

File No. 3-24/23

2-23050162-01-3-05042023

D E C I S I O N
In the name of the Law

THE SUPREME COURT OF JUSTICE

01 August 2023

Chisinau municipality

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

composed of:

the Chairman, the judge

the judges

Tamara Chisca-Doneva

Ion Guzun

Mariana Pitic

the clerks

Mariana Tilipet,

Marianna Boico

With the participation of:

the plaintiff

the representative of the plaintiff,

the defence lawyer

Tatiana Chiriac

Dumitru Cazacu

the representatives of the defendant,

the defence lawyers

Roger Gladei

Valeriu Cernei

having examined in a public court session, in the administrative proceeding the application for appeal filed by Tatiana Chiriac against the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, regarding the cancellation of Decision No. 30 of 24 March 2023 regarding the candidacy of Tatiana Chiriac, candidate for the position of member in the Superior Council of the Magistracy and ordering the resumption of the candidate's evaluation procedure,

f i n d s o u t:

Arguments of the trial participants:

On 3 April 2023, Tatiana Chiriac submitted a request through the post office in order to challenge the decision of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors No. 30 of 24 March 2023 regarding the candidacy of Tatiana Chiriac, candidate for the position of member of the Superior Council of the Magistracy, requesting the cancellation of the mentioned decision and ordering the resumption of the evaluation procedure.

In the reasoning of the appeal, the plaintiff reported that on 16 June 1997, she was appointed as a judge at the Calarasi Court, where she worked until her resignation from this position on 8 April 2008.

Between 29 May 2008 and 4 June 2013, the plaintiff claimed that she worked as a lawyer. Later, on 5 June 2013, she started working as the head of the Record and Procedural Documentation Department of the Calarasi Court, and on 1 October 2014, she was appointed as the head of the Calarasi Court Secretary, where she worked until 10 May 2016.

They noted that on 1 March 2023, she participated in public hearings 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.

The Evaluation Commission decided that the candidate does not meet the integrity criteria by Decision No. 30 of 24 March 2023, regarding Tatiana Chiriac's candidacy, as serious doubts were found regarding her compliance with the ethical and financial integrity criteria and, therefore, she did not pass the assessment.

The plaintiff deemed this decision as being illegal, unfounded, unjustified and based only on assumptions, doubts and inconclusive and unconvincing evidence.

The plaintiff claimed that the Evaluation Commission decided not to promote the assessment for two reasons, the first reason being the failure to submit declarations regarding income and property upon appointment and dismissal.

In this regard, the plaintiff mentioned that according to the findings of the Evaluation Commission, on 5 June 2013, the candidate was hired as the head of the Record and Procedural Documentation Department in the Calarasi Court. Although the legislation in relation to the declaration and control of the income and property of persons with positions of public officials, judges, prosecutors, civil servants and persons with management positions, in force at that time, required the obligation to submit the declaration regarding income and property within 20 days from the date of appointment or election to the position. According to the National Integrity Authority, there is no record of a statement submitted at the time of the candidate's appointment to the position. On 10 May 2016, the candidate resigned from the position of the head of the Calarasi Court Secretary. Although the legislation stated that the subjects of the declaration were obliged, at the end of the mandate or at the end of the activity, to

submit a declaration regarding the income and property, held at the time of the end of the mandate, according to the National Integrity Authority, there is no record of a statement submitted in this regard.

Considering the mentioned circumstances, the Evaluation Commission found that it has serious doubts (art. 13 para. (5) of Law No. 26 of 10 March 2022) regarding the candidate's compliance with the criterion of financial integrity and ethical integrity under art. 8 para. (2) lit. (c), para. (4) lit. (a) and para. (5) lit. (b) from Law No. 26 of 10 March 2022, in relation to compliance with the legal regime for the declaration of wealth and personal interests, namely the submission of the declarations upon appointment and dismissal in 2013 and 2016, doubts which were not mitigated by the candidate.

Considering that the doubts cannot be based on the lack of confirmatory documents which are in fact certified in the case at hand, the plaintiff emphasized that it is not clear how the Evaluation Commission came to this conclusion regarding the lack of financial integrity, since the last declaration was submitted on 15 March 2016, the dismissal from office took place on May 10, 2016, and during this period the plaintiff did not make any transactions, a fact that could easily be verified.

Furthermore, the plaintiff also pointed that, during the public hearings, she informed the Evaluation Commission that she submitted the income declarations for the entire period during which she was working in the Calarasi Court. Moreover, the lack of statements to the National Integrity Authority is not the plaintiff's fault. The National Integrity Authority did not find any violations committed by Tatiana Chiriac regarding the regime of declaration of wealth and interests, for the period of 2013 and 2016.

Hence, the plaintiff considered that, the absence of the statements cannot cast doubt on the integrity of a candidate, because it did not constitute an intentional concealment of income, which could be a circumstance that casts doubt on the integrity of the candidate.

The plaintiff also mentioned that her family has had the same real estate and land for the last 20 years. During this period there were only transactions for the procurement and sale of two movable properties, mainly cars, which were in a damaged condition.

She noted that these "properties" were certainly going to appear in the two missing declarations, which were definitely submitted.

The plaintiff also revealed that in Decision No. 30 of 24 March 2023, the Evaluation Commission declared that it obtained information from numerous sources to evaluate the financial and ethical integrity of the candidate, the sources from which information was obtained regarding the evaluated candidates included, in general, the National Integrity Authority, the State Fiscal Service, the General Inspectorate of the Border Police, financial institutions, public institutions, open sources such as social networks and journalistic investigative reports and reports from members of civil society. However, the plaintiff believes that the Evaluation Commission did not go into the essence of the related problem, such as the fact that the plaintiff had a dispute with

the chairman of the court, a fact known to the general public, considering that the Disciplinary Board, the Superior Council, the Magistrate and the press were informed about this subject. At the same time, during the written questions, the plaintiff also presented the documents relevant to the described situation.

The plaintiff mentioned that the Evaluation Commission did not take into account the fact that in 2013 Tatiana Chiriac was employed by the chairman of the Calarasi Court, Grigore Daschevici, and after his transfer to the Chisinau Court of Appeal, and as Valentina Criucicova was appointed as the chairman of the Court Calarasi, who previously held the position of vice chairman and who informed the plaintiff that she would not be able to work under her leadership from the very beginning.

She indicated that, from the content of Decision No. 30 of 24 March 2023, it follows that the plaintiff worked under the direction of the same chairman of the court. This fact might seem to be a minor thing, but in essence it is not clear whether the Evaluation Commission properly assessed the written and verbal explanations of the plaintiff.

The amicus curiae brief of 6 June 2016, of the Office of the United Nations Organization for Human Rights (OHCHR) in Moldova also serves as proof of the tense, stressful and discriminatory situation for the plaintiff during the described period of time.

