

D E C I S I O N

In the name of the Law

SUPREME COURT OF JUSTICE

01 August 2023

mun. Chisinau

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

comprising:

President of the hearing, judge judges

Tamara Chisca-Doneva
Ion Malanciuc
Mariana Pitic

Registrar

Rodica Nicula

With the participation of:

Applicant

Aliona Miron

defendant's representative, lawyer

Valeriu Cernei

Having examined in the public hearing in administrative procedure the appeal filed by Aliona Miron against the Independent Commission for assessing the integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors, regarding the annulment of Decision no. 15 of 11 January 2023 on the candidacy of Aliona Miron, candidate for the position of member of the Superior Council of Magistracy and ordering the resumption of the evaluation procedure of the candidate,

F o u n d:

Arguments of participants in the process.

On February 5, 2023, Aliona Miron filed an appeal against the Independent Commission for assessing the integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors, requesting the declaration of action as admissible, the upholding of the action, the annulment of the decision

No. 15 of 11 January 2023 of the Evaluation Commission and ordering the resumption of the candidate's evaluation procedure.

In motivating the action, she invoked that, within the terms established by the Superior Council of Magistracy, she submitted her candidacy to be elected as a member of the Superior Council of Magistracy.

She communicated that on June 21, 2022, the Evaluation Commission sent her an ethical integrity questionnaire, to be completed by July 5, 2022, a requirement she complied with. And, on July 8, 2022, the Evaluation Commission submitted a request to complete and submit by July 15, 2022 the Declaration of assets and personal interests for the last 5 years, which has been submitted by her on July 14, 2022.

Subsequently, on 3 August 2022, the Evaluation Commission sent a request for clarification of information to the complainant. She answered all questions on 7 August 2022 and provided all requested documents.

On 14 September 2022, the Evaluation Commission sent the applicant a second round of questions, the last one answering within the requested deadline, although she was objectively unable to provide all the requested documents.

On 21 October 2022, the Evaluation Commission sent the applicant the third round of questions, to which she answered within the requested deadline on 24 October 2022. On 30 November 2022, she was heard publicly by the Evaluation Commission and answered all questions raised by the members of the Commission.

In view of the fact that, during the public hearings, uncertainties had arisen concerning the applicant's activity in a euro bank account, after the hearings, she removed the doubts that had arisen by submitting at a date subsequent to the hearings a written explanation of the bank's activity of the account, which confirmed her previous explanations.

By Decision No. 15 of 11 January 2023 on the candidacy of Aliona Miron, candidate for the position of member of the Superior Council of Magistracy, the Evaluation Commission decided that the applicant does not meet the integrity criteria, as serious doubts have been found regarding the candidate's compliance with the ethical and financial integrity criteria on the first two issues analyzed, namely: the financial capacity of a relative to grant her a loan of EUR 10,000 and failure to submit documents confirming the expenses incurred by the applicant for the construction of the house with an area of 190 sq. m., located in mun. Chisinau.

She reported that the Evaluation Commission indicated, as grounds for non-promotion of the applicant's evaluation, Article 8 para. (1), (2) letter c), para. (4) letters a), b), para. (5) letters b), c), d) and e) of Law no. 26/2022.

The Evaluation Commission indicated as grounds for non-promotion of the applicant's assessment the following circumstances: violation of the legal regime of declaration of assets and personal interests, conflicts of interest, incompatibilities, restrictions and/or limitations; the candidate's assets were not declared in the manner established by legislation; acquired wealth by the candidate in the last 15 years does not correspond to the declared income.

The applicant disregards these findings and conclusions of the Evaluation Commission, considers them unfounded and based on the erroneous assessment of the evidence presented by the applicant, but also ignoring the arguments presented by the latter at the public hearing on November 30, 2022.

Regarding the source of funds for a loan of EUR 10,000 and the National Integrity Authority declarations and the Evaluation Commission about the loan", she indicated that in the annual declarations of assets and personal interests submitted for 2015, 2016 and 2017, she declared a loan in the amount of EUR 10,000, without interest and due date, contracted in 2015 from Elena Brinișter, the applicant's husband's relative. However, for 2018 she has declared a loan in the amount of EUR 5,000, without interest and due date, from Elena Brinișter, the relative of the applicant's husband, on the grounds that during 2018, in several installments, part of the loan was repaid – EUR 5,000, but this fact has not been documented. However, in order to confirm this, she submitted Elena Brinișter's written statement to the Evaluation Commission.

She pointed out that, at the public hearing, she explained to the Commission that she had not repaid the EUR 5 000 in monetary value because her sister-in-law and her husband had decided to 'forgive' the loan, citing the help they had received, including the fact that they had lived in the apartment owned by her family since 2016. However, although her sister-in-law gave up on the remaining part of the loan, the applicant's husband insisted on repaying the debt, which is why she reflected the assumption of EUR 5 000 as such.

She reiterated that in her declarations of assets and personal interests, she indicated and declared regularly and in compliance with the legal provisions the loan granted by her sister-in-law, Elena Brinișter, and once the creditors decided not to claim the repayment of EUR 5 000, the applicant was not obliged to indicate in the declaration of assets and interests the amount of the loan in the amount of EUR 10 000, since she was no longer obliged to repay the sum of EUR 5 000.

At the same time, she considered erroneous the conclusion of the Evaluation Commission regarding the alleged doubts regarding the source of the money available to Elena Brinișter to grant her a loan in the amount of EUR 10,000. She had the financial capacity to lend her EUR 10 000, and it was explained in detail that her sister-in-law's husband worked as an engineer and then worked in Romania, in the field of agriculture; for a long time, he transported cars from abroad, repaired and sold them, including other household goods. However, the Evaluation Commission did not exercise due diligence to verify these claims. Although, the husband of the applicant's sister-in-law, Valentin Brinișter, imported about 12 cars into Moldova only between 2005 and 2009, with the help of which he carried out the activity of selling products at the markets in the district.

The applicant noted that the Evaluation Commission took into account only the income declared to the State Tax Service for a limited period of time when determining the income earned by the Brinișter family, completely ignoring the fact that the husband of the applicant's sister-in-law worked for a period of time in Romania, where he earned income, which was not reflected in the data submitted to the State Tax Service.

In this context, she mentioned that the Evaluation Commission did not ask the Customs Service for information about import operations carried out by her sister-in-law's husband and did not hear the persons who have the relevant information on the topics addressed.

She pointed out that her sister-in-law and her husband were unable to request the institutions to release the information requested by the Evaluation Commission, given

their state of health, but also the short terms set for submitting the requested answers and evidence.

She considered that the Evaluation Commission erroneously established that Elena Brinişter's affidavit was not sufficient to confirm the financial capacity to grant the loan in the amount of EUR 10 000, as the Evaluation Commission did not take into account the period when these funds were granted as loans and the usual conduct of natural persons not involved in public activities and functions. Moreover, the Evaluation Commission did not request any additional document or information either during the question rounds or after the public hearings, creating the impression that this aspect was sufficiently clarified.

