisinau municipality

The special court panel of judges, established within the Supreme Court of Justice, for the examination of appeals filed 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

composed of:

the Chairman of the meeting, the judge

Ion Guzun

the judges

Ion Malanciuc

Mariana Pitic

the clerk

Marianna Boico

With the participation of:

the plaintiff

Cristina Gladcov

the representative of the plaintiff, the defence lawyer

Dumitru Cucu

the representatives of the defendant, the defence lawyers

Roger Gladei

Valeriu Cernei

having examined in a public court session, in the administrative proceeding, the application for appeal filed by Cristina Gladcov against the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, regarding the cancellation of the Decision No. 34 of 18 May 2023 regarding the candidacy of Cristina Gladcov, candidate for the position of member of the Superior Council of Prosecutors and ordering the resumption of the procedure for the evaluation of the candidate by the Evaluation Commission,

f i n d s o u t:

Arguments of the trial participants:

On 09 June 2023, Cristina Gladcov filed an application for 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 No. 34 of 18 May 2023 regarding the candidacy of Cristina Gladcov, candidate for the position of member of the Superior Council of Prosecutors, requesting the cancellation of the mentioned decision and ordering the resumption of the assessment procedure.

In the reasoning of the lawsuit, she stated that, by order of the General Prosecutor of the Republic of Moldova no. 671-p of 22 July 2011, the plaintiff was appointed as a prosecutor at the Cimislia Prosecutor's Office. During her activity, the Cimislia District Prosecutor's Office obtained the Honorary Diploma of the IIIrd category No. 996-p of 19 September 2012.

The plaintiff claimed that by the Order of the General Prosecutor No. 1301-p of 11 October 2013, she was granted a childcare leave pursuant to Art. 124 of the Labour Code, until 20 June 2016, inclusive. By the Decision No. 12152/16 of 09 June 2016, she was reappointed to the position of prosecutor at the Cimislia District Prosecutor's Office.

Later, by the Order of the General Prosecutor no. 1027 p of 29 July 2016 she was transferred to the position of Prosecutor at the Botanica Prosecutor's Office, Chisinau municipality. By the Order of the General Prosecutor no. 1099-p of 12 September 2017 she was delegated to the Anticorruption Prosecutor's Office. By the Order of the General Prosecutor no. 320-p of 20 March 2018 she was delegated to the Anticorruption Prosecutor's Office until 17 June 2018.

According to the Decision no. 12-119/18 of 02 August 2018, the Superior Council of Prosecutors proposed to the General Prosecutor to appoint Cristina Gladcov to the vacant position of prosecutor at the Anticorruption Prosecutor's Office.

The plaintiff mentioned that, through the amendments to the Law on the Prosecutor's Office no. 3 of 25 February 2016, especially in Art. 69, pre-vetting procedures were introduced for candidates for the position of member of the Superior Council of Prosecutors. On 10 March 2022, the Law on certain measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors no. 26 of 10 March 2022 was adopted, in force since 16 March 2022. According to the Law no. 26 of 10 March 2022, an extraordinary procedure was instituted to assess the integrity of candidates for the position of member of the Superior Council of Magistracy, of the Superior Council of Prosecutors, as well as candidates for the position of member

in their specialized bodies, as a mandatory phase of the process for selecting candidates and electing or appointing them to the respective positions.

She indicated that, since 21 June 2022 and until 08 April 2023, she successively responded and had constant communication with the secretariat of the Evaluation Commission, submitting the documents required for the evaluation. Thus, the plaintiff did not withdraw from the competition for the membership of the Superior Council of Prosecutors, and the list of candidates registered for the position of member of the Superior Council of Prosecutors was published. In these conditions, the plaintiff's candidacy for the position of member in the Superior Council of Prosecutors was subject to prior assessment. The assessment procedure regarding the plaintiff started on the date when the Superior Council of Prosecutors submitted the list of candidates to the Evaluation Commission.

The plaintiff stated that on 21 June 2022, the Evaluation Commission sent the candidate a questionnaire on ethical integrity to be completed and returned. The candidate submitted the completed questionnaire to the Evaluation Commission on 05 July 2022. At the request of the Evaluation Commission, on 30 January 2023, the plaintiff submitted the declaration of assets and personal interests for the last 5 years.

On 17 March 2023, the Evaluation Commission sent the plaintiff a request for clarification of information, which contained 14 questions, including 46 sub-questions and 23 additional requests for documents. The plaintiff answered the questions asked within the given time limit. On 27 March 2023, the Evaluation Commission sent the plaintiff the second round of 11 questions, including 34 sub-questions and 20 requests for additional documents, to make clear some issues that arose during the assessment. The plaintiff answered the questions asked within the given time limit. The plaintiff also sent some additional information on 31 March 2023. On 04 April 2023, the Evaluation Commission sent the third round to the plaintiff, which contained 7 questions, including 16 sub-questions and 12 requests for additional documents, to clarify some issues that arose during the assessment. On 08 April 2023, the Evaluation Commission sent the plaintiff the fourth round, which contained 1 question, including 7 sub-questions and 4 requests for additional documents, to clarify some issues that arose during the evaluation.

The plaintiff pointed out that on 28 April 2023, she was heard at the public session by the Evaluation Commission, after which the deliberation followed, and the hearing was published. The plaintiff provided all the available information and documents and fully answered all the questions of the Evaluation Commission. A new meeting was not convened by the Evaluation Commission.

In the plaintiff's opinion, the decision of the Evaluation Commission no. 34 of 18 May 2023 is an unfavourable individual administrative act and shall be cancelled for illegality.

She mentioned that the Decision no. 34 of 18 May 2023 was sent to the plaintiff on 05 June 2023.

In this case, the Decision no. 34 of 18 May 2023 regarding the candidacy of Cristina Gladcov, candidate for the position of member of the Superior Council of Prosecutors, is an individual unfavourable illegal administrative act, which by reference to Art. 10, 11(1)(a) of the Administrative Code imposes duties, affects the rights/legitimate interests of the person.

As the case may be, 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 no. 34 of 18 May 2023 regarding the candidacy of Cristina Gladcov (hereinafter Decision no. 34/2023) is an individual administrative act, issued by a public entity, which produces legal effects with direct repercussions on the plaintiff.

Therefore, through the Decision no. 34/2023, the plaintiff was removed from participation in the competition for the position of member of the Superior Council of Prosecutors, but her level of professional integrity and probity was also assessed. This situation gives a double unfavourable character to the issued administrative act: on the one hand, the rights and legitimate interests of the plaintiff are directly affected.

Thus, the plaintiff Cristina Gladcov, being directly concerned by the Decision no. 34/2023, is a procedural subject, whose legitimate right was violated and is entitled to reclaim this right by filing a lawsuit to the competent administrative court.

In this case, the preliminary procedure is not mandatory, the law provides for appealing directly to the administrative litigation court.

In this regard, passing the assessment is a mandatory individual administrative, rather than a discretionary act. Cumulative meeting of the conditions set forth in Art. 8(2) and (4) of the Law no. 26 of 10 March 2022 generates the obligation of the Evaluation Commission to issue a favourable decision to promote the candidate to the position of member of the Superior Council of Prosecutors, in terms of meeting the criterion of financial and ethical integrity.

She considers that the authority, the Evaluation Commission, has only a procedural discretion, which refers to the investigation and clarification of the state of affairs ex officio (and other aspects regarding the preparation and issue of the individual administrative act), a fact that does not imply the attribution of the individual administrative act to the discretionary one.