According to the plaintiff's opinion, another important procedural aspect relates to the presentation of evidence with reference to the lack of asset declarations, namely the fact that each time, the written questions and supplementary questions were sent to the plaintiff on Thursday, around 19:00 or 20:00, the answer was expected to be presented to the Evaluation Commission by Sunday 24:00. She considered that, in this way, her right to defence was affected by establishing a short and insufficient period of time to be able to present the relevant evidence from the relevant institutions.

The plaintiff stated that, during the evaluation procedure, she was working at two places, being engaged from Monday to Sunday in the work related to the refugee crisis in Ukraine, and Friday was scheduled for visits to the territory in order to distribute aid, something that could not be postponed. Thus, she was only able to check the documentation that she kept at home in order to present the defence. She did not have enough time to submit a request to the archives of the Straseni Court and receive an answer.

She revealed that the mentioned reasons were also brought up during the hearings of 1 March 2023, but for unclear reasons they did not serve as the basis of Decision No. 30 of 24 March 2023. As proof, she attached the copy of the excerpts from the electronic mail with the discussions between the plaintiff and the Evaluation Commission.

Regarding the second reason for failure, the underestimated value of the Honda CR-V car, year of manufacture 2011, the plaintiff reaffirmed the findings of the Evaluation Commission, namely that on 7 April 2015, the candidate purchased the Honda CR-V car, year manufactured in 2011. In her annual declaration for 2015, the candidate stated that the purchase price of the car was 100,000 lei, which is

approximately 4,785 euros. The car was imported to the Republic of Moldova at the end of 2014 with a customs value of 180,000 lei and customs duties in the amount of 31,000 lei, all according to the information from the Customs Service. The total import cost of the car was 211,000 lei. During the public hearings, the candidate confirmed that she could not provide a copy of the 2015 car sales contract, as she personally did not keep a copy of the contract, and P.I. The "Public Services Agency" does not keep records of such contracts for more than six years.

The plaintiff highlighted that the Evaluation Commission stated that on 14 September 2017, two years later, the candidate sold the car. According to her 2017 declaration provided to the Evaluation Commission, the car was sold at the same price of 100,000 lei, estimated at 4,807 euros. However, the candidate provided a copy of the sales contract, which states that the sales price was 50,000 lei.

Considering the nominated circumstances, the Evaluation Commission indicated that it has serious doubts (art. 13 par. (5) of Law no. 26 of 10 March 2022) regarding the candidate's compliance with the criterion of financial integrity and the criterion of ethical integrity, according to Art. 8 para. (2) (c), para. (4) (a) and para. (5) (b) from Law No. 26 of 10 March 2022, in relation to the accuracy of the information and the lack of convincing explanations regarding the purchase of the Honda CR-V car in 2015 and its sale in 2017, which were not mitigated by the candidate.

Regarding the issue related to the purchase and sale of the Honda CR-V car, the plaintiff considered that the members of the Evaluation Commission were subjective and did not give any consideration to the explanations given by the plaintiff during the public hearing pursuing a single goal, which was the failure of evaluation.

The plaintiff explained that she was not involved in the purchase and sale of automobiles, her husband, who worked for more than 20 years in the Calarasi Transport Record and Registration Section, was fully responsible for this procedure. The information included in the plaintiff's statements for the years 2015 and 2017 was provided by the husband.

Also, the plaintiff stressed that she informed the Evaluation Commission about the condition of the car, which was not in a good shape and an extensive repair was necessary. Thus, she considered that this fully explains the purchase price of the car in 2015, as well as the sale price of the car in 2017.

The plaintiff also pointed out that, during the public hearings, she explained to the Evaluation Commission that the signature on the contract for the sale of the Honda CR-V car from 2017 does not belong to her, and she agrees to a graphology expertise in this regard. Moreover, she indicated that the husband does not deny the fact that the signatures on the purchase and sale contracts of this car belong to him, because he wanted to surprise the plaintiff in 2015.

Regarding the difference between the purchase price of 100,000 lei and the information from the Customs Service, the plaintiff mentioned that the car was in an inadequate condition, therefore it was sold at a lower price, it being lower than the customs value and customs duties. At the same time, she reiterated that due to lack of

time, she was unable to find the person who sold them the car to confirm the information regarding the price and the initial technical condition of the car, as she was abroad. Meanwhile, discussing with other experts in the sale of automobiles and customs services, the plaintiff was informed that in most cases the customs officials estimate the automobiles only according to the year of manufacture and not according to its real technical condition, and they do not draw up technical verification documents. In turn, the sellers who import the automobiles are in compliance with the market requirements.

Likewise, the plaintiff mentioned that once she has time, she will continue to try to find the seller of the car who will certainly confirm that the plaintiff was never even seen, and that the transaction was concluded only with the husband.

According to p. 11 of the Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law of the Council of Europe regarding some measures related to the selection of candidates for administrative positions in the self-administration bodies of judges and prosecutors and the modification of some normative acts passed by the Venice Commission at the 129th Plenary Session (Venice, 10-11 December 2021), in a normal regime, the integrity of magistrates to be elected by their peers should, by nature, result from the qualities, personal circumstances, integrity and professional competence that allowed the appointment as a judge or prosecutor. Once the status of the magistrate has been acquired, the qualities of integrity and competence must be presumed until proven otherwise, which can only result from the evaluation of disciplinary or functional performance through appropriate legal procedures.

And, according to p. 29 of the mentioned Opinion, the implementation of an integrity control system should always be strictly in accordance with the principle of proportionality. Breach of professional conduct covers a wide range of actions, from minor offenses to serious misconduct giving rise to (potential) disciplinary sanctions. This is not to say that breaches of professional standards may not be of considerable relevance where there has been sufficient misconduct to justify and require disciplinary action. However, minor deviations should not, in the opinion of the Venice Commission and the General Directorate, provide a valid reason for rejecting a candidate.

In conclusion to the above mentioned, the plaintiff considered that the findings of the Evaluation Commission's Decision No. 30 of 24 March 2023 are superficial, unfounded and in contradiction with the Opinion of the Venice Commission, as all those related by the defendant in the mentioned decision, could be removed if there was enough time granted. Moreover, the "serious doubts" disclosed by the Commission could be attributed to minor deviations, which in no way affect the ethical or financial integrity (case file 1-8).

On 11 April 2023, the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, represented by Vitalie Miron, filed a defence statement requiring the rejection of the appeal submitted by Tatiana Chiriac.

In the defence statement, the defendant invoked that the activity of the Evaluation

Commission is regulated by Law no. 26 of 10 March 2022 regarding some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors. Decision no. 30 of 24 March 2023 regarding the candidacy of Tatiana Chiriac, a candidate for the member position in the Superior Council of the Magistracy, was issued after the evaluation carried out in full compliance with the Law.

