

DECISION
In the name of the Law

SUPREME COURT OF JUSTICE

1 August 2023

Chisinau

Special panel established within the Supreme Court of Justice to examine appeals against decisions of the Independent Commission for Assessing the Integrity of Candidates for Membership of Self-Administration Bodies of Judges and Prosecutors,

comprising:

President, Judge Tamara Chisca-Doneva

Judges Mariana Pitic Ion Guzun

Clerks Ina Pruteanu, Alina Spataru, Victoria Melinte

Having examined in a public hearing, in the administrative litigation procedure, the appeal filed by Mihail Buşuleac against the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of Self-Administration Bodies of Judges and Prosecutors regarding the annulment of Decision No. 13 of 06 January 2023 and ordering the resumption of the evaluation procedure of the candidate by the Commission, collection of non-pecuniary damage,

f o u n d:

Arguments of participants in the process

On February 3, 2023, Mihail Buşuleac filed a summons against the Independent Commission for Assessing the Integrity of Candidates for the Position of Member in Self-Administration Bodies of Judges and Prosecutors, requesting:

- a) annulment of the decision of the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors no. 13 of January 6, 2023 on the candidacy of Mihail Buşuleac, candidate for the position of member of the Superior Council of Magistracy;
- b) ordering the resumption of the procedure for evaluating the candidate by the Independent Commission for assessing the integrity of candidates for membership in the self-administration bodies of judges and prosecutors.

In the grounds of the action, he invoked that he did not agree with the decision of the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors, issued regarding his candidacy, and requested the admission of the appeal.

At the same time, he indicated that on January 31, 2023, he received the contested decision, but from February 1, 2023 to February 05, 2023, he was on a coordinated in advance trip abroad, being unable to present all the reasons for the action of challenging the unfavorable individual legal act, the file not being fully submitted to take note of the materials contained therein.

Thus, on February 9, 2023, by electronic mail, Mihail Buşuleac filed an additional summons, with the same requests, containing the motivation of his claims.

In his action, Mihail Buşuleac indicated that he did not agree with the conclusions of the Commission outlined in the contested decision, according to which the candidate does not meet the integrity criteria, as serious doubts have been found regarding the candidate's compliance with the ethical and financial integrity criteria and, thus, he does not promote the evaluation.

The complainant considers that the Commission hastily came to the conclusion that he did not promote the assessment, thus decision no. 13 of January 6, 2023 is illegal, groundless, subjective, discriminatory, adopted based on a prejudice of the members of the Commission, in the absence of legal and justified support to find that candidate Mihail Buşuleac does not meet the criteria of ethical and financial integrity, requesting the annulment of the decision, with the order to resume the evaluation procedure of candidate Mihail Buşuleac by the Evaluation Commission.

With regard to the correctness of drawing up the contested decision, the applicant noted two errors, namely the indication of the incorrect date of appointment of candidate Mihail Buşuleac as judge, as well as the indication in the text of the decision that "following the candidate's request, on December 13, 2022, he was granted access to the evaluation materials, according to art. 12 para. (4) letter c) of Law no. 26/2022", which, according to the applicant, does not correspond to reality, as before the assessment, he was issued only a statement from the file. Thus, Mihail Buşuleac invoked that one of his rights provided by art. 12 para. (4) letter c) of Law no. 26/2022.

According to the complainant, the Commission found serious doubts about ethical and financial integrity, namely business relations with two lawyers in 2021 and lack of abstention from examining cases with their participation.

Regarding the argument, Mihail Buşuleac explained that, on June 10, 2021, his wife - Buşuleac Mariana, as buyer, and Chiriacov Grigore, as seller, concluded a sale-purchase contract through which were purchased: half of a plot of land and half of an administrative building, located in Cahul, at the amount of 385,658 MDL, the amount being paid in installments by March 2022.

The Commission's objection was that, although the contractual value of this building was the same as the cadastral value, similar commercial premises in Cahul city, in 2022, were sold for 1000 EUR/m². The market value of half of such a property would have been approximately EUR 57 650. The property was purchased from a lawyer working in Cahul since 2001. The other half of the building belongs to another lawyer, who works in Cahul since 2001. In 2021 and 2022, after purchasing the commercial space, the candidate, as judge, delivered judgments in six civil cases, in which the lawyer from whom the candidate bought the property participated, in all six cases, the decisions pronounced by the candidate were in favor of the parties represented by this lawyer.

In this regard, Mihail Buşuleac claimed that, according to the report generated by the Integrated Case Management Program (Version D_PIGD-GURG-004 March) 13, 2020), between June 2021 and March 10, 2022, he actually examined 3 files with the participation of lawyer Grigore Chiriacov and all three cases have been examined in special procedure, having no legal dispute, in accordance with the provisions of art. 282 para. (2) of the Code of Civil Procedure. At the same time, both petitioners and persons interested in these cases did not submit requests for recusal.

As regards the Commission's objection regarding the need to refrain from judging cases with the participation of lawyer Grigore Chiriacov, the applicant mentioned that, according to art. 116 of the Constitution of the Republic of Moldova, the judges of the courts of law are independent, impartial and irremovable, and under the law and according to the subjective criterion, the personal impartiality of each judge of the panel is presumed until proven otherwise, therefore, the person alleging violation of Art. 6 of the Convention must prove that the judge was personally influenced, that he had an interest in deciding the case in a certain way.

Respectively, the normative framework invoked by the Commission, namely Art. 4 para. (1), 4 para. (3), para. (5), Art. 6 para. (2) of the Code of Ethics and Professional Conduct of the Judge, the Bangalore Principles on Judicial Conduct, is irrelevant, as the purpose of impartiality is that the party is neither advantaged nor disadvantaged by the judge, the decision is pronounced and the other procedural acts are performed only according to the law and the evidence in the file.

As regards the determination of an alleged preferential price for the purchase of the property by the applicant's wife, the latter stated that, given that the price of an asset is determined by several factors, the Commission did not explain how it reached to EUR 1000/m² for similar commercial premises in the Cahul city for 2022 and concluded that the market value of half of such a property would have been 57,650 EUR.

As regards the Commission's argument that the candidate could not provide any proof of the exact amounts paid and the date when the payments were made, the complainant mentioned that he submitted to the Commission the written statement of the owner of the building, confirming

that, on March 10, 2022, Mariana Buşuleac paid the full price agreed in the sale-purchase contract no. 1-361 of 10 June 2021.

Thus, the Commission, having access to the data of the person who could give concrete details to the situation in question and being entitled to hear those persons, chose not to do so.

As regards the source of financial resources for the purchase of four immovable properties between 2007 and 2017, the applicant argued in the action concerning each of them.

Thus, with reference to the apartment with an area of 42.5 sq. m. in Chisinau, purchased in 2007, the Commission noted that on December 28, 2007, the future wife of the candidate, at that time, purchased an apartment with an area of 42.5 sq. m. in "white version" in Chisinau, based on an investment contract. The contract price for this apartment was 32,475 EUR (est. 538,135 MDL) and was paid in two installments. The first installment of EUR 28,872 (est. 479,269 MDL) was paid in 2007, and the second installment of EUR 3,603 (est. 59,809 MDL) - in 2011. This apartment was put into operation on October 30, 2012 and was registered as joint ownership of the candidate and his wife. As of August 11, 2020, the apartment was leased. Between 2020 and 2021, the payment for renting this apartment was 2,000 MDL (est. 100 EUR) per month, and in 2022 the payment was 3,600 MDL (est. 180 EUR) per month. In 2007, the year when the apartment was purchased, the candidate had no income, and his future wife had a net income of 4,359 MDL.

In this regard, the applicant explained that the apartment of 42.5 sq. m. in Chisinau, purchased in 2007, was paid mainly with money provided by parents, and the Commission's finding that in 2007 the applicant had no income is erroneous, because according to information obtained from the State Tax Service, at that time he had registered in his name an individual enterprise, which declared income for 2006 in the amount of 35,969 MDL.

Thus, according to data provided by BC "Victoriabank" SA, on September 23, 2008, a bank account was opened in MDL/EUR/USD currencies at the amounts of 10,000 MDL, 5,000 dollars and 10 EUR - money from the wedding.

Moreover, according to the applicant, in 2009, the first daughter was born, who is a citizen of the Republic of Moldova and Romania, the family benefiting from parental allowances.

With reference to the Commission's finding that the applicant did not submit documents confirming the payment for the apartment or the source of the parents' funds, Mihail Buşuleac said that his parents, throughout their lives, held high, well-paid positions, thus managing to accumulate savings that would have allowed them to purchase real estate for their children. The Commission indicated that the net income of the applicant's parents in 2007 was estimated at 238 073 MDL, and in 2011 - at 290 826 MDL, without taking into account the entire period of their activity, which, in the applicant's opinion, raises doubts when examining the information in many aspects. At the same time, Mihail Buşuleac specified that his parents are no longer alive and, for these reasons, he did not have the possibility to clarify the sources of their income.

With regard to the Commission's objection to the use of this apartment during the years 2012-2020, the applicant explained that, on November 6, 2011, he was appointed judge at the Cahul Court. Therefore, together with his family, he moved to Cahul city. Since 2011, the applicant and his family have settled in the apartment of a family friend, located in Cahul city, str. Tineretului, 10. Meanwhile, given that Mihail Buşuleac is originally from Chisinau and his parents lived there, he often circulated and lived with his family in that apartment.