She mentioned that the essential question, to which the competent court is to provide an answer, is whether the plaintiff meets the conditions according to Art. 8(2) and (4) of the Law no. 26 of 10 March 2022, i.e. it has the right to issue the

promotion decision, and if the Evaluation Commission is obliged to issue such a decision.

The answer involves a judicial review, which includes aspects of formal and material legality, including compliance by the Evaluation Commission with the principle of proportionality (Art. 54 of the Constitution, Art. 29 of the Administrative Code), equal treatment (Art. 23 of the Administrative Code) and legal security (Art. 30 of the Administrative Code).

In all cases, the obligation to respect proportionality is an exclusive burden of proof of the public authority (Art. 93(2) of the Administrative Code).

The plaintiff revealed that the used phrase 'serious doubt' is a generic, undefined term that is the core of the administrative act.

This does not provide discretion, but a margin in establishing the facts from abstract to specific and consequently the application of the rules as appropriate as possible to a specific case (the so-called fair justice). The most common errors in the application of such legal concepts refer to the correct establishment of the facts and the interpretation of the law.

She noted that the Evaluation Commission did not find in the decision that the plaintiff culpably did not declare her assets according to the legislation in force or that the assets acquired by the plaintiff in the last 15 years did not correspond to the income that she declared. Thus, the checks carried out revealed legal income.

Getting familiarized with the Decision no. 34/2023, we reveal that, in addition to failing to pass the competition, the ad hoc Commission found: 'serious doubts regarding the candidate's compliance with the ethical and financial integrity criteria.' This conclusion is likely to seriously and irreparably damage the image and the integrity of the candidate's professional life, including to the extent of losing the position held. This leads to qualifying the conclusion as illegal and contrary to the normative provisions that regulate the case, and also exceeding the powers granted by law to the Commission.

Thus, all the circumstances reflected in Decision no. 34/2023 make it clear that the arguments of the Commission that led to the failure of the candidate Cristina Gladcov, constituted a non-compliance with the criteria of ethical and financial integrity resulting from:

- 'Serious doubts' regarding the candidate's statements related to the sale of a land plot. Failure to pay the capital gains tax;
- 'Serious doubts' regarding the candidate's failure to declare the share held by her husband in the company T.C. S.R.L.;
- 'Serious doubts' regarding the undervaluation of the purchase prices of the MAN truck, year of manufacture 1997.

Therefore, she disagreed with these findings of the Commission, considering them to be unfounded, devoid of logical, mathematical reasoning, including

disproportionate and even erroneous in several terms, such as wrong calculations and obviously subjective assessments, exceeding the fact qualification authority.

According to the certificate submitted to the Commission, until the deliberation, adoption of the decision, the Candidate submitted the cash collection the Order no. 12073856 of 26 April 2023 regarding the payment of the personal income tax to be paid/paid - Gladcov Valentin.

She mentioned that the Law no. 26 of 10 March 2022 uses only in Art. 13(5) the phrase 'serious doubts' regarding the candidate's compliance with the requirements provided for in Art. 8, which were not removed by the evaluated person. The Law does not define the content of this significantly new concept for the national legal system. From this point of view, the Evaluation Commission has a wide margin of appreciation of the factual situations to classify them in its decisions as 'serious doubts', without considering the criteria that identify 'serious doubts'. However, the margin of appreciation of the Evaluation Commission cannot be absolute and is limited by the provisions of Art. 16 and Art. 137(1) of the Administrative Code, which provide imperatively that the discretion or the margin of appreciation of the authorities cannot be arbitrary and is to be exercised in good faith.

In this case, to justify her statements and the information provided to the Evaluation Commission, the plaintiff submitted documents that prove honesty, not ipso facto seeking to cause damage to third parties or the authorities.

As regards the legal concept of 'arrears' in the Tax Code, it provides for that it arrears is: an amount that the taxpayer was obliged to pay to the budget as a tax, charge or other payment, but which he/she did not pay within the deadline, as well as the amount of the delay increase (penalty) and/or fine.

Thus, there were no arrears in the payment of taxes at the phase of conclusion of the investigation by the Commission, or, the Commission cannot interpret special tax rules derogatorily.

She noted that the arguments broken from the context of another subject and added to the explanations on the subject concerned are also critical, such as that the husband's income and her income is joint family income that is managed according to the family's needs, as stated by the candidate on the subject proposed by the Commission to divide the money earned by both spouses during a declaration year in relation to the savings of each spouse separately.

The fact that the Commission chose the formal way of deducing the violation by making conclusions about the candidate's guilt is also important.

The commission exceeded, by the formulated conclusion, the margin proposed for assessment in relation to the special tax legal provisions in the field of the proposed case. Through the very formula used by the Commission, a formal nature of analysis is determined, and the response of a public authority implies a judicial review, which includes the aspects of formal and material legality,

including the observance by the Evaluation Commission of the principle of proportionality (Art. 54 of Constitution, Art. 29 of the Administrative Code), equal treatment (Art. 23 of the Administrative Code) and legal security (Art. 30 of the Administrative Code).

A regards 'the candidate's failure to comply with the obligations of declaring assets and personal interests of the husband's 50% share in T.C. SRL', the plaintiff claims that this fact was covered in the interpretation, in the conditions that the husband did not participate in the formation of the share capital, no payments of registered income (dividends) were made, he did not participate in the management of the company (as a member) – these aspects of law speak of a formal inclusion, but do not produce legal effects.

According to the limits of the exercise of discretion provided by Art. 16 and Art. 137)(1) of the Administrative Code, this discretionary assessment of the Commission was to be based on information acquired during the investigations made and once certain factual aspects were not sufficiently ascertained for reasons not attributable to the plaintiff, the Evaluation Commission cannot oppose them, with a negative effect on the latter.

Therefore, the appealed decision does not contain arguments, reasons that prove that the Evaluation Commission denied the factual circumstances shown, and compared to the requirements of the administrative act, they constitute a serious procedural flaw, cancelling the act for illegality.

The Evaluation Commission neglected the information provided by the plaintiff in order to make clear these aspects, and there is no ethical violation in the plaintiff's act.

The plaintiff considers that the Decision is illegal, given that it did not admit, in its activity, reprehensible actions or inactions.

The plaintiff has been always claiming that integrity is an attribute of correctness. The components of integrity are honesty and judicial morality. The plaintiff always shows, and not only in the exercise of her duties, an honourable and worthy manner of holding her position; is not guilty of frauds, deception and forgeries. There are no different degrees of integrity. Integrity is absolute.

The Commission was able to obtain information about the bank transfer, about the vehicle repair, about the 2017 contract both from public bodies such as the State Tax Service, the Public Services Agency, the bank, and from the candidate's husband, as long as the questions offered in the public interview were new, and exceeded the questions asked in the written communication rounds, or, there was no diligence necessary to obtain the information given by the candidate, at the written communication phase, although it was known that she was not a party to the transactions. Thus, in this case, the principles of security of legal relations, the freedom of contract, the Law on the declaration of income and interests, where the subject of the declaration obliges to declare the sale and purchase transaction, the

price of the contract to which party is a close person, were violated, the written form being priority.

At the same time, it was proposed that the candidate assume what she does not know and not to rely on the contract that was submitted in 2017 by her husband and which was the basis of the 2018 Declaration, to comment herself on the a transfer of her husband, without the Candidate's participation and assume, only for the violation to be found.