The Commission explained that in this case the Evaluation Commission diligently and in good faith executed all its obligations, provided for by Law No. 26 of 10 March 2022 in particular when they found certain uncertainties, the Evaluation Commission offered the applicant the opportunity to clarify them, by presenting additional data and information (within the meaning of art. 10 para. (7) of Law No. 26 of 10 March 2022), and also offering sufficient time (a fact confirmed by the plaintiff, because they presented additional data and information).

Also, it was emphasized that the burden of proof passes to the candidate during the evaluation process.

In the initial stage, it is the Commission's duty to gather data and information by exercising its legal powers (art. 6 of Law no. 26 of 10 March 2022) and fulfilling its legal obligations (art. 7 of Law No. 26 from 10 March 2022). However, to clarify uncertainties as and when they arise, the Commission gives the candidate the opportunity to submit additional data and information (art. 10 para. (7) of Law No. 26 of 10 March 2022). The submission of additional data and information is a right (art. 12 paragraph (4) of Law No. 26 of 10 March 2022), not an obligation of the candidate, but not exercising this right (by refusal, overt or implicit, or by presenting incomplete or inconclusive data) carries the risk of leading the Commission to the conclusion that there are serious doubts as to whether the candidate meets the integrity criteria. It is therefore in the candidate's interest to take on the burden of proof, and this legislative transfer not only does not violate but also effectively protects the candidate's rights.

According to the defendant, the reason for shifting the burden of proof to the candidate was developed on international level. Thus, the European Commission for Democracy through Law (Venice Commission) finds the following: - in a system of vetting and integrity checks, it can be perfectly legitimate to transfer the burden of proof from the state to the judge/prosecutor requesting the recruitment or employment. ... (Opinion of the Venice Commission No. 1064/2021 of 9 February 2022 regarding the development of the vetting process in the judicial system, Kosovo; page 68); - The re-appointment process, on the other hand, turns all employees into applicants, and the burden of proof falls on these people, who must prove that they are fit to have the position in question. (ibid, page 95).

The Independent Evaluation Commission for assessing the integrity of candidates for the position of a member in the self-administration bodies of judges and prosecutors specified that the integrity evaluation process, as well as the decision, does not affect the professional status of the plaintiff, or: 1) the matters of the Commission's mandate

is expressly established by Law (Art. 3 para. (1) of Law No. 26 of 10 March 2022), as follows: The Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors performs the evaluation of the integrity of candidates for the position of member in the bodies provided for in Art. 2 para. (1) (including in the Superior Council of Magistracy). Respectively, the Commission does not substitute or take over the position of any public body in the Republic of Moldova (including criminal investigation bodies).

The defendant pointed out that the decision indicates that there are serious doubts as to the plaintiff's compliance with the criteria of ethical and financial integrity. However, the decision is not, and is not intended to be, a determination of non-compliance with those criteria.

The Evaluation Commission's conclusion, expressed by Decision, regarding the existence of serious doubts regarding the plaintiff's compliance with the criteria of ethical and financial integrity depends on the suitability of the decision.

Thus, it was mentioned that the court is required to review the legality of the decision and has no right to review the appropriateness of the decision. More specifically, it would be in the remit of the court to uphold the plaintiff's action and to order the resumption of evaluation only if it finds (that serious procedural errors were admitted during the evaluation procedure by the Evaluation Commission, which affect the fairness of the evaluation procedure and the existence of circumstances that could result in the promotion of the evaluation by the candidate, situations that are missing in the present case.

They mentioned that the doubts of the Evaluation Commission can appear due to certain uncertainties or even due to the lack of information or evidence. Per a contrario, if the Evaluation Commission were to evaluate the candidates exclusively based on the accumulated information, without considering the information that is missing or that was hidden by the candidates, the final purpose of Law no. 26 of 10 March 2022, to establish an integrity filter regarding the members of the Superior Council of the Magistracy that would increase the trust of the society in the judicial system.

The most relevant documents in the context of candidate evaluation are income and property declarations. Namely, the existence and correctness of these statements are the basis for candidates' compliance with ethical integrity (Art. 8 para. (2) (c) from Law no. 26 of 10 March 2022) and financial integrity (Art. 8 para. (4) (a) from Law no. 26 of 10 March 2022).

The Evaluation Commission explained in its Decision that: a) "the candidate mentioned that the statement submitted at the time of appointment could still be in court and that the head of the Secretary also kept some records in the Register and that she was making her own notes, but she did not try to go to court in person and make a request. The law in force at that time obliged the officials responsible for the collection of statements to register the statements in a special Register" b) "other candidates confirmed that their statements were recorded, when they did not keep records of the

submission. The candidate did not do this" (page 10 of the Decision). From the above mentioned, it is easy to see that the Evaluation Commission's claim was related to the lack of any evidence that, in fact, was to be presented by the plaintiff to confirm the facts invoked by her. In particular, the Evaluation Commission explained that the plaintiff had to be diligent enough and, at the very least, show that she tried to obtain the records from the special court register, which was omitted by the plaintiff.

The Evaluation Commission stated that it has no way of knowing in each case whether or not the person has the confirmations and documents requested by the Evaluation Commission and if the candidate does not have them - nothing prevents them from communicating this to the Evaluation Commission and presenting the proof that the candidate submitted the necessary requests in order to obtain the documents requested by the Evaluation Commission, even after the deadline.

Confirming the above mentioned, attention was drawn to the fact that the Evaluation Commission accepted the declaration for the year 2016, a document that was presented by the plaintiff after public hearing, without a request from the Evaluation Commission. This circumstance shows that when the plaintiff acted with the necessary diligence for the presentation of the documents requested by the Evaluation Commission in order to remove doubts - these documents were taken into account by the Evaluation Commission, thus the plaintiff's right to defence was respected altogether.

Moreover, they observed that from the date of the 1st round of questions to the date of the hearing or even the issuance of the Decision, at least one month had passed, which would have been more than enough time for the plaintiff to provide the Commission with the answer from the Straseni Court's archive.

All these statements were examined by the members of the Evaluation Commission, which results from the Decision: - "the candidate explained that the information she provided was information from her husband" (page 11); - "noted that the signature on the contract was her husband's" (page 11). Moreover, the Evaluation Commission assessed the explanations provided by the candidate, noting that the candidate's argument was not convincing, especially because it was "the personal responsibility of the candidate to ensure the completeness and accuracy of the information she had sent to the National Integrity Authority.

Contrary to what the plaintiff stated, it is the competence of the Evaluation Commission to assess whether or not certain circumstances are sufficient to establish the existence or absence of serious doubts regarding compliance. This is because this particular issue refers to the suitability of the Decision, which cannot be subject to judicial review. So, the following aspect invoked by the plaintiff is foreign to judicial control (as aspects of the Decision opportunity): - "lack of statements cannot create doubts about the integrity of a candidate". However, the plaintiff's statement above is in fact a subjective assessment vis-a-vis the findings of the Evaluation Commission, which shows disagreement (which is explainable) with the background of the decision. In no case do these statements lead to the conclusion that the Evaluation Commission

would have acted in an arbitrary way or in bad faith, and the decision would be illegal and therefore subject to cancellation.