With reference to the apartment with an area of 40.2 sq. m. in Chisinau, purchased in 2010, for which the sum of 25,560 EUR was paid in ten instalments between 2010 and 2014, the applicant explained that it was largely paid by his parents, who decided to buy an apartment for their first granddaughter. The apartment was bought at a discount because it was registered in the name of a minor, and was bought from the same company from which the first apartment was bought in 2007. Repair works have not been carried out in this apartment for a long period of time, due to the insolvency procedure of the construction company.

As regards the Commission's finding that the candidate's father received, on 28 June 2010, a transfer of USD 88 000 (MDL 1 128 970 est.) from the company B.B.C., established in Panama, and that the net income of the candidate's father registered by the State Tax Service in 2010 was 405 183 MDL, and it is concluded that he did not declare that transfer to the tax authority, Mihail Buşuleac said that due to the death of his parents, he could not provide details about the transfer.

In addition, the complainant mentioned that on August 18, 2022, he sent a request to the Commission requesting cooperation in documenting the fact about his parents' income, by collecting information about the pension they received. In support of the application, Mihail Buşuleac indicated that his father died in 2021, and the mother was diagnosed with an incurable disease, being in serious condition. However, according to the complainant, he received no response to this request and after a period of more than a month, after the death of his mother on September 16, 2022, he received a question asking him to explain what kind of transfer worth USD 88,000 was made for the benefit of his father, to provide relevant materials, as well as the source of funds.

The complainant stated that he did not know about this transfer until the evaluation, tried to find documents relating to it, but he didn't manage to. At the same time, the complainant pointed to the slow and faulty work of the Commission, to the procedural delays that had taken place, which made it impossible to obtain information from his mother, who had recently died.

In conclusion, the applicant mentioned that, from the moment of the transfer (June 28, 2010) until the death of his father (August 16, 2021), no conviction was issued in respect of the latter, by which it would have been proved that this transfer was illegal, and in accordance with the provisions of art. 46 para. (3) of the Constitution of the Republic of Moldova, the licit character of the acquisition shall be presumed.

As regards the sum of EUR 30 000 as a gift in 2016 at the baptism event of the applicant's child, the Commission stated that there were doubts as no document had been provided. In this regard, Mihail Buşuleac mentioned that it is well known by the inhabitants of the Republic of Moldova that there is a holiday called christening. This event is attended by relatives and close family members. There is a custom to donate money, as a support for the child, which is collected by the parents. The complainant stated that, as the subject of the declaration, he indicated this amount in his 2016 income declaration. He also mentioned that the amount of 21,000 EUR remained for safekeeping with his parents in 2017, because in Cahul he lived in an apartment for which its owners also had keys, and the security of keeping money was low.

Another doubt invoked by the Commission is that the immovable property purchased in 2017 had a price of 305,000 MDL, while the price of such real estate in 2022 is one thousand EUR/sq. m.

The complainant explained that this doubt had no basis because prices in 2017 were compared with prices in 2022, whereas it is notorious that prices have increased considerably as a result of the COVID-19 pandemic and the war in Ukraine. At the same time, the Commission left unanswered the argument that the property has a significant defect, namely its windows are blocked by the wall of the neighbouring building.

The Commission also had doubts about the price set by the lease agreements, which have been concluded by the applicant's wife. In this regard, Mihail Buşuleac mentioned that we live in a democratic society with free economic market, and rent prices are not set by any normative act, being freely negotiated by the parties. Also, the State Tax Service registered the contract and did not establish doubts or violations, but collected the taxes paid.

With regard to the failure to submit supporting documents regarding the repair of real estate, the complainant explained that he did not keep cheques proving that he had purchased the building materials, and this did not constitute misconduct. However, no guarantees are given for construction materials, so keeping payment receipts for repairs in 2011 is not necessary. The Commission also failed to take into account the fact that the applicant's family income in the last 5 years amounted to 4 817 572.41 MDL - a legally acquired amount, for which he paid taxes and declared to NIA, not including donations.

With regard to the decrease in the prices of immovable property or their fictitious nature, according to the Commission, the complainant stated that the defendant was entitled to hear the sellers of these properties in order to elucidate the method of setting prices.

Referring to the failure to submit documents confirming the donations made by the applicant's parents, the latter said that following the interpellation of the State Tax Service, information was provided on his parents' incomes for 2000-2021, from which it is clear that their income was considerably higher than the average income in the economy established for each year.

At the same time, the National Social Insurance House was also questioned, informing that the applicant's father in 2021 had a pension of 25,482.14 MDL/month (1,225.71 EUR/month), and his mother in 2021 had a pension of 26,314.94 MDL/month (1 265.77 EUR/month), thus the donation offered by parents in the amount of 150,000 MDL in 2021 is related to their monthly income and doubts in this regard cannot arise.

According to the complainant, it is clear that, when adopting its decision, the Commission did not give a correct assessment of the circumstances established in the assessment, i.e. incorrectly calculated revenue, which led to the finding of serious doubts for them.

The calculation carried out is missing in the reasoned part of the contested decision, thus lacking a logical reasoning, limiting itself only to the exposure of intimate belief, although it must be based on evidence, as the probability and uncertainty constantly persist in the form of an accusation, which leads to violation of the principle of equality, non-discrimination and equal treatment.

The complainant considers that in establishing the factual circumstances, prices were erroneously assessed and double standards were applied to the evaluation of candidates. These double standards lead to discrimination against candidates. The Commission invoked that there were serious doubts because he did not submit documents belonging to other persons, although he is not a personal data controller.

On March 3, 2023, Mihail Buşuleac submitted a supplement to the summons application which, in addition to the initial requests, also contains the request of direct application of the Convention for the Protection of Human Rights and Fundamental Freedoms, and the finding of violation of his right to privacy, guaranteed by Art. 8 of the Convention, ordering the defendant to compensate him for non-pecuniary damages in the amount of EUR 15 000.

The applicant considers that interference with the judge's professional activity, including limiting the right to accede to the position of member of the Superior Council of Magistracy, constitutes a form of interference with private life. The existence of a legitimate aim, the legality and proportionality of the interference – are three elements that must be studied in order to determine whether or not this interference is compatible with the rigors of Art. 8 of the Convention.

Thus, despite its obligation to demonstrate that the interference had a legitimate aim, the Commission did not do so and did not invoke it in its decision. Respectively, the court is not competent to supplement the Commission's arguments with its own arguments and, accordingly, has no other option than to find the absence in the contested decision of the argument of the existence of a legitimate aim.

Having analysed the legality criterion, the applicant considers that the interference with his private life was not sufficiently foreseeable and therefore cannot be regarded as a legal interference.

He demanded the admission of the action, annulment of the decision of the independent commission for assessing the integrity of candidates for the position of member of self-administration bodies of judges and prosecutors no. Law no. 13 of 06 January 2023 on the candidacy of Mihail Buşuleac, candidate for the position of member of the Superior Council of Magistracy and ordering the resumption of the candidate's evaluation procedure by the Commission; receipt from the Commission of non-pecuniary damage amounting to EUR 15 000.

On February 7, 2023, the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of Self-Administration Bodies of Judges and Prosecutors submitted a reference, requesting the rejection of the appeal submitted by Mihail Buşuleac.

In substantiating its reference, the defendant argued that the decision of the Evaluation Commission No. 13 of 06 January 2023 is legal and well founded, and the applicant's allegations are unfounded and have no evidentiary support.

The Evaluation Commission executed with diligence and good faith all the obligations provided by Law no. 26 of 10 March 2022 on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, and when it found uncertainties, it gave the applicant the opportunity to elucidate them, by submitting additional data and information, setting him a sufficient deadline in this regard.

It explained that the integrity assessment process and the decision of the Evaluation Commission no. 13 of January 6, 2023 does not affect the candidate's professional status, as the Commission does not replace or take over the functions of a public body in the Republic of

Moldova. And the decision on not passing the evaluation is a legal basis for not admitting the candidate to elections or contests, respectively no other legal effect has legal support.

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

Thus, it was noted that on 21 June 2022, the Commission sent the Ethical Integrity Questionnaire, which was submitted by the complainant on 05 July 2022. On 08 July 2022, the Commission requested the completion of the declaration on assets and personal interests, followed by its submission by the complainant on 15 July 2022.

On 17 August 2022, the Commission sent a request for clarification of information, containing 17 questions, including 44 sub-questions and 26 requests for additional documents. The complainant answered 7 questions and submitted documents for most of the questions on August 19, 2022. The complainant submitted additional information on October 05, 2022.

On 21 November 2022, the Commission sent the second round of 16 questions, including 63 sub-questions and 33 requests for additional documents, to elucidate some issues raised in the evaluation. The candidate replied later than the requested deadline (for reasons deemed justified by the Commission) to all questions and provided most of the requested documents on 07 December 2022.

According to the Commission, the complainant made use of his right to study the assessment materials on 13 December 2022.

On 14 December 2022, the applicant was heard in a public hearing. The candidate submitted additional information after the public hearing on December 28, 2022.

The decision was sent to the complainant on January 31, 2023. The complainant objected to the publication of the decision concerning him.

Respectively, the Commission has diligently and in good faith executed all the obligations imposed on it, provided by Law no. 26/2022. In particular, when the Commission noted uncertainties, it gave the complainant the opportunity to clarify them by submitting additional data and information (under Art. 10 para. (7) of Law no. 26/2022).

According to the defendant, the burden of proof shifts to the candidate during the evaluation process. In the initial phase, it is the Commission's obligation to accumulate data and information, making use of its legal powers (art. 6 of Law no. 26/2022) and in compliance with legal obligations (art. 7 of Law no. 26/2022). However, once some ambiguities arise and in order to elucidate them, the Commission offers the applicant the opportunity to submit additional data and information (Art. 10 para. (7) of Law no. 26/2022).