The issue of the candidate's failure to comply with the obligations regarding the declaration of assets and personal interests was aggravated by the candidate's statement regarding the value of the MAN truck, thus, from the beginning, the Commission ascertained the candidate's guilt in violating the Law on the declaration of assets and interests, although the specific legal provisions were not the basis of the finding, or, the candidate declared the sale price of the car in 2017, according to the contractual provisions and the documents she possessed in 2017 submitted by her husband and registered with public bodies. The contract price was negotiated by the contracting parties according to the principle of contractual freedom. Moreover, the vehicle was sold by the husband in 2021 and taxes were paid, thus was proven that the vehicle after repairs was sold more expensively, unlike the levers available to the candidate the Commission was also able to determine where the vehicle is currently and in what condition it was purchased by the new owners. The Commission also had the obligation to state in its decision that, although the candidate did not submit the contract from 2017, but, based on the fact that the sale contract from 2021 was submitted, taxes are also calculated at the State Tax Service, it could be established how to calculate the capital increase and the initial price in 2017.

Moreover, although the Commission knows the data of the person to whom the bank transfer was made, unlike the candidate, it did not submit the data and did not request through the rounds of questions to clarify the situation and find out the truth objectively, thus in this case the Commission also did not reverse the burden of proof, but created circumstances of abstract assumptions.

The Commission noted the inconsistencies between the candidate's declaration for 2017, in which she declared the purchase price of the truck of 9,999 MDL (estimated at 560 EUR) and her explanations regarding the monetary deposit of 95,930 MDL (estimated at 4,568 EUR), which her husband made in 2017 to the bank account of A.T. Here, the Commission did not explain what the inconsistencies consisted of, or in 2017, the subject of the declaration was obliged to indicate the price of the purchased good according to the deed generating the transfer of ownership, i.e. the sale and purchase contract, which was respected in the 2017 annual declaration, then, upon the sale it was repaired and a higher price was charged, the tax was paid to the state budget, and all these facts confirmed to

the Commission by documents, do not constitute arguments confirming the ethical and financial integrity of the candidate.

After the hearings, the candidate, for the first time and without providing supporting documents, informed the Commission that the truck was repaired by her husband and 'therefore, the initial price was low and later it became higher'. Because, during the hearing and after playing the video records, the husband watched, as the person directly concerned by the questions and transactions, and told about the repair, the Commission was provided with photos of the vehicle as it was upon purchase and later upon the sale, and they were accepted by the Commission, however, although in other rounds of questions the submitted photocopies were considered as arguments, in this case they are not considered as arguments, or at least grounds for additional verification, so that the law allows the Commission, until the final decision is adopted, to offer additional questions, to resume the investigation, etc., but these levers were not used.

As a result of the assessment carried out by the Commission, all close persons, according to the concept offered by the law, were subjected to verifications, the assets, income, expenses, the subject of the verification, the criminal cases she managed as a prosecutor, disciplinary ethics, impeccable reputation, and it is found out that there were no concerns about the candidate in none of the verified criterion and she did not violate any of the criteria.

As regards the two aspects addressed by the Commission, it is identified that the candidate was not part of the reports, and the income statement was prepared correctly, according to the required criteria. At the same time, exceeding all the Commission's doubts, and verifying the amounts of money that the Commission considers to be true, it is found that the income of the husband and the Candidate are enough to cover all expenses. According to the statement of 29 March 2019 (for the year 2018) – she declared as income of the husband resulting from the rent the amount of $60,000 + 240,000 + 280,000$ MDL = 580,000 MDL. According to the declaration of 31 March 2020 (for the year of declaration 2019) she declared as the husband's income from rent the amount of: $280,000 + 240,000 + 60,000 = 580,000$ MDL. According to the declaration of 31 March 2021 (for the year of declaration 2020) she declared as income of the husband from rent the amount of: $240,000 + 60,000 + 480,000 = 780,000$ MDL. There are also the salaries of the prosecutor and administrator, as income.

At the same time, it was found out that the verification also extended to the current company, where the husband works, the company's turnovers were requested, a fact that does not correspond to the verification criteria falling within the powers of the Commission.

On 19 June 2023, the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies

of judges and prosecutors, represented by Vitalie Miron, submitted a reference requesting the rejection of the appeal submitted by Cristina Gladcov.

In the reasoning of the reference, the defendant invoked that she executed with due diligence and in good faith all her obligations provided for by the Law no. 26 of 10 March 2022, and when she found certain uncertainties, she offered the plaintiff the possibility to make them clear, by presenting additional data and information, setting a sufficient deadline.

Thus, the Evaluation Commission considered that its Decision no. 34 of 18 May 2023 is legal and well-founded, and the plaintiff's allegations are unfounded and have no evidentiary support.

The defendant noted that, in the spirit of the Law no. 26 of 10 March 2022, the burden of proof passes to the candidate during the evaluation process. In the initial phase, it is the obligation of the Commission to accumulate data and information, subject to its legal powers and respecting legal obligations. However, as some ambiguities arose and in order to clarify them, the Evaluation Commission offers the candidate the possibility to provide additional data and information (Art. 10(7) of the Law no. 26 of 10 March 2022). Submission of additional data and information is a right, not an obligation, of the candidate (Art. 12(4) of Law no. 26 of 10 March 2022), but the failure to exercise this right (by refusing, openly or tacitly, or by providing incomplete or inconclusive data) risks making the Commission to conclude that there are serious doubts that the candidate does not meet the integrity criteria (Art. 13(5) of the Law no. 26 of 10 March 2022). Accordingly, it is in the best interest of the candidate to take on the burden of proof, and this legislative transfer not only does not violate, but actually protects the rights of the candidate.

The Evaluation Commission noted that the reason for passing the burden of proof to the candidate was developed at internationally. Thus, the European Commission for Democracy by Law (Venice Commission) noted that in a system of vetting and integrity verifications, it can be perfectly legitimate to transfer the burden of proof from the state to the judge/prosecutor that requests the recruitment or holding a position (Opinion of the Venice Commission no. 1064/2021 of 09 February 2022 regarding the development of the vetting process in the judicial system, Kosovo; page 68). The reappointment process, on the other hand, transforms all employees into plaintiffs, and the burden of proof falls on these people, who must prove that they are fit to hold the position concerned (*ibidem*, p. 95).

She explained that the integrity assessment process and the decision of the Evaluation Commission no. 34 of 18 May 2023 does not affect the professional status of the candidate, however, the Commission does not replace or take over the functions of a public body from the Republic of Moldova. And, the decision on the

failure to pass the assessment is a legal basis for not admitting the candidate to the elections or competition, accordingly, no other legal effect has legal support.

At the same time, according to point 39 of the Joint Opinion of the Venice Commission and the General Directorate of Human Rights and Rule of Law of the Council of Europe (Opinion No. 1069/2021 of 13 December 2021, Moldova), the revised draft law makes it clear that the results of the integrity assessment will have no effect on the candidate's career as a judge.

The Evaluation Commission mentioned that, in its activity, it does not ascertain the existence or lack of compliance of the candidate with the integrity criteria, but only the existence or the lack of serious doubts regarding compliance.

Thus, the conclusion of the Evaluation Commission from the decision on the existence of serious doubts regarding the plaintiff's compliance with the criteria of ethical and financial integrity, depends on the appropriateness of the decision, and the court is required to exercise control over the legality of the decision and is not entitled to execute control of opportunity.