She also noted that the existence of close family relations gave a strong presumption of veracity of Elena Brinişter's statement, a presumption which has not been rebutted by the information obtained by the Evaluation Commission concerning the applicant.

According to the applicant, once the Evaluation Commission breached its obligation of full official inquiry, she considered that an insufficient investigation of the facts was present, which constituted a procedural defect.

She informed that after the hearings, she found out that her sister-in-law's husband worked on the basis of an entrepreneur's patent, from which he also earned income, used to accumulate savings. And, on the grounds that the income obtained under the entrepreneur's patent is not a source of taxable income, the Brinişter family did not have the obligation and did not submit declarations to the State Tax Service.

She also mentioned that the Brinişter spouses also owned an Individual Enterprise through which they sold goods through purchase documents, which were subsequently declared to the Tax Inspectorate.

She reported that the above demonstrates once again the superficiality of the findings of the Evaluation Commission in the contested decision.

Moreover, she noted that based on the 3 rounds of questions, the Evaluation Commission asked only one question in relation to the source of funds of the applicant's husband's sister on 3 August 2022 at 20:44 and requested the answer by 7 August 2022. Under these circumstances, the applicant would have effectively had 2 working days, in which to collect the necessary information, being genuinely unable to collect other evidence that the Evaluation Commission would have considered relevant.

The applicant indicated that the data in the declaration of assets and personal interests were absolutely legal.

As regards the inconsistency in the applicant's written communication invoked by the Evaluation Commission, the applicant pointed out that there was no inconsistency. Elena Brinişter did not possess legal knowledge to express herself in legal language, but admitted that the applicant had reimbursed her the sum of EUR 5 000, without specifying how and in what currency that amount had been returned.

In addition, she mentioned that, after receiving the decision of the Evaluation Commission, during discussions with her sister-in-law, she informed her that on March 13, 2013, she sold several agricultural plots with an area of 4.14 ha, from the sale of which she earned an income, which was also used as savings. However, she did not know about these circumstances either at the time of the written questions formulated by the Evaluation Commission, nor at the public hearing.

The administration of additional documents is also due to the failure of the Evaluation Commission to request from the public authorities the necessary information regarding the patrimony of the Brinișter family, the law grants the Commission the right, but also obliges it, to request information from public authorities regarding the patrimony of persons close to the candidate.

With reference to the costs of construction of the house of 190 m² located in mun. Chisinau, the applicant argued that the allegation in the decision of the Evaluation Commission concerning the alleged lack of coherent and credible evidence on construction expenditure was not sufficient to substantiate any serious doubts, as the Evaluation Commission did not take into account the evidence provided by the applicant; the applicant's request to hear her mother, the specificity of our country's culture, the fact that the works are carried out by individuals and the usual conduct of individuals who are not involved in public activities and functions and who have no serious reason to keep for years documents confirming the expenses incurred, because they have no reason to believe that in the indeterminate future they will have to submit them to the authorities-reason referring to the applicant's mother, who did not keep cheques/invoices/vouchers confirming the expenses incurred for the construction and repair of the dwelling house.

In this regard, she reiterated that she never had documents that she could submit in answer to the questions of the Evaluation Commission, as most of the construction and finishing works of the donated house were paid for by her mother. And, the Evaluation Commission neglected the reality of strong family ties, as well as the legal origin of the money invested (to which the commission had no objections).

The Commission did not comply with the applicant's request to hear the applicant's mother, so that the Commission did not take into account the possibility of collecting additional information, which would have elucidated several aspects.

Moreover, at the public hearings, she informed the Evaluation Commission that her husband owns a small atelier, with the help of which he prepared and installed the furniture in the house, and the necessary pieces for the furniture were gradually purchased from the salary, which can be confirmed by several attached invoices, which were accidentally found by Elena Brinișter, in the apartment where they previously lived together.

With regard to the value of the dwelling house and the difference between the value of the property owned by the applicant's mother and the property owned by her, it was revealed that the dwelling house owned by her parents had been completed, and the dwelling house owned by the applicant's family was not put into operation; the value of the dwelling house transferred to the applicant family was determined according to a valuation report from 2017; the repair works in the applicant's house were carried out by members of the applicant's family, which are not yet finished. Since acquiring ownership of the house, the applicant and her family have carried out repair works for three rooms of the house, the leaving and kitchen, while the other rooms are currently unfinished.

She reiterated that at the public hearings, she communicated that on the date of acquiring ownership of the house, it was transmitted in the white version, and her mother sent her even more construction materials, previously purchased.

She claimed that the Commission subjectively doubted the expenses incurred by her in carrying out the repair works of the dwelling house, without analyzing the

statements from the presented bank accounts, as well as ignoring the loans contracted by her family, for the execution of repair works of the dwelling house.

At the same time, according to Technical Opinion no. 17 of February 3, 2023, the degree of execution of constructions at the current date is approximately 81%. A large part of the works has been executed between 2017 and 2018, until the transfer of ownership of the real estate. This technical opinion was not previously presented, believing that the descriptions and pictures presented were sufficient, and she required more time than that granted by the Evaluation Commission, as well as significant additional costs.

Also, in the income declaration for the last 5 years, the applicant indicated a single one-time purchase of more than 25 000 MDL, as the rest of the construction expenses were borne by her mother between 2017 and 2018, and as of March 2018 the purchases were less than 25 000 MDL.

The applicant mentioned that the Commission's statement that the value of the property in 2018 was 921,676 MDL was erroneous. The house was valued at this price in 2017, a year before it was transferred into possession. From the moment of valuation until the moment of transfer into possession, the applicant's mother continued the construction works in both houses, but the applicant's mother lived in this house in 2018.

Moreover, the applicant's mother found several invoices confirming that between 2017 and 2018 the works continued in both houses, as well as a contract confirming the installation of the heating system, with the data of the person who carried out the works.

She noted that at the moment she managed to contact two people, who carried out a large part of the work, whose statements confirm all previous arguments.

She indicated that at the time of concluding the donation contract in 2018, the notary took over the data from the statement from the PSA, and the house is not put into operation until now.

She pointed out that, although the Evaluation Commission had invoked that the applicant was obliged to declare expenditure in excess of 25 000 MDL, the Commission had failed to take into account the fact that a denial could not be demonstrated, as the applicant could not have evidence of the absence of certain expenses. However, the Evaluation Commission also failed to assess the evidence/documents submitted by the applicant.

At the same time, the Evaluation Commission ignored to give an assessment to the documents submitted by the applicant, such as: statement from bank accounts, confirming the purchase of construction materials from salary; pictures from the house, confirming that so far the building is not finished and put into operation; proof of transfer of credit to the husband's account by BC., Moldova-Agroindbank" JSC; credit agreement.