At the same time, the submission of additional data and information is a right of the candidate (art. 12 para. (4) of Law no. 26/2022), but failure to exercise this right (by refusal, overt or tacit, or by submitting incomplete or inconclusive data) risks leading the Commission to conclude that there are serious doubts that the candidate does not meet the integrity criteria (Art. 13 para. (5) of Law no. 26/2022). Respectively, it is in the candidate's interest to take over the burden of proof, and this legislative transfer not only does not violate, but also effectively protects the candidate's rights.

It was noted that the Evaluation Commission does not find the existence or lack of compliance of the candidate with the integrity criteria, but only the existence or absence of serious doubts regarding compliance.

The defendant pointed out that the conclusion of the Evaluation Commission in the decision regarding the existence of serious doubts regarding the applicant's compliance with the ethical and financial integrity criteria is related to the opportunity of the decision, and the court is bound to exercise review of the legality of the decision and is not entitled to execute the opportunity review. However, the court may order the resumption of the evaluation only if it finds the existence of circumstances that could lead to the promotion of the evaluation by the candidate or procedural violations, a situation which is absent in the present case.

With reference to the applicant's objections raised in the summons, namely that the defendant: did not submit the entire file in order to study the materials contained; failed to give a fair assessment of the established circumstances; erroneously calculated income, which led to the

establishment of serious doubts for it; misinterpreted the provisions of certain normative acts; prices were erroneously assessed, as well as double standards were applied to the evaluation of candidates; The Commission noted that they were unfounded and had not been substantiated by the complainant. At the same time, according to the defendant, all of the applicant's claims are of a general nature, being formulated in an absolutely abstract manner.

In addition, the defendant noted that the Decision contained a detailed reasoning underlying the solution adopted by the Commission, analysing the factual circumstances in respect of which serious doubts had arisen as to the integrity of the complainant (failure to examine cases and purchase of 4 real estate) and explaining why serious doubts arose about these factual circumstances and why these doubts have not been removed by the applicant. All conclusions of the Commission are strictly based on the factual and legal circumstances mentioned in the decision, and it does not contain any arbitrary conclusions that would not have a legal and factual basis considered by the Commission in the evaluation process.

Moreover, the Commission reiterated that during the evaluation process the burden of proof shifts to the candidate, and failure to exercise this right risks leading the Commission to conclude that there are serious doubts that the candidate does not meet the integrity criteria (Art. 13 para. (5) of Law no. 26/2022). Thus, the solution offered by the Commission, by deciding whether or not to pass the evaluation, represents an assessment, according to its intimate conviction, of whether or not there are serious doubts regarding the candidate's compliance with the criteria of financial integrity and ethics.

This is expressly provided for in Art. 8 para. (6) and art. 10 (6). (9) of Law no. 26/2022.

At the court hearing, the applicant Mihail Buşuleac supported his application, requesting its full admission, according to the formulated requests.

The applicant's representative, lawyer Bogdan Gangan, fully supported the action, requesting its admission, annulment of the decision of the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors no. 13 of January 6, 2023 on the candidacy of Mihail Buşuleac, candidate for the position of member of the Superior Council of Magistracy; and ordering the resumption of the candidate's evaluation procedure by the Independent Commission for assessing the integrity of Candidates for Membership in the Self-Administration Bodies of Judges and Prosecutors.

The applicant's representative, lawyer Stanislav Pavlovschi, fully supported the action, requesting its admission.

The applicant's representative, lawyer Oxana Eşanu, supported the action, according to the arguments formulated in the application for summons, and requested that the claims be admitted in full.

The representative of the Independent Commission for Assessing the Integrity of Candidates for Membership in the Self-Administration Bodies of Judges and Prosecutors, lawyer Roger Gladei, supported the arguments put forward in the reference, requesting that the action be dismissed as unfounded.

In addition to what was alleged in the submitted reference, he claimed that the Commission had respected all the rights provided for in Art. 12 para. (4) of Law no. 26 of 10 March 2022.

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.

Case Examination Period

According to Art. 14(7) of the Law No 26/2022, by derogation from the provisions of Art. 195 of the Administrative Court No 116/2018, the appeal against the decision of the Commission shall be examined within 10 days.

Thus, on February 3, 2023, the applicant filed the present appeal (f.d. 2-4, vol. I).

By the order of February 03, 2023 of the Supreme Court of Justice, the application for summons was received for consideration and the participants were summoned to the hearing for February 09, 2023 (f.d. 22-24, vol. I).

On February 7, 2023, the defendant recorded the reference (f.d. 29-40, vol. II).

On February 09, 2023, the applicant sent to the court the reasoned objection and an application for adjournment of the hearing, in order to give the defendant an opportunity to study this objection (f.d. 54, 56-61, vol. I).

At the hearing on February 9, 2023, the applicant Mihail Buşuleac did not appear, and the examination of the case was postponed at his request (f.d. 78, vol. I).

On 15 February 2023, the applicant's representative, lawyer Gangan Bogdan, became aware of the case materials (f.d. 84, vol. I).

A number of applications and petitions have been examined at the hearing on February 17, 2023, and the hearing was adjourned until March 3, 2023 (f.d. 97, vol. I).

On 03 March 2023, the applicant sent to the court by electronic mail a supplement to the summons application and an application for adjournment of the hearing, in which reference was made to a request to hear witnesses and the need to summon them (f.d. 2, 4-7, vol. II). The hearing of March 3, 2023 was adjourned at the request of the applicant.

On March 10, 2023, the applicant's representative, lawyer Gangan Bogdan, filed a request for recusal of the panel (f.d. 9-13, vol. II), for these reasons the hearing of the same date has been postponed.

On March 16, 2023, the request for recusal was considered and rejected (f.d. 3543, vol. II).

By the order of March 20, 2023, the request of Mihail Buşuleac regarding the lifting of the exception of unconstitutionality with the submission of the complaint to the Constitutional Court was admitted (f.d. 78-85, vol. II). The examination of the case was postponed indefinitely.

By Decision No. 42 of 06 April 2023 of the Constitutional Court have been declared inadmissible the complaints regarding the exceptions of unconstitutionality of the provisions of Law no. 26 of 10 March 2022.

On 10 April 2023, the Independent Commission for Assessing the Integrity of Candidates for Membership in Self-Administration Bodies of Judges and Prosecutors submitted a request for recusal to a member of the Special court panel. The request for recusal was considered on May 25, 2023, and was rejected (f.d. 121, 142-146, vol. II).

With reference to the period of impossibility of examining the challenge request, the special panel mentions that, on April 6, 2023, Law no. 64 of March 30, 2023 regarding the Supreme Court of Justice, as well as Law no. 65 of March 30, 2023 regarding the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.

According to the provisions of art. 8 of Law 64/2023, the Plenum of the Supreme Court of Justice is composed of all the judges of the Supreme Court of Justice and has, among other things, the attribution of establishing, annually, the composition of the trial panels.

The special panel, bearing in mind the legal provisions cited above and the fact that in the period March-April 2023 the majority of magistrates from the Supreme Court of Justice resigned, attests to the impossibility of forming trial panels by the Plenary of the Supreme Court of Justice, which during that period was not deliberative.

However, by Law no. 89 of April 27, 2023, in force from May 2, 2023, the transitional provisions of Law 64/2023 regarding the Supreme Court of Justice, were amended in order to establish the moment of the commencement of the activity of the Supreme Court of Justice in the new composition, including the Plenary, providing as a result, powers to form trial panels according to the previous rule - by the president of the Supreme Court of Justice.

In accordance with art. 12 para. (8) from Law 65/2023, the Superior Council of the Magistracy by Decision no. 120/6 of April 10, 2023 announced the competition for filling, by temporary transfer, the vacant positions of judges at the Supreme Court of Justice, and by the decision of the Superior Council of the Magistrate no. 142/8 of May 2, 2023, it was decided to temporarily transfer 7 judges from the national courts, for a period of 6 months, starting from May 10, 2023 to the position of judge of the Supreme Court of Justice.

Thus, the special panel finds that the activity of the Supreme Court of Justice was blocked between March 30, 2023 and May 10, 2023, during which it was neither factually nor legally possible to examine the cases before the court.

In this context, taking into account the above, the special trial panel notes that exceeding the deadline for examination of the appeal in 10 days, was also influenced by the complexity of the

case, the behavior of the parties to the trial, which includes that of the defendant authority, the difficulty of the debates, the mass resignations of the judges of the Supreme Court of Justice and the impossibility of forming the special panel to judge appeals.

Moreover, the length of time the case was pending was also conditioned by ensuring respect for the rights of the participants in the trial, a fact that cannot be regarded as delaying the examination of the case, because the purpose of judging the appeal request was to respect the guaranteed right of the parties to a fair process, enshrined in Article 38 of the Administrative Code and Article 6 §1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Thus, the court examined the merits of the case, having heard the explanations of the parties, examined the evidence and listened to the pleadings, and, according to art. 14 para. (9) from Law no. 26/2022, the issuance and placement of the decision on the website of the Supreme Court of Justice was 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 art. 21 para. (1) of the Administrative Code for the issuance of the individual administrative act by the Commission. Accordingly, the provisions of art. 8 para. (1)-(4) of the Law 26/2022 are rules of substantive administrative law.

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 art. 21 para. (1) of the Administrative Code for the issuance of the individual administrative act by the Commission. Accordingly, the provisions of art. 8 paras. (1)-(4) of the Law 26/2022 are rules of substantive administrative law.