In the court session, the plaintiff Tatiana Chiriac and her representative, lawyer Dumitru Cazacu, filed an appeal against decision No. 30 of 24 March, 2023 regarding Tatiana Chiriac's candidacy, requesting her admission, on the factual and legal grounds cited in the application.

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

The Determination of the Court

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

Case Examination Period

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

By the order of the interim Chair of the Supreme Court of Justice No. 46 of 28 March 2023, in relation to the fact that by the Decision of the Superior Council of the Magistracy No. 66/3 of 23 February 2023, the resignation request of the judge of the Supreme Court of Justice, Vladimir Timofti, was accepted, his dismissal from the position of judge of the Supreme Court of Justice being from 27 March 2023, the members of the panel of the special court were changed, provided by item 12 No. 1 of the order of the Interim President of the Supreme Court of Justice No. 39 of 20 March 2023 and new members of the special court panel were established for the examination of appeals declared against the Decisions of the Independent Evaluation Commission for the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, as follows: Tamara Chisca-Doneva – chairman, judges - Mariana Pitic, Maria Ghervas - judge, otherwise, the provisions of the order of the Interim President of the Supreme Court of Justice no. 39 of 20 March 2023 "Regarding the amendment of Order no. 34 of 2 March 2023".

On 5 April 2023, the mentioned case was automatically assigned in a randomized way, through the Integrated File Management Program, for examination in the first instance to the judge - rapporteur Mariana Pitic.

By the conclusion of 6 April 2023 of the judge-rapporteur Mariana Pitic, member of the Special Panel, established within the Supreme Court of Justice to examine the appeals of candidates for the position of member in the self-administration bodies of judges and prosecutors. She was admitted for examination, in the administrative

litigation procedure, the appeal filed by Tatiana Chiriac against the Evaluation Commission, the participants in the trial being summoned to the court session set for April 11, 2023, 5:00 p.m., room no. 4 in the premises of the Supreme Court of Justice, located at 18, Petru Rareș str., Chisinau municipality.

The panel of the Supreme Court of Justice notes 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 No. 64 of March 30, 2023, the Plenum of the Supreme Court of Justice is composed of all judges of the Supreme Court of Justice and has, among others, the task of establishing, annually, the composition of the trial panels.

On 11 April 2023, the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors moved to recuse Judge Mariana Pitic.

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

However, by Law No. 89 of 27 April 2023, in force from 2 May 2023, the transitional provisions of Law No. 64 of 30 March 2023 regarding the Supreme Court of Justice, were amended in the sense of establishing the moment of the start of the activity of the Supreme Court of Justice with the new members, including the Plenary, offering as a result powers to form the trial panels according to the previous rule - by the Chair of the Supreme Court of Justice.

In accordance with Art. 12 para. (8) from Law No. 65 of 30 March 2023, the Superior Council of the Magistracy by Decision No. 120/6 of 10 April 2023 announced the competition for filling, by temporary transfer, the vacant positions of judge at the Supreme Court of Justice, and by the Decision of the Superior Council of Magistracy No. 142/8 of 2 May 2023, it was decided to temporarily transfer 7 judges from the national courts, for a period of 6 months. Was put into action starting from 10 May 2023 to the position of judge of the Supreme Court of Justice.

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

By ruling of 25 May 2023, the Special Panel established at the Supreme Court of Justice rejected the motion to disqualify Judge Mariana Pitic, filed by the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors.

In this regard, taking into account the above mentioned, the special trial panel declares that the exceeding of the deadline for examination of the appeal by 10 days, was also influenced by the complexity of the case, the behaviour of the parties to the

trial, which includes that of the defendant authority, the difficulty of the debates, the mass resignations of the judges of the Supreme Court of Justice and the impossibility of forming the Special Panel to judge appeals.

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

At the hearing on 30 June 2023, the case was examined on the merits, the parties' explanations were heard, the evidence was examined, the pleadings were heard and, in accordance with Article 14(9) of the 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 Article 21(1) of the Administrative Code for the issuance of the individual administrative act by the Commission. Accordingly, the provisions of Article 8(1)-(4) of the Law 26/2022 are rules of substantive administrative law.

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

The Special Panel thus notes that the decision of the Commission is an individual

administrative act within the meaning of Article 10(l) of the Administrative Code. The individual administrative act is the final output of the administrative procedure.

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

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

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

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

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

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

The special rules of the Law No 26/2022 do not preclude the application of Books I and II, with the exception of certain aspects, such as, in particular, the initiation of administrative proceedings, clarification of facts on own motion, quorum and majority, the right of the candidate to be heard, and others. The wording “certain aspects” in Article 2(2) of the Administrative Code does not mean that the Administrative Code shall not apply.

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

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

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

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

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

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

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

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

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

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

The Special Panel also emphasizes that the administrative procedure of evaluation has a clarifying and guiding purpose owing to the procedural nature of the formal action of evaluating candidates for the position of member of the Superior

Council of Magistracy. Respect for the basic principles, safeguards and rules of administrative procedure is therefore a requirement directly rooted in the concept of the rule of law stipulated in Article 1(3) of the Constitution of the Republic of Moldova.

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

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

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

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

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

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

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

According to Article 10(1) of the Administrative Code, the Commission's decision relates to "an individual case", which consists of the concrete situation of plaintiff's evaluation. This trait of the individual administrative act has the function to delimit it from the normative administrative act, which is an abstract regulation as per Article 12 of the Administrative Code.

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

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

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

Regarding the existing judicial practice on appeals filed against the Evaluation Commission (files No. 3-5/2023 and No. 3-13/2023), where the court established with *res judicata*, that the cases filed against the Evaluation Commission the provisions of books I and II of the Administrative Code are not applicable, the special trial panel, established within the Supreme Court of Justice declared that those files do not form a unitary judicial practice. However, the role of jurisprudence is to clarify and apply the law to concrete cases. So, not every decision that differs from another decision constitutes a divergence of jurisprudence.

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

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

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

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

Application admissibility.

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

application are met.

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

According to Article 5 of the Administrative Code, the administrative activity under the public law of public authorities includes the individual administrative act as the main form of administrative action of the authorities.

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

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

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

The Special Panel notes that by means of the filed application, plaintiff Tatiana Chiriac is claiming an infringement of a right by administrative activity, according to Article 189(1) of the Administrative Code, namely that by issuing Decision No 30 of 24 March 2022, the Pre-Vetting Commission violated her right to be elected to the position of a member in the Superior Council of Magistracy (Article 14 of the Law on the status of judges No 544/1995), right to self-administration of judges.

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

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

In this context, it is believed that the Decision of the Independent Evaluation Commission for the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors No. 30 of 24 March, 2023 was received by Tatiana Chiriac on March 29, 2023, a fact confirmed by the e-mail extract attached to the case documents (case file no. 367, administrative file).