She communicated that the impossibility of submitting documents is based on both objective and subjective circumstances: insufficient time to answer rounds of questions; direct dependence on other people's actions and diligence; reluctance of individuals to give statements; lack of access to personal data of others; response time of public authorities and financial institutions holders of relevant information; The questions in the hearings concerned new information, which needed to be proved and/or specified; certain facts were not known prior to public hearings; denials cannot

be proved.

Referring to the three rounds of questions, the applicant had 3 effective days for the first round of questions, 2 effective days for the second round of questions and 2 effective days for the third round of questions.

She pointed out that she was obliged to provide information about close relatives in so far as she knew of their existence, and in so far as that information was provided to her, so the applicant did not refuse to provide the information available to her.

She noted that although the Evaluation Commission did not have this right, the applicant had been limited in her right to present new evidence or to answer questions which, in some cases, had not even been asked before.

She argued that the Evaluation Commission decided to give a subjective assessment to certain documents submitted by the applicant, others of which had not been assessed in any way. At the same time, the Commission obtained data from the National Integrity Authority, the State Tax Service, other authorities, but in its decision did not refer to answers issued by other public authorities. At the same time, the Evaluation Commission failed to make requests to the Customs Service, General Inspectorate of Border Police, to verify the statements of the applicant and her relatives, who insisted that Valentin Brinișter had carried out import activities.

She noted that the Evaluation Commission did not exercise in good faith its discretionary right in solving the administrative procedure and issuing the contested administrative act in violation of the principle of equality, as there is no objective reason arising from the contested individual administrative act relating to the applicant's failure to meet the integrity criteria. And, in another case, which raised several issues related to the non-declaration of accounts, problems regarding the way of declaring the value of a car and problems of declaring bank accounts, the Evaluation Commission argued that these omissions of the candidate do not indicate "serious doubts" regarding the financial and ethical integrity of the candidate.

In law, she based her claims on the provisions of art. 5, 10, 11, 15, 30, 163, 189, 205, 206, 207, 208, 224, 225 Administrative Code and Law no. 26 of 10 March 2022 on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors.

On February 09, 2023, the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors submitted a reference, requesting the rejection of the appeal submitted by Aliona Miron.

In substantiating its reference, the defendant argued that the decision of the Evaluation Commission No. 15 of January 11, 2023, is legal and well-founded, and the Evaluation Commission has diligently and in good faith executed all its obligations provided by the Law.

The defendant is of the opinion that the burden of proof shifts to the candidate during the evaluation process. In the initial phase, it is the obligation of the Evaluation Commission to accumulate data and information, but, once some uncertainties arise and in order to elucidate them, the Evaluation Commission offers the candidate the opportunity to submit additional data and information. Therefore, it is in the candidate's interest to take over the burden of proof.

The defendant explained that the integrity assessment process, as well as the decision of the Evaluation Commission No. 15 of 11 January 2023, does not affect

the professional status of candidate. The legal effect of the decisions of the Evaluation Commission is expressly and exhaustively established by law in art. 13 para. (6) of Law no. 26 of March 10, 2022, and the candidate may refuse to publish it.

It noted that the Evaluation Commission's decision was a finding of serious doubts as to the applicant's compliance with ethical and financial integrity criteria and did not represent, nor does it pretend to represent, a finding of non-compliance with those criteria.

The defendant pointed out that the conclusion of the Evaluation Commission in the Decision regarding the existence of serious doubts as to the applicant's compliance with ethical and financial integrity criteria was a matter of the opportunity of the decision. And, the court is bound to exercise the legality review of the decision and is not entitled to execute the opportunity review.

It argued that the notion of "serious doubt" does not represent a margin in establishing the facts from the abstract to the concrete and, consequently, applying the rules as appropriately as possible to a particular case. Thus, from the ordinary meaning of these words, serious doubt is understood as a lack of confidence of a serious character, and in transposition to Law no. 26 of March 10, 2022, serious doubt regarding the candidate's compliance with the requirements set out in art. 8, means a serious lack of confidence, i.e. not superficial, in the candidate's compliance with integrity requirements.

Contrary to the plaintiff's allegations, the Commission has no obligation to pass the candidate, as it has a certain margin of discretion, which it duly observed.

As regards the applicant's arguments relating to the source of funds for a EUR 10,000 loan and the declarations to the National Integrity Authority (NIA) and to the Commission regarding the loan, the defendant pointed out that the Commission had verified the official registered income of the applicant's relative and husband, being clarified that for the five years prior to granting the loan, the income averaged 55,850 MDL per year (est. 2,700 euros). Thus, the Evaluation Commission reasonably considered that if there had been any income from activities of transportation and sale of transport units, they would have been declared and, respectively, reflected in the data of the State Tax Service.

In the same context, the very performance of an activity cannot necessarily bring any income to the person, for which reason the applicant's arguments were not able to dispel the suspicions raised by the Evaluation Commission. Thus, the serious doubts raised on that point remained undisputed by the applicant.

Contrary to the applicant's contention, the Evaluation Commission had reason to doubt the person's statement since it did not correspond to official data on his income.

At the same time, the Evaluation Commission did not question the existence of close family and affectionate relationships. And, in the case, the Commission's doubts were generated by the inconsistency of the statements of the applicant and her relative regarding the manner of extinguishing the loan.

The defendant considered as erroneous the applicant's position that the Evaluation Commission was to request information from multiple authorities in order to identify possible income of certain persons, but requested from the

State Tax Service information on the income of third parties, on the grounds that this public authority holds information on the income of individuals and legal entities. And, any other information that could possibly have been obtained would confirm other circumstances/activities, but they would not prove that the person also obtained any income related to these circumstances/activities.

As regards the applicant's arguments relating to the costs of building the 190 m² house located in mun. Chisinau, the defendant indicated that even these allegations could not lead to the promotion of the candidate's evaluation. The Evaluation Commission was not supposed to obtain evidence that there were expenses for the construction of the dwelling house, but only to ascertain the existence of serious doubts, which may be generated by uncertainties or even by the lack of information or evidence.

Per a contrario, if the Evaluation Commission were to evaluate candidates solely on the basis of accumulated information, without taking into account that information that is missing or that has been hidden from the candidates, the purpose of the law to establish an integrity filter on members of the Superior Council of Magistracy who would increase society's confidence in the judiciary would have disappeared.

In the case, the Commission's doubts also arose as a result of the applicant's confirmation that initially the house was in an "uninhabitable" condition, and after the expiry of only one year the applicant moved to live in it, which raised uncertainties regarding the amount of expenses incurred by the applicant to change the state of affairs of the house. Finally, these uncertainties could not be refuted by the applicant by of the evidence provided, which also raised serious doubts among the members of the Commission.