According to art. 9 para. (2) and art. 69 para. (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 art. 2 para. (1) of the Law No 26/2022. Pursuant to art. 189 para. (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 art. 10 para. (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 art. 2 para. (1) of the Law No 26/2022 is, by its nature, a specific field of activity within the meaning of art. 2 para. (2) of the Administrative Code.

Although the Administrative Code establishes a uniform administrative procedure and administrative litigation procedure, however, according to art. 2 para. (2) of the Administrative Code, certain aspects can be regulated by special legislative rules, if they do not contradict 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 art. 2 para. (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 art. 14 para. (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 art. 21-27 and art. 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 art. 220 para. (1), art. 87-93 of the Administrative Code, referrals under art. 223, art. 97-114 of the Administrative Code, impartiality under art. 25 of the Administrative Code, recusals under art. 202, art. 49-50 of the Administrative Code, forms of administrative activity under art. 5, art. 10-15 and art. 189 of the Administrative Code, the concept of party in an administrative dispute under art. 204 and art. f7 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 art. 171 para. (4) of the Administrative Code, the validity, binding force and *res judicata* of the Commission decision under art. 139 paras. (2)-(4) and art. 140 of the Administrative Code etc.

In this regard, 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 art. 10 para. (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 art. 7, 10, 203 lit. (a) and art. 204 of the Administrative Code, because it was established by law, it has public law tasks by virtue of its mandate as defined in art. 8 of the Law No 26/2022, and pursues a public interest.

The Special Panel also emphasizes that the administrative procedure of evaluation has a clarifying and guiding purpose owing to the procedural nature of the formal action of evaluating candidates for the position of member of the Superior Council of Magistracy. Respect for the basic principles, safeguards and rules of administrative procedure is therefore a requirement directly rooted in the concept of the rule of law stipulated in art. 1 para. (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 art. 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 art. 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 art. 72 para. (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 art. 2 para. (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 art. 7 and art. 2 para. (2) of the Administrative Code and for the purposes of Law No. 26 of 10 March 2022.

According to art. 10 para. (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 art. 10 para. (1) of the Administrative Code, the Commission’s decision fits within the concept of “*public law domain.*” According to art. 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, administrative, and constitutional disputes to which public authorities can be party as per art. 2 para. (3) lit. (a)-(c) of the Administrative Code.

According to art. 10 para. (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 art. 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 art. 10 para. (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 art. 12 of the Administrative Code.

According to art. 10 para. (1) of the Administrative Code, the Commission’s decision meets the criterion of “*with the purpose to produce direct legal effects*”, which means to create, alter or terminate legal relationships under the public law. The Special Panel holds that the Commission’s decision produces direct legal effects in the legal sphere of the plaintiff, in her capacity of a judge that applied for the position of member in the Superior Council of Magistracy. 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 art. 6 of the Administrative Code and of public authority defined in art. 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 of 10 March 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 (art. 21), the principle of investigation of own motion (art. 22), the principle of equal treatment (art. 23), the principle of good faith (art. 24), the principle of impartiality (art. 25), the principle of procedural language and reasonableness (art. 26, art. 27), the principle of efficiency (art. 28), the principle of proportionality (art. 29), legal certainty (art. 30), the principle of motivation of administrative acts and administrative operations (art. 31), the principle of comprehensibility (art. 32), the principle of protection of legitimate expectations and others.

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 Turcan vs Evaluation Commission and Clevadi vs Evaluation 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.

Following the abovementioned, the Special Panel notes that the cases to which the Pre-Vetting Commission’s representatives referred, initiated upon the applications of Anatolie Turcan (nr. 3-5/23) and of Natalia Clevadi (nr. 3-13/23) do not form unitary case-law. Or, 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.

In principle, jurisprudence must be stable, but this character must not prevent the evolution of law. Precisely for this reason, the Strasbourg Court shows that there is no right to a constant jurisprudence, so that the change in jurisprudence imposed by a dynamic and progressive approach is admissible and does not violate the principle of legal security (ECtHR, Unedic v. France, 2008, §74 ; Legrand v. France, 2011), but two conditions must be met: the new approach must be consistent at the level of that jurisdiction and the court that decided to change the interpretation must give detailed reasons for the reasons why it decided in this way (ECtHR, Atanasovski v. Macedoniei, 2010, §38).

In these circumstances, the special trial panel rejects the argument presented by the Commission that when issuing the solution on a case-by-case basis, the court is to substantiate

its opinion and issue the solution based on the considerations and examples of judicial practice stated.

In conclusion, the special court panel rules that a judge, according to the rules of judicial organization, is generally not bound by the decision pronounced by another judge, nor even by his own previous decisions, because he decides on the particular case that is presents before him.

Admissibility of action

According to art. 207 para. (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 art. 189 para. (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 art. 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 art. 11 para. (1) lit. (a) of the Administrative Code, individual administrative acts can be unfavorable acts – acts which impose obligations, sanctions, and burdens on their addressees or affect the legitimate rights/interests of persons or which refuse, in whole or in part, to grant the requested benefit.

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

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

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

In this context, it is noted that the decision of the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors No. 13 of January 6, 2023 was received by Mihail Buşuleac on January 31, 2023, which was confirmed by the statement from the electronic mail attached to the case materials (f.d. 54, vol. II, copy of the candidate's file).

The special panel concludes that the appeal filed by Mihail Buşuleac is admissible, as the plaintiff complied with the legal provisions prescribed in the art. 14 para. (1) of 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 March 10, 2022, filing the present application on February 3, 2023, within the time limit prescribed by law, with 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 art. 206 para. (1) lit. (b) and art. 224 para. (1) lit. (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 art. 219 para. (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 art. 225 para. (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 art. 39 and art. 189 para. (1) of the Administrative Code. Thus, neither the Administrative Code nor art. 14 para. (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 art. 225 para. (1) of the Administrative Code are clear and cannot be confused, as they regulate, in functional unity with art. 36, 39, 189, 190, and art. 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 art. 8 of Law No. 26 of 10 March 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 art. 137 para. (2) of the Administrative Code.

Substance of the administrative action

According to art. 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 art. 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 art. 20 pars. (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 art. 53 para. (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 art. 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 art. 194 para. (1), art. 219, 22, 36, and art. 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, art. 194 para. (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 art. 14 para. (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 art. 54 para. (2) of the Constitution (DCC No 5 of 14 February 2023, §78).

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

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

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

The Special Panel highlights that art. 14 para. (8) of Law No. 26 of 10 March 2022 amended by Law No. 147 of 9 June 2023 design an effective judicial review, which involves the

legality of the evaluation procedure and the substantive legality of the decision to fail the evaluation.

The review of the procedural legality of the Decision will be limited to whether or not the Pre-Vetting Commission committed serious procedural errors that could affect the fairness of the evaluation procedure. The review of the substantive legality of the Decision will be limited to whether there are circumstances that could have led to the candidate Veronica Cupcea passing the evaluation.

The special panel of the Supreme Court of Justice notes that the Administrative Code regulates the concept of serious errors and particularly serious errors. In case of particularly serious errors according to art. 141 para. (1) of the Administrative Code, the individual administrative act is null and consequently does not produce legal effects from the moment of issuance. Whereas in the case of serious errors, the individual administrative act is illegal and produces legal effects until its definitive cancellation. Thus, whenever an issue of procedural legality is invoked, it must be analyzed both through the concept of particularly serious error and through that of serious error.

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

Therefore, taking into account the legal norms cited and the fact that the object of the present action is the decision of the Independent Commission for Assessing the Integrity of Candidates for the Position of Member in the Self-Administration Bodies of Judges and Prosecutors no. 13 of January 6, 2023 regarding the failure of candidate Mihail Buşuleac to pass the evaluation, the Special Court Panel mentions that, in the case, it will verify the existence of circumstances that could lead to the promotion of the evaluation by the candidate.

According to art. 13 para. (5) from Law no. 26 of March 10, 2022, it is considered that a candidate does not meet the integrity criteria if the existence of serious doubts regarding the candidate's compliance with the requirements provided for in art. 8, which were not removed by the assessed person.

At the same time, in accordance with art. 5 para. (1) from the Evaluation Regulation of the Independent Commission for the Evaluation of the Integrity of Candidates for the Position of Member in the Self-Administrative Bodies of Judges and Prosecutors, adopted during the meeting of the Independent Evaluation Commission on May 2, 2022 pursuant to Law no. 26 of March 10, 2022, only if a candidate fully meets all the indicators, as defined in art. 8 para. (2)-(5) of Law no. 26 of March 10, 2022, it is considered that it corresponds to the criteria of ethical and financial integrity.

It is considered that a candidate corresponds to the criterion of ethical integrity if he has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, as the case may be, of other professions, as well as he has not admitted, in his activity, reprehensible actions or inactions, which would be inexplicable from the point of view of a professional in the field of law and an impartial observer, and did not violate the legal regime of the declaration of wealth and personal interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

A candidate is considered to meet the criterion of financial integrity if:

a) The evaluation commission finds that the wealth acquired by the candidate in the last 15 years correspond to the declared income.

In order to assess the candidate's financial integrity, the Evaluation Committee verifies:

a) the candidate's compliance with the legal regime of the declaration of wealth and personal interests;

b) the method of acquiring the goods in the property or possession of the candidate or the persons specified in art. 2 para. (2), as well as the expenses related to the maintenance of these goods;

c) the sources of income of the candidate and, as the case may be, of the persons specified in art. 2 para. (2).