Subsequently, the defendant considered unfounded the plaintiff's objections regarding the applicability, in this case, of the provisions of the Administrative Code regulated in other parts than those in the Third Book. However, according to Art. 4(2) of the Law no. 26 of 10 March 2022, in its activity, the Evaluation Commission is governed by the Constitution of the Republic of Moldova, this law and other normative acts that regulate the fields related to its activity. The Evaluation Commission operates based on its own organization and operation regulation, which is approved by it.

Thus, the Evaluation Commission carries out its activity on the basis of the Law no. 26 of 10 March 2022 and of its own organization and operation regulation, approved by it, rather than in accordance with the Administrative Code, and the adjudication of appeals against the decisions of the Commission is subject to the procedure provided for by the Third Book of the Administrative Code.

Therefore, the Commission was not bound by the provisions of Art. 15, Art. 22, Art. 82, Art. 85(3), Art. 87, Art. 92 and Art. 93 of the Administrative Code, and consequently did not carry out administrative operations and did not have the obligation to study *ex officio* the state of facts, as well as to prepare the candidate's file according to the requirements of the Administrative Code.

The defendant also mentioned that she does not find in the decision any statement that a candidate meets neither the integrity criteria, nor any violations by the candidates. The decision to promote or not promote a candidate is an assessment of the Commission, with the exercise of the legal margin of discretion, depending on the fact whether it finds the existence or absence of serious doubts regarding the candidate's compliance with the requirements provided for in Art. 8 of the Law no. 26 of 10 March 2022, which were not removed by the candidate. The court has no legal basis to rule on this assessment of the Commission, because

it refers to the appropriateness of the decision, which cannot be subject to judicial review.

It is up to the Commission to assess whether or not certain circumstances are enough to establish the existence or absence of serious doubts regarding compliance with the integrity criteria. This is because this particular issue refers to the appropriateness of the decision, which cannot be subject to judicial review.

The defendant mentioned that, as regards the loan contracted by the plaintiff from her father, the Commission found certain serious doubts due to the fact that this loan was taken by the candidate while her father was subject to an integrity verification procedure. Thus, the aspects invoked by the plaintiff, such as the fact that the Commission deliberately exceeded the period allowed by law, sought to establish the total surface area of the land and analyse these transactions, are irrelevant, because the Commission did not find any serious doubts regarding these transactions and assets invoked by the plaintiff.

The defendant mentioned that the failure to execute the obligation to pay the income tax is not due to reasons beyond the plaintiff's control. This is because the sale and purchase contract concerned was concluded and registered in the Real Estate Register in 2021 and in the same year the full price was paid. Thus, it is clear that the plaintiff was obliged to pay the income tax obtained as a result of the sale of this land plot, rather than in 2023 after the registration of the sale and purchase contract by the notary.

As regards the plaintiff's argument, such as that the tax authority has not started any enforcement procedure in this regard, the defendant mentioned that according to Art. 8(6) of the Law no. 26 of 10 March 2022, in the assessment of the criteria provided for in para. (2) - (5) and in making certain decisions on them, the Evaluation Commission does not depend on the findings of other competent bodies in that field.

The Evaluation Commission noted that the plaintiff had all the necessary information and had the possibility to pay the income tax in 2021, there being no impediments in this regard imposed by the State Tax Service. Moreover, the plaintiff admitted that the husband's income is the family's joint income. And, on 27 April 2023, the tax authorities recorded the payment of the tax and the penalty, which proves that the plaintiff did not pay the tax on time. Although the plaintiff invoked several provisions of the Tax Code (Art. 169, 170, 190, 191, 192, 264, 265), the plaintiff did not explain the relevance of these provisions for the examination of the object of this case.

The defendant revealed that according to Art. 4(1)(h) of the Law no. 133/2016 on the declaration of assets and personal interests (in force on 01 January 2018, applicable to declarations for the year 2017), the subject of the declaration had the obligation to declare the stakes/shares in the share capital of an economic operator

held by the subject of the declaration personally or by family members, his/her conjugal partner.

At the same time, according to Art. 4(1)(h) of the Law no. 133/2016 on the declaration of assets and personal interests (in force from 01 January 2019, applicable to declarations for the period 2018-2021), the subject of the declaration was obliged to declare the stakes/shares in the share capital of an economic operator owned by the subject of the personal statement or by family members, his/her conjugal partner, including as actual beneficiaries.

Thus, the defendant concluded that the law does not condition the declaration of ownership of a share in the share capital of an entity on the fact of (i) paying the contribution to the share capital, (ii) paying dividends or (iii) participating in the management of the company.

In the court session, the plaintiff Cristina Gladcov and her representative, the defence lawyer Dumitru Cucu, supported the application for appeal against the Decision no. 34 of 18 May 2023 regarding the candidacy of Cristina Gladcov, requesting her admission, on the factual and legal grounds referred to in the application.

At the court hearing, the representatives of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, counsels Roger Gladei and Valeriu Cernei, upheld the arguments put forward in the defense statement, and moved for the dismissal of the action as unfounded.

The Determination of the Court

Having heard the parties and their representatives, having examined the documents in the administrative and judicial files, the Special Panel of the Supreme Court finds that the appeal is admissible and well founded, for the following reasons.

The term for consideration of the lawsuit

According to art. 14(7) of the Law no. 26 of 10 March 2022, by derogation from the provisions of Art. 195 of the Administrative Code, the application for appeal the decision of the Evaluation Commission is examined within 10 days.

By the Order of the interim Chair of the Supreme Court of Justice no. 53 of 04 April 2023 ‘On the amendment of provisions no. 46 of 28 March 2023, no. 34 of 02 March 2023 no. 39 of 02 March 2023’ the membership of the special court panel was changed, provided for in point no. 1 of the order of the interim Chair of the Supreme Court of Justice no. 46 of 28 March 2023 and established a new membership of the special court panel for the examination of appeals filed 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, as follows: Tamara Chisca-Doneva – Chair, judge; Mariana Pitic and Ion Guzun – judges; Maria Ghervas – substitute judge.

By the Order no. 69 of 04 May 2023 of the Interim Chair of the Supreme Court of Justice ‘On the amendment of the Order no. 29 of 29 March 2022’ was appointed as substitute member of the special court panel for the examination of the appeals filed 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, judge Ion Malanciuc.

In this case, it should be noted that the application for appeal submitted by Cristina Gladcov was registered at the Supreme Court of Justice on 09 June 2023. According to the application allocation sheet, this case was allocated through the Integrated Case Management Program on 09 June 2023 to the judge-rapporteur Mariana Pitic (file sheet 46).

By the Ruling of 13 June 2023, the judge-rapporteur Mariana Pitic, member of the special court panel, established within the Supreme Court of Justice to examine the appeals of candidates for the position of member in the self-administration bodies of judges and prosecutors, was received for examination, in the administrative proceeding, the application for appeal filed by Cristina Gladcov against the Evaluation Commission, the trial participants being summoned to the court session set for 26 June 2023, 16:00 h., the room no. 4 in the premises of the Supreme Court of Justice, located at 19 Petru Rares str., Chisinau municipality (file sheets 47-49).

On 19 June 2023, within the term set by the court, the Evaluation Commission submitted a reference to the application for appeal submitted by Cristina Gladcov regarding the cancellation of the Decision no. 34 of 18 May 2023 (file sheets 52-69).