According to Law no. 26 of 10 March 2022, the Commission is not obliged to conduct the hearing of other persons as requested by the candidate. Moreover, during the hearing of the applicant, she did not request the hearing of other persons, but merely mentioned such a possibility.

Contrary to the applicant's contention, the Evaluation Commission did not restrict her in her right to present new evidence at the hearings, because the applicant did not present any evidence at the hearings which the Commission refused to accept. Even after the hearings the applicant was entitled to present new evidence, and she did it.

At the same time, with regard to the questions asked during the hearings, for which the applicant indicated that in some cases they had not even been asked previously, she stressed that Law no. Article 26 of March 10, 2022 does not establish that only questions that have been asked before may be asked during hearings. On the contrary, the hearing of candidates takes place in order to clarify the issues previously raised, including by asking questions that were not previously asked.

Both at the hearing and in her appeal, the applicant admitted that she did a mistake in the form when she changed the "initial amount" of the loan from EUR 10,000 to EUR 5,000, but explained that she indicated the outstanding amount of the loan, which did not indicate bad faith. At the same time, the applicant indicated that the creditor had refused to claim repayment of half of the loan and she was no longer obliged to indicate in the declaration of assets and interests the total amount of the loan of EUR 10 000. Therefore, the applicant no longer considers that she admitted a mistake in the process of filling in the declaration of assets and personal interests.

The applicant annexed several documents to her appeal, but did not explain why she had not previously provided those documents, although it is clear that even at the evaluation stage she had the opportunity to search and find invoices and contracts related to the costs of repairing the house; to obtain the technical approval confirming the stage of completion of the house; obtain statements from workers who carried out repair work on the house; and request and obtain information from the Real Estate Register on the sale of agricultural land. Similarly, the applicant had the opportunity to request from the Evaluation Commission an additional period for their submission, which, however, was not done.

In addition, it noted that although the applicant complained about the lack of sufficient time to answer the Commission's questions and provide documents, she had not raised any objections in this regard when she submitted her answers to the Evaluation Commission.

At the hearing, the applicant Aliona Miron argued the application for appeal against decision no. 15 of 11 January 2023 on Aliona Miron's candidacy, requesting its admission, on the factual and legal grounds invoked in the application.

The representative of the Independent Commission for assessing the integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors, lawyer Valeriu Cernei, supported the arguments invoked in the submitted reference, requesting 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(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 order of the Acting President of the Supreme Court of Justice, no. 29 of 29 March 2022, amended by Provision No. 35 of April 14, 2022, for the examination of appeals declared against the decisions of the Independent Commission for assessing the integrity of Candidates for the Position of Member of Self-Administration Bodies of Judges and Prosecutors, a special panel of judges was established, consisting of: Vladimir Timofti – president, judge; Ala Cobăneanu and Svetlana Filincova – judges, Dumitru Mardari – alternate judge.

In the case, it should be noted that the appeal filed by Aliona Miron was registered with the Supreme Court of Justice on February 6, 2023.

According to the application allocation sheet, the present case was assigned through the Integrated Case Management Programme on 6 February 2023 to Judge-Rapporteur Ala Cobăneanu.

By the order of February 6, 2023, of Judge-Rapporteur Ala Cobăneanu, member of the special panel of judges established within the Supreme Court of Justice to examine the appeals of candidates for the position of member of the self-administration bodies of judges and prosecutors, the application for appeals submitted in the administrative litigation procedure

by Aliona Miron against the Evaluation Commission was received for examination, the participants in the trial being summoned to the court hearing set for February 13, 2023, at 10:00, room no. 4 in the Supreme Court of Justice, located on Petru Rareș Street no. 18, mun. Chisinau (vol. I, f.d. 118-120).

On 09 February 2023, within the deadline set by the court, the Evaluation Commission submitted reference to the appeal filed by Aliona Miron regarding the annulment of decision no.15 of 11 January 2023 (vol. I, f.d. 123- 141).

In connection with the fact that judge Vladimir Timofti, member of the special panel of judges established within the Supreme Court of Justice, was away from work and was unable to participate on February 13, 2023, in the examination of the appeal filed by Aliona Miron, the examination of the case was postponed to February 16, 2023.

On February 16, 2023, judge Ala Cobăneanu declared recusal from examining the appeal filed by Aliona Miron against the independent commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors regarding the annulment of decision no. 15 of January 11, 2023 and ordering the resumption of the evaluation procedure of candidate Aliona Miron. It was announced that the court hearing would be adjourned until March 2, 2023.

Through the Decisions of the Superior Council of Magistracy no. 23/2 and no. 27/2 of February 14, 2023, the Plenum of the Superior Council of Magistracy accepted the requests for the resignation from office of judges Ala Cobăneanu and Svetlana Filincova from the Supreme Court of Justice, being relieved from office on March 01, 2023.

By Order of the Interim President of the Supreme Court of Justice No. 33 of March 2, 2023 "On the amendment of Provisions No. 29 of March 29, 2022 and No. 35 of April 14, 2022", the composition of the special court panel , provided by Point No. 1 of the Order of the Acting President of the Supreme Court of Justice no. 29 of 29 March 2022 "On the establishment of the special panel", amended by the Order of the Acting President of the Supreme Court of Justice no. 35 of 14 April 2022 has been changed, and a new composition of the special panel of judges has been established to examine appeals against the decisions of the Independent Commission for assessing the integrity of Candidates for the position of Member of the Self-Administration Bodies of Judges and Prosecutors, as follows: Vladimir Timofti – President, Judges – Dumitru Mardari, Mariana Pitic, Alternate – Galina Stratulat.

In connection with the fact that judges Mariana Pitic and Galina Stratulat were on sick leave for more than 10 days, by order of the Acting President of the Supreme Court of Justice no. 34 of 02 March 2023 "On the amendment of provision No. 33 of 02 March 2023" the composition of the special court panel was changed , as follows: Vladimir Timofti – president, judge; Tamara Chisca-Doneva and Dumitru Mardari – judges, Ion Guzun – alternate judge.

According to the repeated assignment sheet of the case dated March 2, 2023, at 10.20 a.m., the present case was assigned to Judge-Rapporteur Dumitru Mardari, who is part of the composition of the special panel, as follows:

Vladimir Timofti – president and Tamara Chisca-Doneva – judge (vol. I, f.d. 173).

At the hearing on March 2, 2023, the case was examined on its merits, hearing the explanations of the parties, in accordance with Art. 213 of the Code of Civil Procedure, investigating the evidence in accordance with Art. 224 of the Code of Civil Procedure and hearing pleadings pursuant to Art. 233 of the Code of Civil Procedure.

At the same time, according to art. 14 para. (9) of Law no. 26 of March 10, 2022, it was established that the deliberation and issuance of the decision would take place on March 24, 2023, by placing it on the official website of the Supreme Court of Justice.