The Special Panel highlights that the terms “*seriously*”, “*wrongful*”, and “*inexplicable*” from art. 8 para. (2) lit. (a) of Law No 26/2022 are, in their nature, undefined legal notions (vague legal notions) that do not grant discretion to the Pre-Vetting Commission, but rather oblige it to conduct a complex and rigorous interpretation of the provision in the light of solidly established facts. The court, by virtue of its constitutional function of administering justice, has the final competence to interpret a vague legal notion in a concrete case. The special panel notes that people who have a professional activity must show greater prudence in their activity and it is expected that they assume the risks inherent in their activity (DCC no. 173 of December 13, 2022, par. 28).

According to art. 2 para. (2) from the above-mentioned law, in the context of the evaluation of the candidates mentioned in para. (1) the wealth of persons close to the candidates is also verified, as defined in Law No. 133/2016 regarding the declaration of wealth and personal interests, as well as the persons mentioned in art. 33 para. (4) and (5) of Law no. 132/2016 regarding the National Integrity Authority.

Respectively, according to art. 2 of Law no. 133 of 17 June 2016, a close person is the spouse, child, common-law partner of the subject of the declaration, the dependent of the subject of the declaration, also the person related by blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and the person related by affinity to the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law).

And, according to art. 33 para. (4) and (5) of Law no. 132 of June 17, 2016 regarding the National Integrity Authority, control of wealth and personal interests extends to family members, parents/in-laws and adult children of the person subject to control. If the person subject to control is cohabiting with another person, the check will also extend to this person's assets.

If it appears that the assets of the person subject to control have been registered in the name of other persons, the control will also extend to these assets and persons. If the subject of the declaration has indicated income and goods obtained from donations or holds goods in trust, the control will also extend to the donor and the trust. They may be asked for clarifications regarding the origin of the income used for the purchase and maintenance of those goods. To clarify these aspects, the integrity inspector may request relevant information from any natural or legal person.

According to art. 4 para. (1) lit. a) and d) from Law no. 133 of June 17, 2016 regarding the declaration of wealth and personal interests, the subjects provided for in art. 3 para. (1) declare:

- a) the income obtained by the subject of the declaration together with the family members, the cohabitant/concubine in the previous fiscal year.

According to art. 2 of Law no. 133 of June 17, 2016 regarding the declaration of wealth and personal interests, income is defined as any financial benefit, regardless of the source of origin, obtained by the subject of the declaration and by family members, by his/her concubine both in the country and abroad.

According to art. 4 para. (3) from the same law, gifts received by the subject of the declaration free of charge from his family members, from his parents, brothers, sisters or children, whose cumulative value during a year does not exceed 10 average salaries per economy.

Likewise, relevant to the case are presented the provisions of art. 4 of the Law on the declaration and control of income and property of persons with positions of public dignity, judges, prosecutors, civil servants and persons with management positions no. 1264 of July 19, 2002 (in force until August 1, 2016), the persons mentioned in art. 3 states:

- a) income obtained together with family members during the period of declaration;
- b) movable and immovable goods of all types, owned, with right of usufruct, use, residence, surface or in the possession of the declarant or his family members based on contracts of mandate, commission, fiduciary administration, as well as transfer contracts of possession and use (lease,

lease, leasing, mortgage) on the date of submission of the declaration regarding income and property;

c) goods made through persons interposed or transmitted for consideration to ascendants, descendants, brothers, sisters and relatives of the same degree, as well as those transmitted free of charge to any person;

d) financial assets, i.e. bank accounts, investment funds, equivalent forms of saving and investing, placements, bonds, checks, bills of exchange, loan certificates, other documents that incorporate patrimonial rights of the declarant or his family members, direct investments in currency national or foreign currency made by him or his family members, as well as other financial assets;

e) share in the share capital of the declarant's commercial companies and a members of his family;

f) debts in the form of debits (including unpaid taxes), mortgages, guarantees issued for the benefit of third parties, loans and credits.

The special panel notes that in its decision no. 13 of January 6, 2023, in Chapter III "Evaluation of the candidate", the Evaluation Commission indicated that Mihail Buşuleac, candidate for the position of member of the Superior Council of Magistracy, does not meet the criteria of ethics and integrity, taking into account the following circumstances and the existence of serious doubts about them:

1. Business relations with two lawyers in 2011 and non-refraining from examining cases with their participation;
2. Source of financial resources for the purchase of four real estate properties during 2007-2017.

Having analyzed the conclusions of the Evaluation Commission on these circumstances in relation to the evaluation criteria, the special panel of judges reveals that Mihail Buşuleac, during the written questions stage, was asked for additional information and documents to be submitted to the Evaluation Commission.

Thus, during the first round of questions, sent on 17 August 2022, the Commission sent a request for clarification of information, containing 17 questions, including 44 sub-questions and 26 additional requests for additional documents. The complainant answered 7 questions and submitted documents for most of the questions on August 19, 2022. The complainant submitted additional information on October 05, 2022.

On 21. November 2022, the Commission sent the second round of 16 questions, including 63 sub-questions and 33 requests for additional documents, to elucidate some issues raised in the evaluation. The candidate replied later than the requested deadline (for reasons deemed justified by the Commission) to all questions and provided most of the requested documents on 07 December 2022.

The candidate made use of his right to study the assessment materials on December 13, 2022.

On 14 December 2022, the applicant was heard in a public hearing. The candidate submitted additional information after the public hearing on December 28, 2022.

According to Art. 10 para. (9) of Law no. 26 of March 10, 2022, the Evaluation Commission appreciates the accumulated materials according to its intimate conviction, formed as a result of multiaspectual, complete and objective research 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 proof and direct assessment of evidence by the members of the Commission.

In particular, the panel states that the Commission has failed to exercise its positive obligation to clarify the factual and legal circumstances, as provided for in Art. 22 of the Administrative Code. Respectively, the Evaluation Commission did not fully exercise its competence to investigate the state of affairs ex officio, this being expressly provided by art. 6 lit. f) of Law no. 26/2022, which establishes that, in order to exercise its functions, the Evaluation Commission requests information from natural and legal persons of public or private law, as well as accumulates any information relevant to the achievement of its mandate.

Therefore, the legislator provided the Evaluation Commission with a wide range of tools and levers to collect all the necessary information, and the non-execution of the ex officio investigation obligation led to the adoption of an erroneous solution by the Commission.

In the present case, the special panel also notes that, in order to respect the right to a fair trial, the arguments put forward by the applicant are to be examined, as the implicit guarantees of Art. 6 § 1 include the obligation to give reasons for judicial decisions (H. v. Belgium, paragraph 53). A reasoned decision shall enable the parties to demonstrate that their case has indeed been heard.

Although Art. 6 § 1 obliges courts to give reasons for their decisions, this cannot be understood as requiring a detailed answer to every argument (Van de Hurk v. the Netherlands, paragraph 61; Garda Ruiz v. Spain (MC), para. 26; Jahnke and Lenoble v. France (dec.); Perez v. France (MC), para. 81]. However, the scope of the obligation to state reasons may vary depending on the nature of the decision (Ruiz Torija v. Spain, paragraph 29; Hiro Balani v. Spain, para. 27) and must be considered in the light of the circumstances of the case (Ruiz Torija v. Spain, para. 29; Hiro Balani v. Spain, para. 27).

Thus, it is necessary to examine the applicant's main arguments (Buzescu v. Romania, paragraph 67; Donadze v. Georgia, paragraph 35) and pleas concerning respect for the rights and freedoms guaranteed by the Convention or its Protocols, which national courts must examine with particular rigour and attention (Fabris v. France (GC), paragraph 72 in fine; Wagner and J.M.W.L. v. Luxembourg, paragraph 96).

Respectively, the special panel concludes that the applicant's arguments, formulated in the appeal, reveal the existence of circumstances that could lead to the promotion of his evaluation by the Commission and which would justify the resumption of the candidate's evaluation procedure, removing the serious doubts raised by the Evaluation Commission regarding the compliance by Mihail Buşuleac with the ethical and financial integrity criteria established by art. 8 of 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, regarding business relations with two lawyers in 2011 and not refraining from examining cases with their participation; as well as the source of financial resources for the purchase of four real estate during 2007-2017.

Regarding the business relations with two lawyers in 2021 and the non-abstention from examining cases with their participation, the court noted that, on June 10, 2021, the candidate and his wife purchased half of a plot of land and half of an administrative building, located in the center of Cahul. They were purchased for 385,658 MDL (est. EUR 18,430), an amount paid in several installments until March 2022.

The Commission found that, although the contractual value of this building was the same as the cadastral value, similar commercial premises in the Cahul city, in 2022, were sold for EUR 1000/sq. m. The market value of half of such a property would have been approximately EUR 57 650. The other half of the building belongs to another lawyer, who works in Cahul since 2001.

At the same time, the Commission found that in 2021 and 2022, after purchasing the commercial space, the candidate, as judge, issued judgments in six civil cases, involving the lawyer from whom the candidate bought the property. In all six cases, the candidate's decisions were in favour of the parties represented by this lawyer.

In response to written questions, the candidate stated that he did not consider it necessary to refrain from examining the cases in which the lawyer participated, referring to the provisions of the Civil Code and the Criminal Code governing the institute of abstention.

During the public hearing, the candidate confirmed that the commercial property was bought from that lawyer for 385,658 MDL and that this amount was paid in cash in several installments.

On this point, the Special Panel concludes that with regard to the price of the goods purchased, the Commission made an unfair comparison, as in its conclusion on the decrease in the price of real estate it compared the contract price in 2021 with market prices in 2022, without referring to statistical data on price fluctuations during this time period.