The court session set for 26 June 2023, at 16:00 h. did not take place due to the failure of the trial technical recording system ‘SRS Femida’ and the impossibility of audio recording of the court session. The next court session was set for 07 July 2023, at 12:00 h. (file sheet 80).

On 26 June 2023, the judge of the Supreme Court of Justice, Tamara Chisca-Doneva declared abstention from examining the case.

Thus, the court session on 07 July 2023, at 12:00 h., was postponed without a date, given the need to examine the statement of abstention.

By the Ruling of 10 July 2023 of the Supreme Court of Justice, the statement of abstention of the judge of the Supreme Court of Justice, Tamara Chisca Doneva, was admitted, and considering the provisions of the Law no. 26 of 10 March 2022, in case of admission of the request for abstention, the case is to be examined with the substitution of the concerned judge by the substitute member, in the case of judge Ion Malanciuc. Thus, in order not to delay the examination of the case, the court hearing was set for 17 July 2023, at 10:00 h.

According to the minutes of the court session of 17 July 2023, the special court panel admitted the request of the plaintiff Cristina Gladcov, obliged the Evaluation Commission to submit all the file materials of the candidate Cristina Gladcov and the examination of the case was postponed for 24 July 2023, at 11:30 (file sheets 113-120).

In this context, taking into account the above, the special court panel notes that exceeding the deadline for examination of the appeal in 10 days, was also due by the complexity of the case, the behaviour of the parties to the trial, which includes that of the defendant authority, the difficulty of the debates, the resignations of the judges of the Supreme Court of Justice and the impossibility of forming the special court panel to adjudicate appeals.

Moreover, the length of time the case was pending was also conditioned by ensuring that the rights of the participants in the trial were respected, a fact that cannot be considered as delaying the examination of the case, because the adjudication of the application for appeal aimed at respecting the guaranteed right of the parties to a fair trial, enshrined in Article 38 of the Administrative Code and Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

During the court session on 24 July 2023, the case was examined on the merits, the explanations of the parties were heard, the evidence was studied, the pleadings were heard and according to Art. 14(9) of the Law no. 26 of 10 March 2022, the issuance and placement of the decision on the website of the Supreme Court of Justice were announced.

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 Prosecutors. 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 Prosecutors. 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.

Furthermore, the Special Panel highlights that during the court hearing the defendant's representatives invoked the cases *Țurcan v. the Pre-Vetting Commission* and *Clevadi v. the Pre-Vetting Commission*, where the court established with the force of *res judicata* that the provisions of Book I and II of the Administrative Code are not applicable to the cases filed against the Pre-Vetting Commission.

Thus, based on the aforementioned, the Special Panel mentions that the cases to which the Pre-Vetting Commission's representatives referred, initiated upon the applications of Anatolie Țurcanu (No 3-5/23) and Natalia Clevadi (No 3-13/23) do not form unitary case-law. The role of case-law 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.

As a matter of principle, jurisprudence must be stable, but this should not obstruct the evolution of the law. That is why the Strasbourg Court stated that there is no right to an established jurisprudence, so that the change in the jurisprudence imposed by a dynamic and progressive approach is admissible and does not violate the principle of legal certainty (ECHR, *Unedic v. France*, 2008, §74; *Legrand v. France*, 2011), however two conditions must be met: the new approach has to be consistent at the level of that jurisdiction and the court that ruled on the change must provide a detailed explanation of the reasons for which it decided so (ECHR, *Atanasovski v. Macedonia*, 2010, §38).

Under these circumstances, the Special Panel rejects the argument invoked by the Commission that when issuing a solution on a case the court must reason its opinion and issue the solution based on mentioned considerations and judicial practice examples.

To conclude, the Special Panel states that a judge, according to the judicial organization rules, is not, generally, bound by the decision issued by another judge and not even by his/her prior decisions, because he/she pronounces a decision on the particular case brought before court.

Admissibility of the lawsuit.

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 Article 17 of the Administrative Code, the prejudiced right is any right or freedom established by law that is infringed by an administrative activity.

The special court panel notes that, through the filed lawsuit, the plaintiff Cristina Gladcov claims the violation of a right through administrative activity, according to Art. 189(1) of the Administrative Code, and namely that by the Decision no. 34 of 18 May 2023, the Evaluation Commission violated her right to be elected as a member of the Superior Council of Prosecutors, the right to self-administration of the prosecutor's office, the right to the dignity and professional reputation of prosecutor, the fundamental right to independence and immovability of the prosecutor, as well as the fundamental right to administration, the right to a favourable evaluation decision of the candidate Cristina Gladcov.

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 can appeal against the unfavorable decision of the Evaluation Commission at the Supreme Court of Justice, within which a special court panel composed of 3 judges and an substitute judge is established. The judges and the substitute judge are appointed by the Chair of the Supreme Court of Justice.

In this context, it is noted that 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 no. 34 of 18 May 2023 was notified to the plaintiff Cristina Gladcov through e-mail on 05 June 2023, a fact confirmed by the extract from the e-mail attached to the case documents (file sheet 393, administrative file).

The special court panel concludes that the appeal filed by Cristina Gladcov is admissible, since the plaintiff complied with the legal provisions of Art. 14(1) of the Law no. 26 of 10 March 2022, having been submitted on 09 June 2023, within the deadline provided by law, 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.

With respect to the substance of the case, the Special Panel holds the following factual and legal situation.

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).

In this consequence, the special court panel finds out that the Constitutional Court has established a double test that must be met in order for the candidate's lawsuit against a decision issued by 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 admitted, and namely: 1) there are serious procedural errors admitted by the Evaluation Commission, and these errors affect the fairness of the assessment procedure; and 2) there are circumstances that could lead to the candidate passing the assessment.

By the Law no. 147 of 09 June 2023, in force since 21 June 2023,(8) of Art. 14 of the Law No. 26 of 10 March 2022 was amended, with the following content: When examining the application for appeal the decision of the Evaluation Commission, the special court panel of the Supreme Court of Justice may adopt one of the following decisions: a) rejection of the application for appeal; b) acceptance of the application for appeal and ordering the re-evaluation of the candidates who did not pass the assessment, if it finds out that, within the assessment procedure, the Evaluation Commission admitted some serious procedural errors, which affect the fairness of the assessment procedure, and that there are circumstances that could lead to the candidate passing the assessment.

The special court panel emphasizes that the provisions of Art. 14(8) of the Law no. 26 of 10 March 2022 amended by the Law no. 147 of 09 June 2023 designs an effective judicial review, which involves the legality of the assessment procedure and the substantive legality of the decision not to pass the assessment.

The procedural legality review of the decision will be summarized as to whether or not the Evaluation Commission admitted serious procedural errors that could affect the fairness of the assessment procedure. The material legality review of the decision will be summarized if there are circumstances that could lead to the candidate Cristina Gladcov passing the assessment.

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 Prosecutors membership.

Denial of this fact would cause doubts not only about the rule of law, but the very purpose of the Law no. 26 of 10 March 2022. The serious doubts of the Commission shall be analyzed/assessed in terms of both proportionality and equality of treatment.

By the Decision no. 34 of 18 May 2023 regarding candidacy of Cristina Gladcov, candidate for the position of member in the Superior Council of Prosecutors, based on Art. 8(1), (2)(a) and c),(4)(a),(5)(a)-(c) and Art. 13(5) of the Law no. 26 of 10 March 2022 on certain measures related to the selection of candidates for the position of member in the self-administration bodies of judges and 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 decided that the candidate does not meet the criteria of integrity, as serious doubts were found regarding the candidate's compliance with the criteria of ethical and financial integrity and, thus, she did not pass the assessment.