The Special Panel concludes that the appeal filed by Tatiana Chiriac is admissible, as the plaintiff complied with the legal provisions of Art. 14 para. (1) from

Law No. 26 of 10 March 2022 regarding some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors, submitting this appeal request through the post office, on April 03, 2023, within the deadline provided by law, to the Supreme Court of Justice.

With respect to the type of application for administrative litigation, the Special Panel holds the filed application as an action for injunction of a specific nature. By means of a regular action for injunction, the plaintiff, according to Articles 206 (1)(b) and 224(1)(b) of the Administrative Code, aims at the annulment of the individual administrative act rejecting his/her request for obtaining a legal advantage of any kind and at obliging the public authority to issue the rejected individual administrative act. At the same time, the specificity of the filed action is about annulling the Commission's decision on failing the candidate and ruling for a resumption of the evaluation.

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

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

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

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

discretion is reduced to zero, as per Article 137(2) of the Administrative Code.

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

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

For the purposes of Article 13 of the European Convention on Human Rights, everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

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

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

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

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

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

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

The court's review of the work of an administrative authority of public law

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

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

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

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

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

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

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

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

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

The Commission's decision is unfounded and the plaintiff would have the right to a favorable decision, because the appealed decision is vitiated, especially from the perspective of proportionality, misinterpretation of undefined legal notions and fair treatment.

By decision No. 30 of 24 March, 2023 regarding the candidacy of Tatiana Chiriac, candidate for the position of member of the Superior Council of Magistracy, the Evaluation Commission decided that the candidate does not meet the integrity criteria, as serious doubts were found regarding the candidate's compliance of the criteria of ethical and financial integrity and therefore does not promote the evaluation. On 3 April 2023, Tatiana Chiriac filed a request to challenge the decision of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors No. 30 of 24 March 2023 regarding the candidacy of Tatiana Chiriac, requesting the cancellation of the decision and ordering the resumption of the candidate evaluation procedure.

Therefore, according to 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. 30 of 24 March 2023, the candidate for the position of member in the Superior Council of Magistracy, Tatiana Chiriac, did not pass the evaluation under art. 8 para. (2) (c), para. (4) (a) and para. (5) (b) and Art. 13 para. (5) from Law No. 26 of 10 March 2022 regarding some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors, on the grounds that it does not correspond to the integrity criteria, as serious doubts were discovered regarding the candidate's compliance with the criteria of ethical and financial integrity.

In this case, the provisions of Art. 8 para. (2) (c), para. (4) (a) and para. (5) (b) and Art. 13 para. (5) from Law No. 26 of 10 March 2022 regarding some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors, which stipulates that a candidate is considered to meet the criterion of ethical integrity if they have not violated the legal regime of declaring wealth and personal interests, of conflicts of interest, incompatibilities, restrictions and/or limitations.

A candidate is considered to meet the criterion of financial integrity if: the candidate's wealth has been declared in the manner established by the legislation.

In order to assess the candidate's financial integrity, the Evaluation Commission verifies: the candidate's compliance with the legal regime of the declaration of wealth and personal interests.

It is considered that a candidate does not meet the integrity criteria if there are serious doubts regarding the candidate's compliance with the requirements provided for in art. 8, which were not removed by the assessed person.

The Special Panel mentions that in decision No. 30 of 24 March 2023, in compartment III "Evaluation of the candidate", the Evaluation Commission mentioned the existence of serious doubts regarding Tatiana Chiriac, the candidate for the position of member of the Superior Council of Magistracy, regarding the criteria of financial and ethical integrity, taking into account the following circumstances:

1. Failure to submit declarations regarding income and property upon appointment and dismissal;
2. Underestimated value of Honda CR-V car, year of manufacture 2011.

Thus, analysing the conclusions of the Evaluation Commission on these circumstances related to the evaluation criteria and the evidence of the case, the Special Panel declares that the Independent Evaluation Commission for the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors has reached a conclusion in a hastily manner, therefore the claims of the plaintiff Tatiana Chiriac against the defendant presented in the appeal are well founded.

In this case, the violated rights invoked by the plaintiff are: the right to administration according to Art. 39 para. (2) of the Constitution of the Republic of Moldova, the right to a favourable evaluation decision and the right to trust in justice. Effective judicial control involves checking all aspects of procedural and substantive legality, in particular, equality of treatment, proportionality, legal certainty, motivation,

correctness of ex officio factual investigation, impartiality, misinterpretation of legally undefined notions and others. Only in this way can the standard of effective protection enshrined in Art. 53 of the Constitution of the Republic of Moldova.

In these circumstances, the special trial panel notes that, in the process of issuing the administrative act challenged by this request, the plaintiff fully and without reservations guarantees the execution of the requirements for the presentation of documents and the defendant's requests, within the deadline, without any objections from the Commission of full assessment of what was presented, which could have been withdrawn by the plaintiff.

The Special Panel concludes that through the presentation of the candidate's explanations and clarifications on the issues raised by the Evaluation Commission and the further manifestation, during the court hearing when examining the present appeal, of an active behaviour by Tatiana Chiriac, they removed the doubts retained by the Evaluation Commission regarding the candidate's compliance with the financial and ethical integrity criteria.

The Special Panel reports that the violations of financial and ethical integrity were assessed by the Evaluation Commission isolated from the historical-social context, which affects the security of legal relationships. The legal system admits the retroactive effect of the law, if it favours the legal situation of the person, but this effect cannot be projected on the fault of the legal interpretation.

Moreover, the submission of the application to be a candidate also implies the voluntary agreement to be subjected to the integrity assessment, as well as the conviction of each candidate that he has respected the integrity criteria during this period, arising specifically from the reasons of legal security and the social context in which he lived and related to public authorities.

Thus, the panel of judges considers that the circumstances retained by the Evaluation Commission would defeat the rule of protection of legitimate trust in the activity of the public authorities of the state, which had tasks and powers to react, but also the principle of legal security in all its complexity.

Therefore, the Special Panel rules that both from the documents and from the arguments of the applicant presented before the court, the existence of circumstances that could lead to the promotion of her evaluation before the Evaluation Commission and which would justify the re-evaluation of the candidate Tatiana Chiriac, removed the serious doubts formulated by the Evaluation Commission regarding Tatiana Chiriac's compliance with the criteria of ethical and financial integrity established by Art. 8 of Law No. 26 of 10 March 2022 regarding some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors, regarding the failure to submit declarations regarding income and property upon appointment and dismissal from office and the underestimated value of the Honda CR- V, year of manufacture 2011.

With reference to the circumstance related to the failure to submit declarations regarding income and property upon appointment and dismissal

from office, the Evaluation Commission established whether the candidate complied with the legal regime for declaring wealth and personal interests and verified the sources of income and methods of acquisition of the goods by the candidate, family members and close people of the candidate.