By decision of the Superior Council of Magistracy no. 103/4 of March 16, 2023, the decision of the Superior Council of Magistracy was amended. 68/3 of February 23, 2023, changing the date of release of judge Dumitru Mardari from the position of judge of the Supreme Court of Justice, from April 18, 2023 to March 20, 2023, and thus, in order to meet the limited deadline provided by law for examining appeals, it was necessary to change the member of the special panel of judges established within the Supreme Court of Justice.

By Order of the Interim President of the Supreme Court of Justice No. 39 of March 20, 2023 "On the amendment of Order No. 34 of March 02, 2023, the composition of the special court panel was changed , as follows: Vladimir Timofti – president, judges – Tamara Chisca-Doneva, Mariana Pitic, but the stipulations of Provision no.34 of March 02, 2023 "On the amendment of Provision no.33 of March 02, 2023 " were maintained.

As a result of the repeated distribution of files, on March 21, 2023, the administrative litigation case, to the appeal filed by Aliona Miron against the Independent Commission for assessing the integrity of Candidates for the position of member in the self-administration bodies of judges and prosecutors regarding the annulment of the decision and ordering the resumption of the candidate's evaluation procedure was repeatedly assigned through the Integrated Case Management Program to Judge-Rapporteur Ion Guzun.

On March 21, 2023, Judge Ion Guzun submitted a declaration of abstention from examining the present case, due to the existence of circumstances that would cast doubt on his objectivity and impartiality as judge when participating in the examination of the present case.

By the order of March 22, 2023, of the special panel of judges established within the Supreme Court of Justice, the declaration of abstention of the judge of the Supreme Court of Justice, Ion Guzun, was admitted.

As a result of the repeated distribution of files, on March 24, 2023, the administrative case, at the request for appeal filed by Aliona Miron against the Independent Commission for assessing the integrity of Candidates for the position of Member of the Self-Administration Bodies of Judges and Prosecutors regarding the annulment of the decision and ordering the resumption of the candidate's evaluation procedure was repeatedly assigned, through the Integrated Case Management Program, to Judge-Rapporteur Mariana Pitic.

By the order of March 24, 2023 , of the special panel established within the Supreme Court of Justice, the examination of the case was resumed and the hearing was scheduled for March 30, 2023.

By Order of the Interim President of the Supreme Court of Justice no. 46 of March 28, 2023, Aliona Miron, in connection with the fact that by the Decision of the Superior Council of Magistracy no. 66/3 of February 23, 2023, the request for the resignation of the judge of the Supreme Court of Justice, Vladimir Timofti was accepted, ordering his dismissal from the position of judge of the Supreme Court of Justice. On 27 March 2023, the composition of the special panel has been changed, provided for in paragraph no. 1 of the Order of the Acting President of the Supreme Court of Justice no. 39 of 20 March 2023 and a new composition of the special panel has been established to examine appeals against decisions of the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of Self-Administration Bodies of Judges and Prosecutors, as follows: Tamara Chisca- Doneva – president, judges – Mariana Pitic Maria Ghervas – judges, otherwise, the provisions of the Order of the Interim President of the Supreme Court of Justice no. 39 of March 20, 2023 "On the amendment of Provision No. 34 of 02 March 2023 were maintained".

Thus, the court hearing on March 30, 2023 was postponed for an indefinite date, given that candidate Aliona Miron, by decision no. 46 of March 28, 2023, formed the panels of judges on this dispute.

Subsequently, the panel of judges of the Supreme Court of Justice notes that, on April 6, 2023, Law No. 64 of March 30, 2023 on the Supreme Court of Justice entered into force, as well as Law No. 65 of 30 March 2023 on the external evaluation of judges and candidates for the position of judge of the Supreme Court of Justice.

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

The panel, noting the legal provisions cited above and the fact that between March and April 2023 most magistrates from the Supreme Court of Justice resigned, attests to the impossibility of forming panels of judges by the Plenum of the Supreme Court of Justice, which is currently not deliberative..

However, by Law no. 89 of 27 April 2023, in force from 02 May 2023, the transitional provisions of Law 64/2023 on the Supreme Court of Justice, have been amended in order to determine when the Supreme Court starts its activity of Justice in the new composition, including the Plenum, giving as effect powers to establish panels of judges according to the previous rule – by the President of the Supreme Court of Justice.

In accordance with the provisions of Art. 12 para. (8) of Law 65/2023, the Superior Council of Magistracy by Decision no. 120/6 of 10 April 2023 announced the competition for the substitution, by temporary transfer, of the vacant positions of judge at the Supreme Court of Justice, and by decision of the Superior Council of Magistracy no. 142/8 of 02 May 2023, it was decided to temporarily transfer 7 judges from national courts, for a period of 6 months, starting May 10, 2023 in the position of judge of the Supreme Court of Justice.

On 10 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.

By Order No 69 of 4 May 2023 Amending Order No 29 of 29 March 2022, the

Acting Chief Justice of the Supreme Court of Justice appointed Judge Ion Malanciuc as an alternate in the Special Panel tasked with the examination of appeals against the decisions of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors.

The request for recusal submitted to Judge Mariana Pitic was assigned automatically-electronically, through the PIGD, on 15 May 2023 and was examined at the hearing on 23 May 2023, at 14.40, with the deliberation and ruling on the application for recusal being postponed to 25 May 2023 (vol. I, f.d. 247, 251-253).

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.

The court hearing has been scheduled for June 16, 2023, at 10:00 a.m.

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

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

At the hearing on 16 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(1) of the Administrative Code. The individual administrative act is the final output of the administrative procedure.

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

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

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

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

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

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

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

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

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

competition in which the candidate concerned participates.

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

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

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

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

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

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

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

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

The Special Panel 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.

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

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 her action, the applicant Aliona Miron claims the violation of a right through administrative activity, according to art. 189 para. (1) of the Administrative Code, namely that by decision no. 15 of 11 January 2023, the Evaluation Commission violated her right to be elected as a member of the Superior Council of Magistracy (Article 14 of the Law on the status of judge no. 544/1995), the right to self-administration judicial authority (Article 23¹ of the Law on judicial organization no. 514/1995), the right to dignity and professional reputation of judges, the fundamental right to independence and irremovability of judges (Article 16 of the Constitution of the Republic of Moldova), but also the fundamental right to administration (Article 39 of the Constitution of the Republic of Moldova), the right to a favorable evaluation decision of candidate Aliona Miron.

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.

In this context, it is noted that the decision of the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors No. 15 of 11 January 2023 was notified to the applicant Aliona Miron electronically.

The special panel concludes that the appeal filed by Aliona Miron is admissible, as the applicant complied with the legal provisions of Art. 14 para. (1) of Law no. 26/2022, being filed on 05 February 2023, within the deadline provided by law, with the Supreme Court of Justice.