Another doubt invoked by the Commission is that the real estate purchased in 2017 had a price of 305,000 MDL, while the price of such real estate in 2022 is one thousand EUR/m², comparing again the price for similar apartments in different years.

In order to elucidate some aspects in this regard, at the court hearing, at the request of the applicant's representative, the judicial expert Chintea Lucia was heard, who explained that the decrease in the price of a property can only be ascertained by applying certain specialized methods, with the exit on the spot, by a specialist in the field or an expert. Respectively, the Commission did not have the necessary competence to draw conclusions on this issue, and the court was not presented with evidence confirming that the Commission consulted a specialist to elucidate this situation.

In this regard, according to the report generated by the Integrated Case Management Program, between June 2021 and March 10, 2022, the applicant actually examined 3 files with the participation of the lawyer, with whom the first had contractual relations for the acquisition of real estate.

Thus, according to art. 282 para. (2) of the Code of Civil Procedure, if during the examination of the case for finding a fact of legal value, a legal dispute arises which does not fall within the competence of the courts, the court examines the application for finding this fact in special procedure.

Based on the materials of the case, all three files were examined in special procedure, having no legal dispute.

Moreover, according to Art. 201 of the Code of Civil Procedure, after the announcement of the panel, the participants in the trial were explained the right to file an application for recusal, however no petitioners, interested persons submitted requests for recusal. The judgments issued on the examination of these cases were not appealed, respectively, being legal and well-founded.

As regards the Commission's objection regarding the necessity of refraining from judging cases with the participation of the lawyer with whom the applicant had contractual relations, it should be mentioned that, according to Art. 116 of the Constitution of the Republic of Moldova, the judges of the courts of law are independent, impartial and irremovable, under the law and according to the subjective criterion, the personal impartiality of each judge of the panel is presumed until proven otherwise, therefore, the person alleging violation of Art. 6 of the Convention must prove that the judge was personally influenced, that he had an interest in deciding the case in a certain way.

In this respect, the normative framework invoked by the Commission is irrelevant, as the purpose of impartiality is that the party is neither advantaged nor disadvantaged by the judge, the decision having to be pronounced and the other procedural acts having to be fulfilled only according to the law and the evidence in the file. In order to ensure judicial neutrality, impartiality presupposes two elements: the absence of any prejudice and the absence of any interest from the judge (ECHR, Piersack vs. Belgium, judgment of 1 October 1982). According to the Strasbourg Court - jurisprudence in the cases Hauschildt vs. Denmark (1989), Sainte Marie vs. France (1992), Padovani vs. Italy (1993), Bulut vs. Austria (1996), Morel vs. France (2000), Didier vs. France (2002). The approach to the first element of impartiality must consist of an assessment in concreto: both the thinking and conduct of the judge concerned must be analysed to see whether the judge has formed an opinion on how the case is conducted and resolved before delivering his judgment. Impartiality shall be presumed unless proven otherwise.

In the case, the cases examined by the applicant, in his capacity as judge, do not imply the existence of a legal dispute, i.e. there are no parties who could be disadvantaged as a result of issuing the judgment.

On the basis of the foregoing, the special panel concludes that it has not been shown that the applicant acted in bad faith, especially since the sale transaction referred to was concluded by his wife and not by him personally.

However, the Evaluation Commission did not argue on what grounds the explanations and documentation provided by the applicant would not be sufficient to dispel any suspicions, particularly where the Commission did not multilaterally verify, in all aspects, the facts set out in order to establish the difference in the alleged decrease in the price of the contracted property. However, the Commission took a different approach to similar circumstances for other applicants.

In this regard, the court notes that Mihail Buşuleac provided detailed explanations regarding the indication of the value of the property in the sale-purchase contract. He explained that the price was set by the seller and the contract was concluded by his wife. Thus, if the candidate under

evaluation presents arguments and logical explanations to the Commission, truthful in the socio-economic context of the Republic of Moldova, then the probability that a fact happened in one way or another balances, and any doubt must be treated in favor of the candidate, especially if it is a fact, established by a legal act legally concluded and subject to registration by a state body, act the legality of which has not been challenged and has produced legal effects.

As regards compliance with the principle of proportionality, the special panel draws attention to the fact that interference with subjective rights is not contrary to the rule of law, but must be proportionate. It should be underlined that the principle of proportionality requires that any infringement of rights by a measure taken by public authorities must serve a legitimate aim, be appropriate, necessary and reasonable as a means to that end. According to art. 29 para. (1) of the Administrative Code, any measure taken by public authorities affecting the rights or freedoms provided for by law must comply with the principle of proportionality.

Regarding the source of financial resources for the purchase of four real estate assets during 2007-2017, the Commission mentioned that it must verify the candidate's compliance with the legal regime of declaring assets and personal interests. When assessing the financial integrity of the applicant, the Commission must also verify the sources of income and methods of acquisition of assets by the applicant and, where appropriate, by family members and persons close to the candidate.

According to Art. 8 para. (4) points (a) and (b) of paragraph 4. (5) letter b) of Law no. 26/2022, in order to determine whether a candidate meets the criterion of financial integrity, the Commission must verify the candidate's compliance with the legal regime of declaring assets and personal interests.

Moreover, according to Art. 8 para. (4) points (b) and (b) of paragraph 4. (5) letters c) and d) of Law no. 26/2022, the Commission must verify whether the wealth acquired by the candidate in the last 15 years corresponds to the declared income and verify how to acquire the assets owned or possessed by the candidate or the persons specified in art. 2 para. (2), and the sources of income of the candidate and, where appropriate, of the persons specified in Art. 2 para. (2).

Also, Art. 8 para. (6) of the Law on certain measures related to the selection of candidates for the position of member of self-administration bodies of judges and prosecutors no. 26 of 10 March 2022 expressly provides that, in assessing the criteria set out in para. (2) to (5) and in deciding on them, the Evaluation Commission shall not depend on the findings of other bodies competent in the field concerned.

According to the applicant, between 2017 and 2021, he received considerable financial support from his parents. This support consisted of monetary contributions to the purchase of various real estate assets and various monetary donations.

In 2007, Mihail Buşuleac bought an apartment in Chisinau that was fully paid by his parents. The price of the apartment was EUR 32 475.

In 2010, the applicant purchased another apartment in Chisinau, which was registered in the name of his child, who was then almost one year old. The price of this apartment was EUR 25 560 and the parents paid 80-90% of the price.

According to the applicant, both apartments were in "white version" and required repair, which was paid exclusively (2007 apartment) and partially (2010 apartment) by the applicant's parents.

In 2016, Mihail Buşuleac declared a gift of EUR 30,000 from a family event organised by his parents on the occasion of the birth of the candidate's second child. In the same year, the parents offered the candidate a donation of 100,000 MDL.

Also, in 2021, the candidate received a donation from his parents, an amount of 150,000 MDL.

Thus, according to the Commission, an estimate of the total financial support given to the candidate by his parents is at least EUR 60 000, but could reach up to EUR 100 000.

The Commission also objected to the fact that the candidate's father had received, on 28 June 2010, a transfer of USD 88 000 (MDL 1 128 970) from the Panamanian-based company B.B.C. As the net income of the candidate's father registered by the State Tax Service in 2010 was 405 183 MDL, the Commission noted that it appeared that he had not declared this transfer to the tax authority.

At the public hearing, the candidate stated that he did not know about this money transfer from Panama before receiving a question to that effect from the Commission, that his father had never spoken to him about it and that he had not been able to explain the source of the financial means of this transfer.

The complainant noted that his parents had held high, well-paid positions throughout their lives, thus being able to accumulate savings that would have allowed them to purchase real estate for their children. The Commission indicated that the net income of the applicant's parents in 2007 was estimated at 238 073 MDL, and in 2011 - at 290 826 MDL, without taking into account the entire period of their activity, which raises doubts when examining the information in many aspects. At the same time, the applicant specified that his parents were no longer alive, his father died before the initiation of the pre-vetting procedure, and his mother died during the Pre-Vetting process because she suffered from an incurable disease.

Thus, the applicant was unable to find out concrete information on the sources and income accumulated during their lifetime and to present evidence, which is, in the court's view, a valid argument. However, it has not been established that the applicant knew about all his parents' sources of income, the amount of all their income or sums. Thus, if the applicant's parents are no longer alive, it cannot be invoked that he had a passive behavior during the evaluation period and did not submit the evidence requested by the Commission, as, as mentioned above, Mihail Buşuleac was unable to find out and submit information and documents.

In addition, it should be noted that more than 10 years passed between the transfer on 28 June 2010 and the death of the applicant's father Mihail Buşuleac on 16 August 2021. During these years, no conviction was issued against the applicant's father, which would prove that the transfer from Panama was illegal, which also demonstrates the legality of these funds.

Moreover, according to art. 46 para. (3) of the Constitution of the Republic of Moldova, the licit character of the acquisition shall be presumed.

According to art. 4 para. (2) of Law no. 26 of 10 March 2022 on some measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, in its activity, the Evaluation Commission is guided by the Constitution of the Republic of Moldova, this law and other normative acts regulating the fields related to its activity.

Thus, in its jurisprudence, the Constitutional Court of the Republic of Moldova explained that the presumption of licit character of acquiring property can be questioned only in a criminal case, and especially its illicit character must be demonstrated by state authorities. And the demonstration of lawfulness can be blamed on the person if he is a public official.

According to the applicant's explanations, his father, at the time of the transfer, was no longer employed by the State for more than 10 years. Thus, the licit character of these funds is presumed and the Commission was to comply with the legal provisions of the Constitution.