The Evaluation Commission indicated that in this case, for the period between 2013 and 2016, in which the candidate was active at the Calarasi Court, there are annual declarations submitted by the candidate for the years 2013, 2014 and 2015, but no declaration submitted when she was appointed to the position, nor a declaration submitted upon release from office, as required by law.

The Evaluation Commission retained the candidate's statements, whereby she claims that she submitted both statements and acknowledged that she received written proof of submission of the statements, but did not retain this confirmation or copies of the statements because, when she left this position, she never intended to return to public service, much less to work in the judiciary.

According to the candidate, due to hostile relations towards her, the Chair of the Calarasi Court could have been involved in submitting the candidate's statements due to the litigation previously initiated by the candidate against the president of the court.

The Evaluation Commission mentioned that the candidate communicated contradictory information regarding the fact of submitting the declarations and did not present confirmation that the declarations for 2013, 2014 and 2015 were registered. Thus, the concerns of the Evaluation Commission regarding the non-submission of declarations were not removed by the candidate.

During the court session, the plaintiff Tatiana Chiriac reiterated the explanations given before the Evaluation Commission and presented to the court: the answer of the Straseni Court No. 5058 of 11 April 2023; copy of the extract from the Register of declarations of assets and personal interests No. 1 of the Calarasi Court, for the year 2013; copy of the extract from Tatiana Chiriac's personal file; copy of the explanations of the senior specialist in the records and procedural documentation department of the Calarasi Court of 18 March 2016.

Through answer No. 5058 of 11 April 2023, the Straseni Court informed the plaintiff that the statement for 2013 and the statement for 2016, following the merger of the courts, were not sent by the Calarasi Court to the Straseni Court.

According to the extract from the Register of declarations of assets and personal interests No. 1 of the Calarasi Court, for the year 2013 it is confirmed that on 7 June Tatiana Chiriac submitted the declaration of wealth and personal interests.

From the extract of section 8 "Declarations of income and property and of personal interests" from the personal file of civil servant Tatiana Chiriac, it follows that on 4 April 2016 the applicant submitted two declarations: the declaration of personal interests on 1 tab and the declaration on income and property on 3 tabs, both being received by Petru Ciumas.

According to the explanation of 18 March 2016, Petru Ciumas held the position of senior specialist in the records and procedural documentation department within the

Calarasi Court.

The Special Panel reveals that according to Art. 10 para. (2) – (3) from Law No. 26 of 10 March 2022 regarding some measures related to the selection of candidates for the position of member in the self-administration bodies of judges and prosecutors, the Evaluation Commission and its secretariat have free and real-time access to information systems that contain data necessary to carry out its mandate, and namely for the evaluation of the ethical integrity and the financial integrity of the candidates, under the conditions of the legislation on data exchange and interoperability, with the exception of the information that falls under the provisions of Law no. 245 of 27 November 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, paragraph (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.

And, according to Art. 2 item 1 (d) from the Evaluation Regulation of the Independent Evaluation Commission for the integrity of candidates for the position of member in the self-administrative bodies of judges and prosecutors, pursuant to Law No. 26 of 10 March 2022, adopted at the meeting of the Evaluation Commission of 2 May 2022, one of the main stages of the evaluation are questions and requests to send documents to candidates to the extent necessary to clarify issues of ethical and financial integrity. Candidates must respond within the deadline set by the Commission.

Thus, from the nominated legal norms, it can be deduced that in case of any ambiguities, the Evaluation Commission may request, at any stage of the evaluation procedure, additional data and information from the candidate, in order to remove the serious doubts that have arisen before the Evaluation Commission.

Analysing the events described above, the Special Panel finds that the candidate complied with all the requests of the Evaluation Commission, presenting the existing documents and acts in order to remove the doubts that arose.

At the same time, the candidate's answers and position on this subject did not reveal an intention to hide the income acquired in 2013 and 2016. Moreover, from the existing documents on file and the findings of the Evaluation Commission, it follows with certainty that during the nominated period neither the candidate neither personally nor her spouse have procured any goods or assets.

Taking into account the above, the special trial panel mentions that, if the Evaluation Commission allowed a sufficient period of time to the plaintiff, taking into account the circumstances mentioned, it had the objective possibility to form an

accurate picture of the candidate's financial situation based on the information detailed, possibly presented by candidate Tatiana Chiriac.

Once the Evaluation Commission has breached its obligation to investigate the factual situation, a procedural flaw is found, which, as a consequence, leads to the illegality of the contested individual unfavourable administrative act.

Moreover, based on the provisions of art. 6 (d), e) and f) from Law No. 26 of 10 March 2022, in order to exercise its functions, the Evaluation Commission has the following powers: it has access to any information systems that contain data relevant to the fulfilment of its mandate, namely for the evaluation of the ethical integrity and financial integrity of the candidates, including through the platform of interoperability (MConnect); hears the candidate and other persons who have relevant information about the integrity of the candidate; requests information from individuals and legal entities under public or private law, as well as gathers any relevant information for the fulfilment of its mandate.

So, the legislator offered the Evaluation Commission a wide range of tools and levers for the accumulation of all the necessary information regarding the applicant and her relatives, including the assessment of the data and documents presented by her during the evaluation.

In the context of the factual and legal circumstances described above, the impossibility of presenting the documents by the applicant was based on both objective and subjective circumstances: the insufficient time given to answer the rounds of questions; direct dependence on the actions and diligence of other persons (who are presumed to possess the information and/or documents); lack of access to personal data of other people; the response time of public authorities and financial institutions holding relevant information; the questions from the hearings concerned new information, which needed to be proven and/or concretized; certain facts were not known prior to the public hearings; negations cannot be proven.

With reference to the insufficient time given to answer some questions and present the additional documents, the special trial panel mentions that from the administrative file it appears that within the communication, the Evaluation Commission sent to the applicant the rounds of questions as well as the instructions for answering them, by means of electronic mail.

On 27 December 2022, at 20:08, the Evaluation Commission sent the plaintiff the "Declaration Form for 5 years" and granted time until 3 January 2023 (7 calendar days) to complete it (case files no.353, administrative file). The deadline was respected by Tatiana Chiriac (case files no.354, administrative file).

On 27 January 2023, at 07:32, the Evaluation Commission sent Tatiana Chiriac the first round of questions to fill in, thus giving the applicant until 31 January 2023 (5 calendar days) to answer the questions (case files no.355, administrative file). Tatiana Chiriac complied with the deadline (case files no.356-357, administrative file).

On 9 February 2023, at 06:37, the Evaluation Commission sent the second round of questions to the applicant for completion, thus giving the applicant until 12 February

2023 (4 calendar days) to answer the questions (case files no.358, administrative file).