From the point of view of the type of action in administrative proceedings, the special panel considers the action filed as an action for specific obligation in its own way. By ordinary action for an obligation, the applicant pursuant to Art. Art. 206 para. (1) letter b) and 224 para. (1) letter b) of the Administrative Code seeks to annul the individual administrative act rejecting her request for obtaining a legal advantage of any kind and to oblige the public authority to issue the rejected individual administrative act. Whereas the specificity of the action submitted is characterised by the annulment of the Commission's decision not to promote the evaluation and ordering the resumption of the evaluation procedure.

The special panel of judges in accordance with the provisions of Art. 219 para. (3) of the Administrative Code is not bound by the text of the claims made by the participants in the process, thus, the argument of opportunity set forth in the reference 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 Aliona Miron 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 unlawful and the applicant would be entitled to a favourable decision, since the contested decision is flawed, in particular from the point of view of proportionality, misinterpretation of undefined legal concepts and equal treatment. The Commission is bound by respect for proportionality and equal treatment when issuing decisions on the evaluation of candidates for the positions of member of the Superior Council of Magistracy. Denying this fact would call into question not only the rule of law, but the very purpose for which Law No. 26/2022 has been adopted. The Commission's serious doubts must also be analysed / assessed in terms of proportionality, but also equal treatment.

The special panel finds that, by decision no. 15 of 11 January 2023 on the candidacy of Aliona Miron, for the position of member of the Superior Council of Magistracy, based on art. 8 para. (1), para. (2) (c) (4) letters a) and b), para. (5) letters b), c), d) and e) and art. 13 para. (5) of Law no. 26 of 10 March 2022 on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors, the Independent Commission for assessing the integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors decided that the candidate does not meet the integrity criteria, as serious doubts have been found as to whether the candidate complies with the criteria of ethical and financial integrity and thus she does not pass the evaluation.

The special court panel mentions that in decision no. 15 of January 11, 2023, in Chapter III "Evaluation of the candidate", the Evaluation Commission indicated that Aliona Miron, candidate for the position of member of the Superior Council of Magistracy, does not meet the integrity criteria, as serious doubts have been found regarding the candidate's compliance with the criteria of ethical and financial integrity on two aspects, namely:

1. the financial capacity of a relative to lend her the sum of EUR 10 000;
2. failure to submit documents confirming the expenses incurred by the applicant for the construction of the house with an area of 190 sq. m., located in mun. Chisinau;

Having analyzed the conclusions of the Evaluation Commission on these circumstances in relation to the evaluation criteria, the Special Court notes that the application for summons filed by Aliona Miron is justified for the following reasons.

With regard to the circumstance related to the source of funds for a loan of EUR 10 000 and the declarations to the National Integrity Authority and the Commission regarding the loan, the special court panel notes the following.

The Commission checked whether the candidate complied with the legal regime

of declaring assets and personal interests and verified the sources of income and methods of acquiring assets by the candidate, family members and close persons of the candidate. The Evaluation Commission indicated that its doubts arose as a result of the inconsistency in the applicant's declaration of the loan amount in her annual declarations as EUR 10,000 between 2015 and 2017 and EUR 5,000, during the years 2018 - 2021, so taking into account the exposed circumstances, the Commission concluded that serious doubts arose according to Article 13 paragraph (5) of Law no. 26/2002 on the candidate's compliance with the financial and ethical integrity regulated by Article 8 paragraph (2) letters c), (4) letters a) and b), (5) letters b), c), d) and e) of Law no. 26/2022.

The special panel reiterates that, according to Art. 8 para. (2) letter c) of Law no. 26/2002 shall be considered that a candidate meets the ethical integrity criterion if he has not violated the legal regime of declaring assets and personal interests, conflicts of interest, incompatibilities, restrictions and/or limitations.

And, according to art. 8 para. (4) of Law no. 26/2022, a candidate shall be deemed to meet the financial integrity criterion if: a) the candidate's assets have been declared in the manner established by legislation; b) The Evaluation Commission finds that the wealth acquired by the candidate in the last 15 years corresponds to the declared income.

At the same time, Article 8 paragraph (5) of Law no. 26/2022 provides that in order to assess the financial integrity of the candidate, the Evaluation Commission shall verify: b) compliance by the candidate with the legal regime of declaring assets and personal interests; c) the manner of acquiring the assets owned or possessed by the candidate or of the persons specified in Article 2 para. (2), as well as expenses related to the maintenance of these assets; d) sources of income of the candidate and, where appropriate, of the persons specified in art. 2 para. (2) e) whether or not there are loan, credit, leasing, insurance or other contracts that can provide financial benefits, in which the candidate, the person specified in Article 2 para. (2) or the legal person in which they are beneficial owners is a contracting party.

Thus, the special court panel states that in the annual declarations of assets and personal interests submitted to the National Integrity Authority for 2015, 2016 and 2017, the applicant Aliona Miron declared a loan in the amount of EUR 10,000, without interest and due date, contracted in 2015 from Elena Brinișter, the relative of the applicant's husband. In the annual 2018 declaration and subsequent declarations, the applicant declared a loan in the amount of EUR 5 000, without interest and due date, from Elena Brinișter, the relative of the applicant's husband.

At the public hearing, the applicant Aliona Miron explained to the Commission that she had not repaid the sum of EUR 5 000 in monetary value because her sister-in-law and her husband had refused to accept repayment of the loan, citing the aid they had received , including the fact that they had lived in the apartment owned by the applicant's family since 2016. However, although her sister-in-law refused to accept repayment of the remaining part of the loan, the applicant's husband insisted on repaying the debt, which is why the sum of EUR 5 000 was reflected in the annual declaration of assets and interests.

The special court accepted as convincing and lawful the applicant's argument that the latter was not obliged to indicate in the declaration of assets and interests the amount of the loan in the amount of EUR 10 000, given that she was no longer obliged

to repay the amount of EUR 5 000, which was a way of extinguishing the obligation by compensation or something similar. Moreover, this legal situation did not require a formalised investigation between the applicant and Elena Brinişter, as she complied with the principles governing civil legal relations, such as freedom of contract, good faith and morality.

The special panel states that the reasoning of the decision of the Evaluation Commission is the first aspect, namely the inconsistency in the declaration by candidate Aliona Miron in her annual declarations of the loan in the amount of €10,000 in 2015-2017 and €5,000 in 2018-2021.

According to Article 4 paragraph (1) letter e) of Law no. 133/2016 on the declaration of assets and personal interests, in force according to the editorial office at the date of adoption, the subjects referred to in Article 3 paragraph (1) declare personal debts of the subject of declaration, of family members or of his/her concubine in the form of debt, pledge, mortgage, guarantee issued for the benefit of third parties, loan and/or credit, if the value exceeds the value of 10 average salaries per economy.