The commission also invoked the financial support provided by the candidate's parents remained undocumented. With reference to this argument, the court draws attention to the fact that confirmatory documents were attached to the case materials concerning the income of the applicant and his wife, as well as those of the applicant's parents. As regards the lack of documents confirming donations from parents, the special panel draws attention to the fact that civil legislation does not oblige the parties to conclude the contract on donation of funds in writing, but stipulates that it is considered concluded at the moment of transmission of the property.

Thus, according to the court, since there are close, trusting relationships between children and parents and they support each other, the transmission of goods free of charge, without concluding documents, does not constitute an infringement of the law, especially if a certain form of contract is not provided for the property that is the object of the donation.

As regards the sum of EUR 30 000 as a gift in 2016 at the event of the baptism of the applicant's child, the Commission stated that there were doubts as no document had been provided.

In this regard, the court concludes that the legislation of the Republic of Moldova does not provide for the drawing up of donation contracts for the amounts received as gifts at various family events, and the applicant Mihail Buşuleac fulfilled his obligation imposed by law and declared the amount of 30,000 EUR in 2016. Respectively, there is no evidence in the case materials to confirm that the tax body or NIA initiated controls on this amount or applied sanctions to the applicant.

The Commission also had doubts about the amount of payments under the lease agreements concluded by the complainant's wife. In this case, too, according to the materials of the case, the contracts were registered with the tax body, taxes were paid based on them, and the tax body had no objections to the amount of rent. According to the principle of freedom of contract, the parties are entitled to negotiate the terms of the contract and to agree on its price.

Regarding this aspect, the Constitutional Court mentioned that, according to an *amicus curiae* opinion of the Venice Commission, the concept of integrity assessment involves the implementation of a process of mechanisms aimed at guaranteeing the highest standards of conduct and financial integrity required for access to public office. In a prior integrity screening system, a decision not to recruit a candidate can be justified in the event of a simple doubt based on a risk assessment. However, the decision not to promote a candidate's assessment must be linked to an indication of illegality, such as unexplained wealth, even if it cannot be proven beyond reasonable doubt that this wealth comes from illegal sources (see CDL-AD(2022) 011, §§ 9-10, (DCC no. 42 of April 6, 2023, par. 136).

The special panel points out that the so-called violations of financial and ethical integrity were assessed by the Commission strictly isolated from the historical and social context, which affects the security of legal relations. In general, the legal system admits the retroactive effect of the law, if it favors the legal situation of the person, but this effect cannot be projected through legal interpretation. The court emphasizes that social realism also includes legal realism, and the imposition of violations for the candidate, which were tolerated, and sometimes even accepted and administered by the state authorities, such as accepting the declaration of untruthful prices in the legal acts regarding buildings or means of transport, are not likely to consider that the plaintiff-judge lacks financial or ethical integrity.

Moreover, submitting the application to run also implies the voluntary agreement to undergo integrity assessment, as well as the conviction of each candidate that he has complied during this period with integrity criteria based precisely on the reasons of legal certainty and the social context in which he lived and relationally with public authorities.

Thus, the circumstances adopted by the Commission, are not considered by the special panel to be a genuine breach of financial integrity, because otherwise the rule of protecting legitimate expectations in the activity of the public authorities of the State, which had tasks and powers to react, but also the principle of legal certainty in all its complexity, would be defeated.

At the same time, the court considers it necessary to respect the general principle of equality, which is one of the fundamental constitutional principles of the state and grants a subjective right, prohibiting treating the same facts unequally or unequal things in the same way, unless a different approach would be objectively justified. This traditional formulation also defines the controversial basic structure and therefore the examination sequence.

The basic question is always justification, that is, whether the weight of unequal treatment is compensated by the relevant factual reasons. The degree of justification required varies according to the material seriousness of the unequal treatment and can range from a simple arbitrary test to a proportionality test. However, determining to what extent equals are treated unequally or unequal in the same way rarely leads to problems in practice.

There is no evidence of fact from the Commission's decision as to why the candidate Mihail Buşuleac is appreciated as lacking integrity in relation to unevaluated candidates, if the state of affairs is similar. Thus, whether two subjects are initially treated equally or unequally is assessed on the basis of a comparison of legal consequences. Further determination of whether this unequal treatment relates to equal or unequal objects is not significantly possible in such an absolutism, since no two objects can ever be equal in all respects, i.e. identical; otherwise there would be only one object.

The elements of comparability refer specifically to those provided by art. 8 para. (2) and (4) from Law no. 26 of March 10, 2022, which does not differ significantly. From the materials of the administrative file and from decision no. 14 of January 11, 2023, it follows that the Evaluation Commission did not perform an evaluation using the comparison method. However, the principle of equality forbids treating essentially the same things unequally. The principle of equality is considered violated, if there is no plausible and objective reason for legal differentiation or equal treatment.

The principle of equality forbids treating essentially the same things unequally, but he evidently sees this formulation as synonymous with the usual formula that the principle of equality is violated if it is a reasonable, natural result that no problem or reason can be found objectively plausible for legal differentiation or equality of treatment.

Thus, the facts of the case indicate, from this perspective, circumstances that would have led to the favorable evaluation of the candidate, and consequently, to the illegality of the contested decision, because it is contrary to the provisions of art. 23 of the Administrative Code. The Commission did not present elements of incomparability, which would only include the assessment that two objects are so different that from the beginning there can be no arguments for equal treatment.

In this context, the special panel emphasizes that according to art. 10 para. (2) – (3) of 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 Evaluation Commission and its secretariat have free and real-time access to information systems that contain data necessary to carry out its mandate, namely for the evaluation of the ethical and financial integrity of the candidates, in accordance with the legislation on the exchange of data and interoperability, with the exception of information that falls under the provisions of Law no. 245 of November 27, 2008 regarding state secrets.

In the process of evaluating the candidates' integrity, the Evaluation Commission has the right to request from individuals and legal entities under public or private law, including from financial institutions, the documents and information necessary to carry out the evaluation. The requested information is presented to the Evaluation Commission free of charge, including in electronic format, within no more than 10 days from the date of the request.

At the same time, para. (7) of the aforementioned legal norm, expressly establishes that in order to elucidate some identified uncertainties, the Evaluation Commission may request, at any stage of the evaluation procedure, additional data and information from the evaluated candidates.

The special panel of judges reveals that from the aforementioned legal norms, it follows that in the event of any ambiguities being detected, the Evaluation Commission can request, at any stage of the evaluation procedure, additional data and information from the candidate, and according to the case materials, the applicant presented all the information and documents he could dispose of without the input of his parents, who are no longer alive.

Moreover, according to art. 24 para. (1) of the Administrative Code, the participants in the administrative procedure and the administrative litigation procedure must exercise their rights and fulfill their obligations in good faith, without violating the procedural rights of other participants.

Point 7 of the Evaluation Regulation of the Independent Commission for Evaluation of the Integrity of Candidates for Membership in the Self-Administrative Bodies of Judges and Prosecutors, pursuant to Law no. 26 of March 10, 2022, adopted at the meeting of the Evaluation Commission on May 2, 2022, provides that the cooperation or lack of cooperation of a candidate during the evaluation process can be taken into account by the Commission to determine whether the candidate has removed serious doubts regarding the candidate's compliance with the criteria of ethical and financial integrity provided for in Article 8 of Law no. 26 of March 10, 2022.

Thus, examining the materials of the case as well as the materials of the candidate's file, presented by the defendant, the court finds that the arguments, findings and conclusions of the Commission were contested. It should be mentioned that the independent Commission for the evaluation of the integrity of the candidates for the position of member in the self-administration bodies of judges and prosecutors tried to obtain relevant information including from the candidate, who presented the confirmatory documents at his disposal.

The facts of the case also show from this perspective circumstances that would have led to the favorable evaluation of the candidate, and consequently to the illegality of the contested decision, because it is contrary to the provisions of art. 23 of the Administrative Code. The Commission did not present elements of incomparability, which would only include the assessment that two objects are so different that from the beginning there can be no arguments for equal treatment.

Both the judge and the prosecutor live in the same socio-economic context as the rest of the officials and citizens, and the state authorities cannot accept different standards for past situations.

Corroborating the circumstances stated above, the special 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 substantial legality, and the observed circumstances denote the candidate's right to a favorable evaluation decision from this point of view.

The Special Panel highlights that the terms “*seriously*”, “*wrongful*”, and “*inexplicable*” from art. 8 para. (2) lit. (a) of Law No 26/2022 are, in their nature, undefined legal notions (vague legal notions) that do not grant discretion to the Pre-Vetting Commission, but rather oblige it to conduct a complex and rigorous interpretation of the provision in the context of serious violations of rules of ethics and professional conduct, while in this case, the Commission noted briefly that the candidate’s actions were a serious violation of the rules of ethics and professional conduct, while, in the case, the Commission virtually held that the candidate's actions could be considered negligent conduct.

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

Thus, the violations found by the Evaluation Commission do not satisfy 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 special panel finds that the Evaluation Commission did not carry out an analysis and justification of the legitimate purpose of the issued decision. From the preamble of Law no. 26/2022 shows that its purpose is to increase the integrity of the future members of the Superior Council of the Magistracy and their specialized bodies and to increase confidence in the activity of the judges' self-administration bodies, but also in general, in the justice system.

From the contested decision and the documents presented by the defendant, it does not appear which of these goals are pursued by the decision not to promote the evaluation. Any of these purposes would be legitimate, but none of them are analyzed.