On 09 June 2023, Cristina Gladcov submitted an application for 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 no. 34 of 18 May 2023 regarding her candidacy, candidate for the position of member in the Superior Council of Prosecutors, requesting the cancellation of the specified decision and ordering the resumption of the assessment procedure.

The special court panel mentions that in the Decision no. 34 of 18 May 2023, in Section III ‘Candidate Evaluation’, the Evaluation Commission noted the existence of serious doubts regarding Cristina Gladcov, the candidate for the position of member of the Superior Council of Prosecutors, regarding the financial and ethical integrity criteria, taking into account the following circumstances:

1. Failure to declare the income of the candidate and her husband to the State Tax Service and failure to pay the related taxes (2021);
2. Failure to declare the assets and personal interests in the manner prescribed by law. Undervaluation of selling/buying prices.

With reference to the failure of the candidate and her husband to declare the income to the State Tax Service and to pay related taxes for the year 2021, the special court panel notes the followings.

The Evaluation Commission verified the candidate's compliance with the tax regime related to the payment of taxes on taxable income.

The Evaluation Commission found out that the candidate and her husband did not declare the income received from the sale of the land plot in Singera town, Chisinau municipality, in the amount of 75,154 MDL (estimated at 3,500 EUR) and did not pay the capital gains tax, in accordance with the provisions of Art. 15 and Art. 40 of the Tax Code. The Commission established that this land plot was received free of charge from the state and was registered in the names of both spouses. The Commission considered that the explanations provided by the candidate regarding the reason why the capital gains was not declared and the taxes were not paid after the sale of the land plot, were not credible.

In this case, the special court panel considers relevant the circumstance of submission by the candidate to the Evaluation Commission, until the adoption of the decision, of the cash collection order no. 12073856 of 26 April 2023 on the payment of personal income tax to be paid/paid – Valentin Gladcov. It is necessary to emphasize that any tax obligation towards the natural person arises from the issue of an individual administrative act by the State Tax Service, because the tax obligation is managed through the forms of administrative activity, thus, the tax provisions apply to an individual case. The candidate reacted promptly when the respective problem was presented to her by the Evaluation Commission, thus, her husband paid the tax owed to the state budget.

Therefore, taking into account the circumstances stated above, the special court panel considers this violation insignificant and which, therefore, cannot lead to the failure to pass the assessment.

Failure to declare the assets and personal interests in the manner prescribed by law.

The special court panel will not consider as a serious violation, which generates doubts regarding the candidate's compliance with the criterion of financial integrity, the candidate's failure to comply with the obligations regarding the declaration of assets and personal interests of the husband's 50% stake in T.C. SRL, and will consider as true and according to the social and economic context the plaintiff's argument that this fact was extended by interpretation, although the husband did not participate in the formation of the share capital, did not make payments of the registered income (dividends), did not participate in the management of the company (as a member) – these legal aspects suggest a formal inclusion only, which does not generate legal effects. In this case, the Evaluation Commission did not justify what was the impact or damage caused, as provided for by Art. 3 point 2 of the Evaluation Regulation 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, pursuant to the Law no. 26 of 10 March 2022, adopted at the meeting of the Evaluation Commission of 02 May 2022.

Or, in the case of another candidate who passed the assessment, regarding the non-declaration issue, the Evaluation Commission concluded that: ‘The Commission established that its concerns regarding the non-declaration in the candidate's declaration for the year 2021 were removed by the candidate and that the Commission did not had serious doubts (Art. 13(5) of the Law no. 26 of 10 March 2022) regarding the compliance by the candidate with the ethical and financial integrity criteria according to Art. 8(2)(c), (4)(a) and(5)(b) of the Law no. 26 of 10 March 2022, regarding non-declaration’.

In this case, the special court panel mentions that the general principle of equality is one of the fundamental constitutional principles enshrined in the Constitution of the Republic of Moldova and grants a subjective right. This principle prohibits treating the same facts unequally or unequal things in the same way, unless a different approach would be objectively justified.

Moreover, the special court panel emphasizes that the questions offered in the public interview shall not have the function of a trap for the candidate, and cannot exceed the questions asked in the written rounds of communication, and the Evaluation Commission had to make the necessary effort to obtain that information from the candidate, in the written communication phase.

The special court panel considers the argument that the candidate should not assume what she does not know and that she should not rely on the contract submitted in 2017 by her husband, which was actually the basis of the declaration from 2018.

As regards the undervaluation of sale/purchase prices, the special court panel notes the following.

As regards the MAN truck, it is mentioned that the candidate declared the selling price of the vehicle in 2017, according to the contractual provisions and the documents on the vehicle owned by her in 2017 submitted by the husband and registered with the public authorities, reflecting the price negotiated by the contractual parties according to the principle of contractual freedom.

At the same time, she stated that the vehicle was sold by her husband in 2021, the taxes were paid and it was proved that the vehicle after repair was sold more expensively, and the Evaluation Commission had the possibility to determine in what condition the vehicle was purchased by the new owners.

The special court panel emphasizes that, after submission of the sales contract from 2021 and the tax calculations performed by the State Tax Service, the Evaluation Commission had the obligation to provide reasons in its decision of the method of calculating the capital gains.

Moreover, the Evaluation Commission, knowing the person to whom the bank transfer was made, did not request the respective data in the rounds of questions, which suggest a lack of clarification of the factual situation and the failure to find out the objective truth on the part of the Commission, which consequently generated contrary to the provisions of Art. 22, 85, 87-88 and 93 of the Administrative Code reversal of the burden of proof, and conclusions based on assumptions.

The special court panel reveals that, having the legal leverages that the candidate does not have, the Evaluation Commission did not study the aspects concerned and hastily made the conclusion that the candidate failed to comply with the criterion of financial integrity.

At the same time, the Evaluation Commission noted the inconsistencies between the candidate's declaration for 2017, in which she declared the purchase price of the truck as being 9,999 MDL (estimated at 560 EUR) and her explanations regarding the monetary deposit of 95,930 MDL (estimated at 4,568 EUR), which her husband made in 2017 to A.T.'s bank account, but the Evaluation Commission in its decision did not explain the inconsistencies.

In 2017, the candidate and her husband declared the price of the purchased good according to the civil legal act of transfer of ownership, a condition respected by the 2017 annual declaration of assets and interests.

The special court panel reiterates that the Commission unjustifiably did not uphold the argument of the plaintiff that the asset being repaired was sold at a higher price and the tax was paid to the state budget. However, the Evaluation Commission was provided with photos of the vehicle as it was upon purchase and later as it was sold.

The special court panel notes that the candidate acted diligently, and the circumstances presented dispel the doubts regarding the failure by the candidate to comply with the criteria of ethical and financial integrity.

Moreover, the special court panel notes here that the candidate was not part of the legal relationships in which the husband participated, and the income statement was drawn up correctly, according to the required criteria. At the same time, it is found out that the income of the husband and the candidate are enough to cover all expenses. Thus, according to the statement of 29 March 2019 (for the year 2018) - the candidate declared as her husband's income from rent the amount of 60,000 + 240,000 + 280,000 MDL = a total of 580,000 MDL. According to the statement of 31 March 2020, the candidate declared as her husband's income from rent the amount of: 280,000 + 240,000 + 60,000 = 580,000 MDL. According to the statement of 31 March 2021, the candidate declared as her husband's income from rent the amount of: 240,000 + 60,000 + 480,000 = 780,000 MDL.