Therefore, the special court panel concludes that from the applicant's arguments, presented before the court, it is found that, given the applicant's lack of obligation to return the amount of EUR 5,000, a situation that occurred in 2018, the latter was not obliged to indicate in the declaration of assets and personal interests the total amount of the loan in the amount of EUR 10 000 because as of 2018 the applicant was no longer obliged to repay the amount of EUR 5 000.

As regards the Commission's second argument, namely the source of the money available to the candidate's relative to lend her the sum of EUR 10 000, on the ground that the officially registered income of the relative and her husband for the five years preceding the loan was on average 55 850 MDL per year, raised doubts about the ability of the candidate's relative to accumulate savings worth 10,000 euros, only three years after the relative completed the reimbursement of installments for a loan of 7,500 MDL contract for the period 2011-2012, the special court panel notes the following.

As the applicant Aliona Miron explained in the written communication, during the public hearing, but also during the court hearing, Elena Brinişter had the financial capacity to lend her the amount of EUR 10 000, being explained in detail the fact that her sister-in-law's husband worked as an engineer, then worked in Romania, in the field of agriculture; For a long time he transported cars from abroad, repaired and sold them, including goods (equipment, refrigerators, washing machines).

Moreover, the Evaluation Commission did not acquire information refuting the existence of close family and affectionate relations between Elena Brinişter's family and the applicant. Suspicions about the source of income for granting the loan were not the object of rounds of questions, including the loan of 7,500 MDL.

According to the decision, the Commission argued, "Moreover, according to bank documents, in 2011 and 2012 the candidate's relative paid installments on a loan of 7,500 MDL, contracted from a Moldovan bank in 2011. This raises doubts about the ability of the candidate's relative to accumulate savings worth 10,000 euros, only three years after the relative completed the repayment of installments for a loan of only 7,500 MDL."

In such a situation, the special court panel notes that, according to the sale-

purchase agreement (f.d.19-22, vol.II), the applicant's relatives alienated in 2018 the house in Drochia for the amount of 267,000 MDL (about 13,000 euros). According to the deposit agreement dated 23.04.2018, confirmed by the Cash Collection Order no. 65313 of 23.04.2018 (f.d.23, vol.II), the applicant's relatives submitted to BC "MAIB" S.A. as deposit, savings of 28 000 euro (which is more than twice the value of the immovable property sold). Subsequently, after the expiry of the deposit, according to the deposit agreement dated 24.05.2018, (f.d.25, vol.II), the applicant's relatives extended the deposit under the same contractual conditions. Upon expiry, on 23.12.2019 they concluded a new deposit contract, this time with a lower value of about 9000 euros, for a period of 3 years (23.12.2019 - 22.12.2022, f.d.24, vol.II).

In this context, the special panel notes that the Commission's conclusions according to which the relatives could not grant the loan of 10,000 euros, once they had a loan of 7,500 MDL three years before it was granted, are unfounded. It is obvious that, although Mr and Mrs Brinişter had sufficient financial sources of their own, they chose this financial method and continue to purchase goods on credit to this day, in accordance with the credit agreements submitted by the applicant (f.d.27-50, vol.II).

According to art. 6 lit. d), e) and f) of Law no. 26/2022, in order to exercise its functions, the Evaluation Commission has the following powers: d) has access to any information systems containing data relevant to the achievement of its mandate, namely for assessing the ethical integrity and financial integrity of candidates, including through the interoperability platform (MConnect); e) hear the candidate and other persons who have relevant information about the integrity of the candidate; f) request information from natural and legal persons of public or private law, as well as accumulate any information relevant to the fulfillment of its mandate.

The legislature therefore provided the Evaluation Commission with a wide range of tools and levers to collect all necessary information on the applicant and her relatives, including the assessment of the data and documents submitted by her during the evaluation.

The special panel points out that, in accordance with the provisions of Art. 22 para. (1) – (2) of the Administrative Code, Public authorities and competent courts investigate the facts *ex officio*. They determine the type and volume of research and are not related either to participants' statements or to their requests for evidence claims. Facts already known to public authorities or competent courts, generally known facts and facts presumed under legal provisions do not need to be proved, until proven otherwise.

At the same time, Art. 85 para. (2) – (3) of the Administrative Code provides that, during the investigation of the state of affairs, the participants in the administrative procedure are obliged to cooperate with the public authority and to indicate the evidence and facts known to them, to submit the documents they hold. The public authority must establish *ex officio* the factual aspects of the case subject to the proceedings, without being limited to the evidence and assertions of the participants. For this, the public authority determines the purpose of the necessary investigations and their type. (4) Investigations shall not be required: a) when the facts are substantiated by the participants and no objections are submitted; b) when facts result from public studies, researches, statistics, provided that these sources are indicated and accessible to public opinion; c) in the case of urgent proceedings based

on the public interest, if the facts have been established and They are obviously not disputed.

In the context of the factual and legal circumstances described above, the impossibility for the applicant to provide the documents was based on both objective and subjective circumstances: insufficient time allowed to respond to rounds of questions; direct dependence on the actions and diligence of other persons (who are presumed to have the information and/or documents); reluctance of persons (involved in construction activity) to give statements; lack of access to personal data of other persons; response time of public authorities and financial institutions holding relevant information; The questions in the hearings concerned new information, which needed to be proved and/or concretized; certain facts were not known prior to public hearings; denials cannot be proved.

With reference to the insufficient time allowed to answer some questions, the Special Court notes that it is clear from the documents in the file that, in the communication, the Commission sent the applicant rounds of questions and instructions for answering them by electronic mail.

On 21 June 2022 at 19:31, the Commission sent the applicant the "Questionnaire on integrity and ethics", which, according to the Commission, was voluntary. However, the Commission allowed until 5 July 2022 (14 calendar days) to complete the questionnaire (f.d.22-28).

On July 8, 2022 at 1:33 p.m., the Commission sent to the applicant for completion, the "Declaration of assets and personal interests for the last 5 years". The Commission granted 7 calendar days for filling the form until July 15, 2022, the legal deadline according to art. 9 para. (2) of Law no. 26/2022 (F.D.29-50).

On 3 August 2022 at 20:44, the Commission sent the first round of questions to the applicant for completion, thus giving the applicant until 07 August 2022 (4 calendar days) to reply to the questions raised (f.d.51-56).

On 14 September 2022 at 20:22, the Commission sent the applicant for completion of the second round of questions, thus giving the applicant until 17 September 2022 (3 calendar days) to reply to the questions raised (f.d.57-70).

On 21 October 2022 at 19:47, the Commission sent the third round of questions to the applicant for completion, thus giving the applicant until 24 October 2022 (3 calendar days) to reply to the questions raised (f.d.71-77).