In connection with the second round of submitted questions, on 10 February 2023, at 11:38 a.m., the applicant Tatiana Chiriac addressed to the Evaluation Commission questions arising in connection with their completion and informed the Evaluation Commission that from Monday to Sunday it is employed at the Women's Law Centre and at "Caritas Moldova" being trained in refugee crisis management activities. Additionally, he mentioned that the deadlines granted are very limited, including 2 days of rest, so he does not have the possibility to accumulate all the requested documents and explanations (case files no.359, administrative file).

Thus, the special trial panel appreciates as unclear the argument of the Evaluation Commission, such as that, when it found certain uncertainties, the Evaluation Commission offered the plaintiff the opportunity to clarify them, by presenting additional data and information, offering a sufficient term (confirmed fact implicitly by the applicant by presenting additional data and information).

However, the above-named letter confirms with certainty that the deadline granted to the plaintiff for the presentation of evidence is insufficient, a fact communicated to the Evaluation Commission.

The Special Panel mentions that in the answers given by the applicant, the insufficiency of the time given for the presentation of the information is cited, a fact that prevented the applicant from obtaining the requested information in a short period of time (case files no. 359, administrative file).

Therefore, the special trial panel finds that Tatiana Chiriac was effectively unable to collect all the information necessary to answer the Evaluation Commission's questions in such limited terms.

The administration of additional evidence and documents is also due to the omission of the Evaluation Commission to request from the Calarasi Court the necessary information regarding the statements presented by the applicant, the section responsible for their collection, or, the law grants the Evaluation Commission the right, but also a obliges, to request from the public authorities, information containing data necessary for the fulfilment of its mandate.

In the case, the special trial panel concludes that the Evaluation Commission did not verify all the factual circumstances, did not give a complex assessment of the applicant's explanations, and the lack of ex officio investigation led to the adoption of a hasty solution.

At the same time, the candidate's answers and position on this subject did not reveal an intention to hide the income acquired between 2013 and 2016. Moreover, from the existing documents in the file as well as the findings of the independent Commission for evaluating the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors regarding the candidacy of Tatiana Chiriac, it is clear that neither the plaintiff nor her husband, during the mentioned period, obtained any movable/immovable property.

Analysing the aspect of the candidate's financial integrity, the Special Panel of

judges considers it necessary to highlight the fact that the Evaluation Commission did not comply with the principle of equal treatment towards the candidate Tatiana Chiriac.

However, the general principle of equality represents one of the fundamental constitutional principles included in the Constitution of the Republic of Moldova and grants a subjective right. This principle prohibits treating the same facts unequally or unequal things in the same way, unless a different approach would be objectively justified.

Determining the extent to which equals are treated unequally in the same way rarely leads to problems in practice.

From the Evaluation Commission's decision, there are no factual elements to indicate why the candidate Tatiana Chiriac is assessed as not having integrity in relation to the evaluated candidates if the facts are similar.

The Special Panel emphasizes that, if two subjects are initially treated equally or unequally, they are evaluated based on a comparison of the legal consequences (on factual equality). Further determination of whether this unequal treatment refers to equal or unequal objects is not significantly possible in such absoluteness, since two objects can never be equal in all respects, that is, identical; otherwise, there would be only one object. However, since the comparison of two objects is always only the comparison of their properties, what is involved here is a non-judgmental collection of those properties in which the objects under consideration differ, oriented towards the subsequent test of justification.

The elements of comparability refer specifically to those provided by art. 8 para. (2) and (4) from Law no. 26 of 10 March 2022, which does not differ significantly in the case of the applicant, an unevaluated candidate in relation to the evaluated candidates. The Evaluation Commission did not carry out an evaluation using the comparison method, at least that is what it appears from the judicial and administrative file presented by the Evaluation Commission.

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 plausible reason can be found objectively for legal differentiation or equality of treatment.

In such circumstances, the Special Panel concludes that the explanations presented by Tatiana Chiriac allowed the Evaluation Commission, as a result of the multi-aspect and objective research, to remove the suspicions regarding the candidate's integrity.

Furthermore, in the context of the principle of equal treatment, in the case of another candidate-judge who passed the evaluation, regarding the failure to submit the statement, it cannot be ignored that the Evaluation Commission concluded that: "Although the Commission finds that the failure to submit two statements annual represents a violation of the legal regime of the declaration of wealth and personal interests and, therefore, affects the ethical and financial integrity of the candidate,

according to the criteria provided by Law No. 26 of 10 March 2022, the Commission concludes that, given the specific circumstances in this case, the violation in question (failure to submit the annual declarations for 2010 and 2011) does not reach the level of seriousness to equate to the candidate's non-compliance with the criteria of ethical and financial integrity".

But in the case of the candidate, the Commission did not even examine from the perspective of the advantages or benefits that Tatiana Chiriac would have had by not submitting the nominated declarations and did not justify why in the case of the candidate the violation reaches the level of gravity to equate to the candidate's non-compliance with ethical and financial integrity criteria.

With regard to the underestimated value of the Honda CR-V car, year of manufacture 2011, the Evaluation Commission noted that it was not convinced by the candidate's arguments, as it was the candidate's personal responsibility to ensure the completeness and correctness of the information she had sent to the National Authority of Integrity in its annual statement for 2015 and the Commission in its annual statement for 2017.

During the court hearing, the plaintiff Tatiana Chiriac reiterated the explanations given before the Evaluation Commission and presented to the court: the copy of the response of P. I. "Public Services Agency" No. 03/C-1052 of 7 April 2023; the copy of the purchase-sale contract dated 7 April 2023 and the statement of the plaintiff's husband Constantin Chiriac dated 29 June 2023.

Thus, the special trial panel reveals that according to the answer of I.P. "Public Services Agency" No. 03/C-1052 of 7 April 2023, according to Indicator No. 57 of 27 July 2016 on standard documents and retention periods (6 years) for public administration bodies, institutions, organizations and enterprises of the Republic of Moldova, approved by Order no. OSSA57/2016 of 27 June 2016 of the State Archives Service, the documents that served as the basis for the registration on 7 April 2015 of the model vehicle "HONDA CRV", in the name of Tatiana Chiriac, were destroyed in connection with the expiration of the retention period.

The sale price of the vehicle of 100,000 lei is confirmed by the copy of the purchase-sale contract dated 7 April 2023.

Analyzing the aspect of the candidate's integrity, the special judgment panel considers it necessary to highlight the fact that the Evaluation Committee has not respected the principle of equal treatment towards candidate Tatiana Chiriac regarding the underestimated value of the Honda CR-V car, year of manufacture 2011.

That is, the general principle of equality represents one of the fundamental constitutional principles included in the Constitution of the Republic of Moldova and grants a subjective right. This principle prohibits treating the same facts unequally or unequal things in the same way, unless a different approach would be objectively justified.

Moreover, it cannot be ignored that, in the case of another candidate-judge who passed the evaluation, regarding the underestimated value of the car, the Evaluation

Commission concluded that: "Although the Commission expresses its concern about the fact that, in the statements in his annual report, the candidate indicated incorrect information regarding the value of the car, however, he cannot conclude that the presentation of this incorrect information, in the absence of any profit recorded by the candidate and without indications of an intention to misrepresent the value of the car, amounted to a breach of integrity ethical or financial of the candidate".