Taking into account the above, the special court panel considers that the Evaluation Commission adopted an unfounded decision, without indicating the legal basis correlated with the factual circumstances, in violation of the principle of proportionality.

The court mentions that the circumstances upheld by the Evaluation Commission do not fall within the perspective of proportionality due to the failure of the candidate Cristina Gladcov to pass the assessment.

Corroborating the circumstances stated above, the special court panel concludes that, the decision issued by the Evaluation Commission contrary to the provisions of Art. 21 of the Administrative Code does not meet the requirements of procedural and substantive legality, and the circumstances found indicate the candidate's right to a favourable assessment decision from this point of view.

In the same sense, the special court panel emphasizes that, by virtue of its constitutional function of making justice, the court has the final competence to interpret a vague legal concept in a specific case.

Thus, the violations noted by the Evaluation Commission do not meet the criterion that would allow it to decide not to promote the candidate for violations of the rules of ethics and professional conduct of high gravity.

The preamble of the Law no. 26 of 10 March 2022 shows that its purpose is to increase the integrity of future members of the Superior Council of Prosecutors and its specialized bodies and in order to increase confidence in the activity of the self-administration bodies of the prosecutor's office, and in the justice system as a whole.

It is not clear from the decision appealed against and the documents submitted by the defendant which of these purposes are pursued by the decision not to pass the assessment. Any of these purposes would be legitimate, but none of them are analyzed.

It should be noted, however, that the Evaluation Commission is fundamentally free to choose its legitimate goals or goal, but this fact shall result from the content of the decision and shall be confirmed by the documents of the administrative file.

According to Art. 29(2)(a) of the Administrative Code, a measure is proportionate if it is suitable for achieving the goal pursued based on the power assigned by law. Thus, the exclusion and not just the limitation of the right to be elected to the bodies listed in the Law no. 26 of 10 March 2022, even for the alleged insignificant violations found by the Evaluation Commission, is not an adequate measure to achieve the goals set forth in the law. Considering the urgent problem in the proper functioning of the judicial self-administration bodies at the time of issuing the decision, the non-evaluation of the candidate, not only does it not fall within the reasons for non-evaluation, but is a violation of the plaintiff's rights.

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 Prosecutors 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 art. 29(2)(c) - (3) of the Administrative Code, a measure taken by public authorities is proportionate if it is reasonable. The measure taken by the public authorities is reasonable if the interference produced by it is not disproportionate in relation to the pursued goal. This requirement involves balancing the legally protected values. The more the right is injured, the more it is required that the advantage from the interference be superior. It should be noted that the exclusion of the prosecutor's right to be a candidate for the position of member of the Superior Council of Prosecutors entails not only an interference, but also an improper cancellation of the right to be elected to this position. Such a solution cannot be accepted in a state of law, as it is incompatible with human dignity and the dignity of the prosecutor. The goal of confidence in the judiciary can be achieved by complex means, but in no case by reducing to zero the idea of free, transparent and competitive elections to the positions of members of the Superior Council of Prosecutors and its bodies. The prosecutor, holding this position, is presumed to have integrity, and if the contrary is proven, then he/she should be dismissed from the prosecutor's position through a disciplinary procedure or another procedure, which takes into account the guarantees of his/her

independence. The special court panel notes that, the purpose of the Law no. 26 of 10 March 2022 is, among other things, to increase confidence in the judiciary, but not to turn the judiciary into an ineffective branch of state power.

Based on what is mentioned considerations, the special court panel reveals that, in this case, there are legal grounds to cancel 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 no. 34 of 18 May 2023 regarding the candidacy of Cristina Gladcov.

In summary of this aspect of legality, the special court panel finds out that the decision of the Evaluation Commission is contrary to the principle of proportionality.

Further, the special court panel of judges reiterates that the so-called violations of financial and ethical integrity were assessed by the Commission strictly subjectively from the historical and social context, which affects the security of legal relationships. In general, the legal system admits the retroactive effect of the law, if it favours the legal situation of the person, but this effect cannot be projected through legal interpretation.

As regards the fact that serious procedural errors were admitted in the assessment procedure by the Evaluation Commission regarding the violation of the language of the assessment process by the lack of English translations of the documents and statements presented by the candidate in the phase of collection and verification of the data by the members of the Commission, considering that the members of the Commission Herman von Hebel, Victoria Henley, Nona Tsotsoria, who are English speakers and who would not have been provided with an English translation by the secretariat of the Commission, the court panel specifically notes the following.

According to Art. 10(9) of the Law no. 26 of 10 March 2022, the Evaluation Commission assesses the accumulated materials according to its intimate conviction, formed following the complete and objective multi-aspect study of the information. None of the submitted materials has a predetermined probative force without its assessment by the Evaluation Commission.

From this rule follows the rule of direct examination of evidence, freedom of evidence and direct assessment of evidence by the Commission members.

The special court panel finds out that the defendant's representatives in the court session confirmed that there is no written translation of the documents in the language known by the foreign members of the Evaluation Commission, appointed by the development partners, and this is specifically contrary to Art. 10(9) of the Law no. 26 of 10 March 2022, and the provisions of Art. 22 and 92 of the Administrative Code.

In the same vein, the special court panel finds out that the Commission did not respect the candidate's right of effective access to the content of the administrative

file, which gives him/her the right to get to know and extract copies of any document and information that refers to him/her as a participant in the administrative assessment procedure. Restriction of the access to the administrative file also violated another guarantee, such as the candidate's right to defence before the Evaluation Commission.

The special court panel considers as well-founded the plaintiff's argument that the time granted by the Evaluation Commission for the submission of information was insufficient and limited, thus making it impossible to accumulate evidence in order to fully eliminate any 'serious doubts' of the Evaluation Commission.

In this respect, the Special Panel emphasizes that, according to Article 82 of the Administrative Code, if the administrative procedure is to be carried out in writing as per Article 28 or is carried out in writing, the public authority, when starting the procedure, shall create a digital or hard copy folder that would include all documents and records regarding the said procedure. The digital folder shall include, as appropriate, scanned copies of paper-based documents and the authenticity of these copies shall be confirmed by the electronic signature applied by the responsible person within that public authority, electronic documents, other relevant records and information in digital format. Scanned digital copies of official documents issued on paper and digital records on which the electronic signature was not applied are used without restriction in the relationship with the public authority and may be included in the administrative case file, unless the regulatory acts require expressly the signature to be applied on these copies/records or the observance of requirements towards electronic documents.

When included in the file, a document is referenced with continuous page numbers. Should documents be retrieved from the file for a certain period, a mention shall be made in this respect, which must include: a) name of the retrieved document; b) number of retrieved pages; c) reason for retrieving the document; d) name of the person that ordered the retrieval of the document; e) date when the document is retrieved. This mention shall be included in the file instead of the retrieved document. Administrative case files shall be kept until the expiry of their term of storage, which results from the applicable legal provisions in force.