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

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

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

According to art. 29 para. (2) lit. (c)-(3) of the Administrative Code, a measure undertaken by public authorities is deemed proportionate if it is reasonable. A measure undertaken by public authorities is reasonable if the interference it causes is not disproportionate compared to its purpose. This requirement involves a balancing of the legally protected values. The more

damage is caused to a right, the more it is required for the advantage resulting from the interference to be superior. Note that excluding the right of a judge to be a candidate for membership in the Superior Council of Magistracy involves not just an interference, but rather an improper annulment of the right to be elected into this position. Such a solution cannot be accepted under the rule of law, as it is incompatible with the dignity of a human being and of a judge. The goal of trust in the justice system can be achieved by complex means, but in no way can it be done by reducing to nothing the idea of free, transparent, and competitive election for the membership of the Superior Council of Magistracy and its bodies. The judge, holding such a position, is presumed to have integrity and, should the opposite be proven, then he/she shall be dismissed from the judiciary by means of a disciplinary procedure or another procedure that would take into account the guarantees of his/her independence. The Special Panel notes that the purpose of Law No 26/2022, among other things, is to boost the trust in justice.

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

Next, the special trial panel reiterates that the so-called violations of financial and ethical integrity were assessed by the Commission strictly isolated from the historical-social context, which affects the security of legal relationships.

In general, the legal system admits the retroactive effect of the law, if it favors the legal situation of the person, but this effect cannot be projected through legal interpretation.

With reference to the claimant's argument that serious procedural errors were admitted in the evaluation procedure by the Evaluation Commission regarding the violation of the language used in the evaluation process, manifested by the lack of English translations of the documents and statements presented by the candidate to the stage of data collection and verification by the Commission members, considering that the Commission members Herman von Hebel, Victoria Henley, Nona Tsotsoria, who are English speakers and who would not have been provided with an English translation by the Commission secretariat, the special panel notes the following.

According to art. 10 para. (9) from Law no. 26/2022, the Evaluation Commission evaluates the accumulated materials according to its intimate conviction, formed following the complete and objective multi-aspect research of the information. None of the materials presented has a predetermined probative force without its assessment by the Evaluation Commission.

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

The special panel finds 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, a fact that specifically contravenes art. 10 para. (9) from Law no. 26/2022, but also the provisions of art. 22 and 92 of the Administrative Code.

In the same vein, the Special Panel finds that the Commission did not respect the candidate's right of effective access to the content of the administrative file, which gives her the right to get to know and extract copies of any document and information that refers to the as a participant in the administrative evaluation procedure. Restricting access to the administrative file also violated another guarantee, such as the candidate's right to defense before the Evaluation Commission.

The Special Panel deems well founded the plaintiff's argument that the time the Commission granted for submitting information was insufficient and limited, thus making it impossible to gather evidence in order to mitigate entirely the potential "serious doubts" of the Pre-Vetting Commission.

In this respect, the Special Panel emphasizes that, according to art. 82 of the Administrative Code, (1) if the administrative procedure is to be carried out in writing as per art. 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. (1¹) 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. (2) 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 art. 83 of the Administrative Code, (1) the public authority holding the administrative procedure shall grant, to the participants, access to the administrative case file. (2) Participants shall not have access to draft individual administrative acts before the completion of the procedure. (3) 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. (4) 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. (5) 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.

Furthermore, the Special Panel notes that the Pre-Vetting Commission had the obligation to submit to the court, as per art. 221 and 82 of the Administrative Code, the entire administrative case file of candidate Mihail Buşuleac, so that the court could fulfil its constitutional task of effective judicial review of factual and legal matters.

Similarly, the special provisions under art. 10 para. (5) and art. 12 para. (4) lit. (c) of Law No. 26/2022 and art. 2 para. (1) lit. (g) of the Evaluation Rules pursuant to Law No. 26/2022, adopted at the meeting of the Pre-Vetting Commission of 2 May 2022, guarantee the candidate's right to access the materials gathered by the Pre-Vetting Commission and its Secretariat for the purpose of candidate's evaluation.

During the examination of the case, this was confirmed by the representatives of the Evaluation Commission, who in the court hearing, communicated that only the documents that the Commission considered relevant were made available to the candidate.

These circumstances prove that the Pre-Vetting Commission violated candidate Mihail Busuleac'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 art. 82 and art. 83 of the Administrative Code, in corroboration with art. 10 para. (5), art. 12 para. (4) lit. (c) of Law No 26/2022 and art. 2 para. (1) lit. (g) of the Evaluation Rules under Law No 26/2022.

Therefore, the Pre-Vetting Commission did not exercise entirely its competence to investigate the situation of its own motion, which is provided for by art. 6 lit. (f) of Law No 26/2022, which stipulates that in order to exercise its powers, the Pre-Vetting Commission shall request information from individuals or legal entities of public or private law, and gather any information relevant to the fulfilment of its mandate.

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 notes that the circumstances found indicate a violation of the guarantees of the administrative evaluation 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 collaboration in clarifying the factual situation and the right to a decision

without discretionary errors in the assessment of the evidence.

The special court finds that only these isolated violations of the guarantees in the administrative procedure constitute serious procedural errors, which affected the fairness of the administrative evaluation procedure, and as a consequence the existence of procedural circumstances, which would have led to the promotion of the evaluation by the candidate.

The special panel notes the fact that the state has invested the Evaluation Commission with the prerogative to be guided by certain standards in order to select the most honest candidates for the position of members, inter alia, in the Superior Council of the Magistracy, which in turn could ensure the correctness the functioning of the judicial system as a whole, including through the application of policies that are consistent and conform to generally accepted standards.

The plaintiff proved to the special panel of the Supreme Court of Justice the plausibility of the elements invoked in her appeal, including regarding the correctness of the financial operations carried out in the management, sale and purchase of movable and immovable assets as well as the early repayment of loans.

At the same time, the Special Trial Panel notes that the Venice Commission recommended that the final decision regarding the evaluation be taken by the competent court, however the Parliament of the Republic of Moldova opted for a different legal policy regarding this subject. Despite this fact, the Special Panel emphasizes that, for reasons of effective protection of rights, it is in law and obliged to carry out a full judicial review of legality on matters of fact and law.

Even though the special panel of the Supreme Court of Justice is limited in making a 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 also on the jurisprudence of the Constitutional Court, which highlighted that, even if the special 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 April 6, 2023 § 143).

The special panel notes that, also for reasons of effective judicial control, but also for reasons of the quality of the law, the Evaluation Commission is not obliged, after ordering the re-evaluation of the candidate, to investigate circumstances other than those that were the basis for admitting the plaintiff's action.

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

The special panel mentions that the circumstances retained by the Evaluation Commission do not fall within the perspective of proportionality in the reasons for not promoting the evaluation of the candidate Mihail Busuleac.

Thus, the exclusion and not only the limitation of the right of the candidate Mihail Busuleac to participate and be elected as a member of the Superior Council of the Magistracy for the minor facts retained by the Evaluation Commission is not an appropriate measure to achieve the goals set out in the law , but not specified in the contested decision. Considering the problem of the proper functioning of the judicial self-administration bodies at the time of issuing the decision and the non-promotion of the candidate for the minor facts, not only does it not fall under the reasons for non-promotion, but it constitutes an unnecessary violation of the stated rights.

The special panel reiterates that the measure taken by the defendant public authority is a reasonable one if the interference produced by it is not disproportionate in relation to the intended purpose. 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 right of the judge to be a candidate for the position of member of the Superior Council of the Magistracy, the College for the selection and career of judges and the College for evaluating the performance of judges entails not only interference, but an improper

cancellation of the right to be elected in this function. Such a solution cannot be accepted in a state of law, as it is incompatible with human dignity and that of a judge.

From the mentioned considerations, the special panel reveals that, in this case, there are legal grounds to cancel the decision of the independent Commission for evaluating the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors No. 13 din 06 ianuarie 2023 regarding the candidacy of Mihail Buşuleac.

The special panel notes that the illegality of the contested decision leads to the annulment of the decision and ordering the reevaluation 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 para. (1) and (2) of the Administrative Code (see DCC no. 42 of April 6, 2023 § 143, the case of Ramos Nunes de Carvalho e Sá v. Portugal [MC], November 6, 2018, § 184 and the jurisprudence cited there) .

In accordance with art. 224 para. (1) lit. b), 195 Administrative Code, art. 238-241 of the Civil Procedure Code, art. 14 para. (6), para. (8) lit. b), paragraph (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 March 10, 2022, the special trial panel, established within the Court

The special panel of judges, set up under the Supreme Court of Justice, for the examination of appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors,

DECIDES:

To partially admit the appeal filed by Mihail Buşuleac against the independent commission for assessing the integrity of candidates for membership in the self-administration bodies of judges and prosecutors regarding the annulment of decision no. Law no. 13 of January 6, 2023 on the candidacy of Mihail Buşuleac and ordering the resumption of the evaluation procedure of the candidate by the Commission, collection of moral damage.

To annul the Decision No 13 of 06 January 2023 on the candidacy of Mihail Buşuleac, candidate for member of the Superior Council of Magistracy.

To order the resumption of the evaluation by the independent commission for assessing the integrity of candidates for membership in the self-administration bodies of judges and prosecutors of candidate Mihail Buşuleac.

To dismiss as unfounded the claim for a finding of violation of the applicant's right to privacy, guaranteed by Art. 8 of the Convention and the collection of non-pecuniary damage.

The decision is irrevocable.

President, Judge Tamara Chisca-Doneva

Judges Mariana Pitic and Ion Guzun