From the decision of the Evaluation Commission, however, there are no factual elements that indicate why the candidate Tatiana Chiriac is judged as not having integrity in relation to the evaluated candidates if the facts are similar.

The Special Panel emphasizes that the principle of equality forbids the treatment of essentially the same things unequally, but obviously sees this wording as a synonym of the usual formula according to which the principle of equality is violated if it is reasonable, resulting from the nature that it cannot be found an objectively plausible problem or reason for legal differentiation or equality of treatment.

The Special Panel of judges notes 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 the acceptance of the declaration of agreed prices in the document's legal issues regarding real estate or means of transport, are not of a nature to consider that the applicant lacks financial or ethical integrity.

The Special Panel reveals that the Evaluation Commission's conclusions regarding the existence of serious doubts regarding the applicant's ethical and financial integrity were not confirmed in the court session.

However, the Evaluation Commission did not make a correlation between the legal basis and the attested factual circumstances, regarding the ethical and financial integrity of the candidate.

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

The Special Panel highlights that the terms "seriously", "wrongful", and "inexplicable" from Article 8(2)(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 of judges.

In the same respect, the Special Panel highlights that given its constitutional function to deliver justice, the court had the ultimate competence to interpret a vague legal notion in a concrete case.

The Special Panel finds that the Pre-Vetting Commission did not analyze and

reason the legitimate purpose of the issued decision. The preamble of Law No 26/2022 provides that the purpose of the Law is to increase the integrity of future members of the Superior Council of Magistracy and its specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and overall in the justice system.

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

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

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

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

According to Article 29(2)(c)-(3) of the Administrative Code, a measure undertaken by public authorities is deemed proportionate if it is reasonable. A measure undertaken by public authorities is reasonable if the interference it causes is not disproportionate compared to its purpose. This requirement involves a balancing of the legally protected values. The more damage is caused to a right, the more it is required for the advantage resulting from the interference to be superior. Note that excluding the right of 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, than 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.

Furthermore, the Special Panel reiterates that the so-called violations of financial and ethical integrity had been assessed by the Commission in a subjective way and isolated from the historical-social background, which affects the security of legal relationships. Generally, the legal systems accept the retroactive effect of the law if it favors the legal situation of a person, but this effect cannot be projected by way of legal interpretation.

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 Tatiana Chiriac. However, it did not conduct an analysis and justification of the legitimate purpose.

Thus, the exclusion and not only the limitation of the right of the candidate Tatiana Chiriac 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 do they not fall under the reasons for non-promotion, but they constitute a 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 goal pursued. This requirement of the legislator implies a balancing of legally protected values, a weighting of the interests at stake. The more the right is injured, the more the advantage from integrity is required to be superior.

Therefore, the exclusion of the applicant's right to be a candidate for the position of member of the Superior Council of the Magistracy entails not only interference but an improper cancellation of the right to be elected to this position. Such a solution cannot be accepted in a state of law, as it is incompatible with human dignity.

The Special Panel considers as well-founded the plaintiff's argument that the time granted by the Commission for the presentation of information was insufficient and limited, thus making it impossible to accumulate evidence in order to fully

eliminate any "serious doubts".

At the same time, the Special Panel notes that the Evaluation Commission had the obligation to present in accordance with the provisions of Art. 221 and 82 of the Administrative Code fully the administrative file of the candidate Tatiana Chiriac in the court of law, so that the court of law can fulfil its constitutional task of effective judicial control over matters of fact and law.

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

So, the legislator has provided the Evaluation Commission with a wide range of tools and levers for gathering all the necessary information. Therefore, the non-execution of the ex officio research obligation led to the adoption of an erroneous solution by the Commission and, respectively, the 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 to be effectively involved in the evaluation 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 demonstrated to the Special Panel of the Supreme Court of Justice the plausibility of the elements invoked in her appeal, including regarding correctness, as well as compliance with ethics and deontology norms.

At the same time, the Special Panel notes that the Venice Commission recommended that the final decision regarding the evaluation be taken by the competent court. 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. The plaintiff demonstrated to the Special Panel of the Supreme Court of Justice

the plausibility of the elements invoked in her appeal, including regarding correctness, as well as compliance with ethics and deontology norms.

At the same time, the Special Panel notes that the Venice Commission recommended that the final decision regarding the evaluation be taken by the competent court. 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 (Constitutional Court Decision No. 42 of April 6, 2023 §143).

The Special Panel mentions that, also for reasons of effective judicial control, but also for reasons of the quality of the Law, the Commission is not obliged, after ordering the resumption of the evaluation procedure, to investigate circumstances other than those that were the basis for admitting the plaintiff's lawsuit.

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, 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 Tatiana Chiriac.

Thus, the exclusion and not only the limitation of the right of the candidate Tatiana Chiriac 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. 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 do they not fall under the reasons for non-promotion, but they constitute a 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, an assessment of the interests at stake. The more the right is endangered, the more the advantage from integrity is required to be better than the previous one.

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

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 the candidates for the position of member in self-administration bodies of judges and prosecutors No. 30 of 24 March, 2023 regarding Tatiana Chiriac's candidacy.

The Special Panel notes that the illegality of the contested decision leads to the annulment of the decision and the re-evaluation of the candidate. Or, ordering the reassessment is the final and implicit result that includes the loss of validity of the decision according to Art. 139 para. (1) and (2) of the Administrative Code (see the Constitutional Court Decision No. 42 of 06 April 2023 § 143; the case of Ramos Nunes de Carvalho e Sá vs Portugal [MC], 06 November 2018 § 184 and the jurisprudence cited there).

In accordance with Art. 224 para. (1) (b) and 195 of the Administrative Code, art. 238-241 of the Civil Procedure Code, Art. 14 para. (6), para.(8) (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. 30 of 24 March, 2023, the Special Panel of judges, established within the Supreme Court of Justice, to examine the appeals declared against the decisions of the independent Commission for evaluating the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors

d e c i d e s:

To admit the application for appeal filed by Tatiana Chiriac against the Independent Evaluation Commission of the integrity of Candidates for the position of member in the self-administrative bodies of judges and prosecutors regarding the cancellation of the Decision No. 30 of 24 March, 2023 regarding the candidacy of Tatiana Chiriac and ordering the resumption of the evaluation procedure of the candidate.

The decision of the Independent Evaluation Commission for the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors no. 30 of 24 March, 2023 regarding Tatiana Chiriac's candidacy. It is ordered that the candidate Tatiana Chiriac be re-evaluated by the independent Commission for the evaluation of the integrity of the candidates for the position of member in self-administration bodies of judges and prosecutors.

The decision is irrevocable.

The chair, the judge

The judges

Tamara Chisca-Doneva

Ion Guzun

Mariana Pitic