In line with Article 83 of the Administrative Code, the public authority holding the administrative procedure shall grant, to the participants, access to the administrative case file. Participants shall not have access to draft individual administrative acts before the completion of the procedure. No access to the administrative case file is allowed if that would affect the appropriate performance of duties by the public authority or if it is necessary to maintain a secret protected by law or if it is necessary to protect the rights of participants to the administrative procedure or of third parties. Should it be justified, the public authority holding the administrative procedure may also allow, upon request, access to the file on the premises of another public authority or a diplomatic or consular mission of the Republic of Moldova overseas. When accessing the case

file, participants are allowed to take notes or make copies of the file. The cost of copies shall be incurred by every participant individually, which is 0.02 conventional units per page. Electronic copies of the case file, as well as electronic documents and copies thereof shall be provided free of charge.

Moreover, the special court panel notes that the Evaluation Commission had the obligation to submit in accordance with Art. 221 and 82 of the Administrative Code in full the administrative file of the candidate Cristina Gladcov in the court, so that the court can fulfil its constitutional task of effective judicial review of the matters of fact and law.

Likewise, the special rules, provided for in Art. 10(5), Art. 12(4)(c) of the Law no. 26 of 10 March 2022 and Art. 2(1)(g) of the Evaluation Regulation pursuant to the Law no. 26 of 10 March 2022, adopted at the meeting of the Evaluation Commission on 02 May 2022, guarantees the right of candidates to have access to the materials accumulated by the Evaluation Commission and its secretariat for its assessment.

Moreover, during the consideration of this administrative case, the defendant's representatives admitted that not all materials gathered by the Pre-Vetting Commission were submitted, but only the records that the Pre-Vetting Commission deemed to be relevant.

These circumstances prove that the Pre-Vetting Commission violated candidate Cristina Gladcov's right to defense, as it did not ensure her access to the administrative case file, which is supposed to include all materials gathered by the Pre-Vetting Commission, with at least 3 days before the hearing, in line with Article 82 and 83 of the Administrative Code, in corroboration with Article 10(5), 12(4)(c) of Law No 26/2022 and Article 2(1)(g) of the Evaluation Rules under Law No 26/2022.

Accordingly, the Evaluation Commission did not fully exercise its competence to investigate the state of facts ex officio, as being expressly provided for by Art. 6(f) of the Law no. 26 of 10 March 2022, which provides for that in order to exercise its powers, the Evaluation Commission requests information from natural and legal persons of public or private law, as well as accumulates any information relevant to the fulfilment of its office.

Therefore, the legislator has given the Pre-Vetting Commission a wide range of tools and levers to gather all the necessary information. Therefore, failure to fulfil the obligation to inquire of its own motion led to the Commission passing an erroneous decision and, respectively, violation of the candidate's right to defense.

The Special Panel holds that the established circumstances reveal a violation of the guarantees of the administrative assessment procedure, such as the right to a full examination of the facts, the right to a reasoned and impartial decision, the right to an effective hearing, the right of access to the administrative file, the right to be effectively involved in the assessment procedure, the right to effective cooperation in clarifying the facts and the right to a decision without

discretionary errors in the assessment of the evidence.

The Special Panel finds that only these isolated violations of administrative procedure guarantees are severe procedural errors, which have affected the fairness of the administrative assessment procedure and, as a consequence, the existence of some procedural circumstances that would have led to the candidate passing the evaluation.

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 Prosecutors, 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.

The plaintiff proved to the special court panel of the Supreme Court of Justice the plausibility of the elements invoked in her appeal, including the correctness of the financial operations carried out for the management, sale and purchase of movable and immovable property, as well as compliance with the rules of ethics and deontology.

At the same time, the special court panel notes that the Venice Commission recommended that the final decision regarding the assessment be adopted by the competent court. Nevertheless, the special court panel emphasizes that, for reasons of effective protection of rights, it has the right and obligation to carry out a full judicial review of legality on matters of fact and law.

Even though the special court panel of the Supreme Court of Justice is limited in making the final decision, its arguments, conclusions and findings are binding and enforceable on the Evaluation Commission. This conclusion follows directly from the provisions of Art. 120 of the Constitution of the Republic of Moldova, which regulates the binding nature of sentences and other final court decisions.

The special court panel bases its argument on the jurisprudence of the Constitutional Court, which highlighted that, even if the special court panel of the Supreme Court of Justice cannot oblige the Evaluation Commission to promote the evaluated candidate, the arguments and conclusions made by this court in the case resolution of appeals remain binding for the Commission (DCC no. 42 of 06 April 2023 §143).

The special court panel notes that for reasons of effective judicial review and the quality of the law, the Commission is not obliged, after ordering the resumption of the assessment procedure, to investigate circumstances other than those that were the basis for admitting the plaintiff's lawsuit.

Thus, the re-evaluation of the candidate should not turn into a vicious argument and circular activity, which is contrary to the standard of effective protection of rights, separation of branches of state power, legal certainty and the binding effect of final court decisions.

The special court panel mentions that the circumstances upheld by the Evaluation Commission do not fall in terms of proportionality in the reasons for not passing the evaluation of the candidate Cristina Gladcov.

Thus, the exclusion and not only the limitation of the right of the candidate Cristina Gladcov to participate and be elected as a member of the Superior Council of Prosecutors for the minor facts upheld by the Evaluation Commission is not an appropriate measure to achieve the goals set out in the law. Considering the problem of the proper functioning of the self-administration bodies of the prosecutor's office at the time of issuing the decision and the failure by the candidate to pass the assessment for minor facts, not only do they not meet the reasons for failure, but they constitute a violation of the stated rights.

The special court panel reiterates that the measure taken by the defendant public authority is reasonable if the interference produced by it is not disproportionate in relation to the goal pursued. This requirement of the legislator implies a balancing of legally protected values, a weighting of the interests at stake. The more the right is injured, the more the advantage from integrity is required to be superior.

Therefore, the exclusion of the prosecutor's right to be a candidate for the position of member of the Superior Council of Prosecutors entails not only interference, but an improper cancellation of the right to be elected to this position. Such a solution cannot be accepted in a state of law.

From the mentioned considerations, the special court panel reveals that, in this case, there are legal grounds to cancel 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 no. 34 of 18 May 2023 regarding the candidacy of Cristina Gladcov.

The special court panel notes that the illegality of the appealed decision leads to the cancellation of the decision and the re-evaluation of the candidate. Or, ordering the reassessment is the final and implicit result that includes the loss of validity of the decision according to Art. 139(1) and (2) of the Administrative Code (see DCC no. 42 of 06 April 2023 § 143; the case of Ramos Nunes de Carvalho e Sá vs Portugal [MC], 06 November 2018 § 184 and the jurisprudence cited there).

In accordance with Art. 224(1)(b) and 195 of the Administrative Code, Art. 238-241 of the Civil Procedure Code, Art. 14(6)(8)(b),(9) from the Law on some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors no. 26 of 10 March 2022, the special court panel, established within the Supreme Court of Justice, for the examination of appeals filed 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

d e c i d e s:

To admit the lawsuit in administrative litigation filed by Cristina Gladcov against the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors regarding the cancellation of the Decision no. 34 of 18 May 2023 regarding the candidacy of Cristinei Gladcov, candidate to the position of member in the Superior Council of Prosecutors and ordering the resumption of the candidate assessment procedure. The Decision no. 34 of 18 May 2023 regarding the candidacy of Cristinei Gladcov, candidate for the position of member in the Superior Council of Prosecutors is cancelled.

To order the re-evaluation of the candidate Cristina Gladcov by 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 decision is irrevocable.

Chair of the meeting,
the judge

Ion Guzun

the judges

Ion Malanciuc

Mariana Pitic