Referring to the three rounds of questions dated 3 August 2022, 14 September 2022 and 21 October 2022, the applicant had 3 effective days for the first round of questions (given that the questions were sent at 20:44) to answer 21 questions of the Commission; 2 effective days for the second round of questions (given that Questions were sent at 20:22) to answer 52 Commission questions ; 2 effective days for the third round of questions (given that questions were sent at 7:47 p.m.) to answer 22 Commission questions.

In this context, the special panel mentions that the applicant's answers also invoke insufficient time allowed for submitting information, thus the applicant failed to obtain the requested information in a short time (f.d.68-69, 76, vol. I).

It is therefore found that the applicant was effectively unable to collect all the information necessary ,to answer the Commission's questions in such limited terms.

Moreover, the special panel considers that the time allowed by the Commission for submitting information was insufficient and limited, thus it is not possible to accumulate evidence in order to completely dismantle any "serious doubts" of the Evaluation Commission .

The special panel notes, by way of example, that the Evaluation Commission did not ask the Customs Service for information about the import operations carried out by the husband of the applicant's sister-in-law and did not hear the persons holding the relevant information on the subjects addressed, so the applicant was unable to obtain this data.

With regard to the inconsistency in the candidate's written communication invoked by the Evaluation Commission, the Special Court noted that Elena Brinișter did not possess legal knowledge to express herself in legal language, but admitted that the applicant had reimbursed her the sum of EUR 5 000, without specifying how and the currency in which this amount was returned.

The administration of additional documents is also due to the failure of the Evaluation Commission to request from the public authorities the necessary information regarding the Brinișter family patrimony, even if the law grants the Commission the right, but also obliges it, to request from public authorities information on the patrimony of persons close to the candidate.

Referring to the fact that some circumstances were unknown prior to the public hearings, the special panel of judges reports that in the case, the applicant Aliona Miron, after receiving the decision of the Evaluation Commission, established that her sister-in-law's financial capacity was questioned, reason for which she presented documents during the court hearing that she did not have at the time of public hearings, because at the time written questions were formulated by the Evaluation Commission she was not asked about this and no documents were requested.

Thus, a certificate of legal heir was presented, attesting that in 2004 Valentin Brinișter acquired as inheritance agricultural lands with a total area of 4 hectares, which he leased until the moment of alienation. This fact is demonstrated by the lease contract of agricultural land no.192 concluded during 2007-2011 (f.d.10-22, vol.II). Thus, until the alienation of agricultural land in 2013, the Brinișter family recorded income from land lease.

The administration of additional documents is also due to the failure of the Evaluation Commission to request from the public authorities the necessary information regarding the Brinișter family patrimony, even if the law gives the Commission the right, but also obliges it, to request information from public authorities on the property of persons close to the candidate.

In the case, the special panel concludes that the Commission did not verify all the factual circumstances and did not give a correct assessment of the sources of income, thus the breach by the Evaluation Commission of the legal obligation of ex officio investigation led to an erroneous decision, both as regards procedural aspects and substantive law.

Thus, the special court finds that the facts adopted effectively remove any serious doubt as to the source and other aspects of the EUR 10 000 loan, and the manner in which that obligation was extinguished, including the declaration of the corresponding amount in annual declarations of income and interests. Moreover, the special panel

notes that the established circumstances indicate that the candidate's wealth was declared in the manner established by the legislation and that the wealth acquired by the candidate in the last 15 years corresponds to the declared income.

Subsequently, the special panel observes that, Chapter III, paragraph 1) of the decision of the Evaluation Commission no. 15 of 11 January 2023 does not contain a detailed motivation, showing how the actions of the candidate, Aliona Miron, were classified by the Evaluation Commission in the criterion of "non-compliance with the criterion of financial integrity" and violation of the legal regime of declaring assets and personal interests, conflicts of interest, incompatibilities, restrictions and/or limitations."

The special panel of judges points out that the Evaluation Commission accused the candidate, Aliona Miron, of violating the legal regime of declaring assets and personal interests as a consequence of her non-compliance with the financial integrity criterion. Thus, given that the conclusion of the Evaluation Commission regarding the applicant's non-compliance with the financial integrity criterion is unfounded, consequently the conclusion of violation of the legal regime of declaring assets and personal interests is also unjustified, given the causal relationship between these two criteria.

Thus, the special panel concludes that the Evaluation Commission did not respect the aspect of procedural and substantial legality, in particular, the correctness of the multiaspectual ex officio investigation of the state of affairs, of the motivation of its solution, and these circumstances constitute grounds for ordering the resumption of the evaluation procedure of the candidate, Aliona Miron, because she would have the right a decision to pass the assessment.

The Special Panel highlights as a matter of jurisprudential principle that the wording "serious doubts" in Article 13(5) of Law No 26/2022 establishes a derogation from the standard of proof laid down in Article 93 of the Administrative Code, even this article opens the way towards such a derogation, including under Article 2(2) of the Administrative Code.

At the same time, the phrase "serious doubts" is not compatible with the formalism and subjectivism of the defendant public authority. This standard relates to the result of evidence assessment in order for it to be deemed as a highly likely factual circumstance, different from the beyond-any-doubt standard. Thus, should the evaluated candidate submit logical arguments and explanations to the Commission, which are true to the social-economic context of the Republic of Moldova, then the likelihood of a fact being in a way or another should be weighed and any doubt has to be treated in favor of the candidate and this is a cornerstone principle of the rule of law.

The Special Panel holds that the plaintiff provided sufficient logical arguments and that the fact happened in the way she stated and the Commission wrongly failed to consider these arguments as relevant.

Regarding the arguments of the Evaluation Commission regarding the construction costs of the 190 sq. m. house located in mun. Chisinau, namely the following: neither the candidate nor her mother provided any information on the amount of expenses or any confirmatory document on the costs incurred by the candidate's mother for the construction of the two houses. There were no details or documents about the amount of construction costs incurred before and after the house

was transmitted to the candidate.

Thus, in view of the circumstances set out, the Commission concluded that serious doubts had arisen under Article 13 para. 5) of Law no. 26/2022 on the candidate's compliance with the financial integrity criterion provided by art. 8 para. (4) letter b), (5) lit. c) and d) of Law no. 26/2022.

The special panel concludes that the Evaluation Commission did not take into account the evidence presented by the applicant; the applicant's request to hear her mother in connection with the questions; the specificity of the culture of the Republic of Moldova, which shows that citizens do not keep vouchers, cheques, receipts, for expenditure incurred; the fact that the work is carried out by natural persons whom, in an attempt to contact, it has established that they are abroad, or refuse to contribute to the administration of the evidence concerned; the usual conduct of natural persons not involved in public activities and functions and who have no serious reason to keep documents confirming their expenses for years, because they have no reason to believe that in an indefinite future they will have to submit them to the authorities Reason referring to the applicant's mother, who did not keep cheques/invoices/vouchers confirming the expenses incurred for the construction and repair of the houses.

Also, the special panel considers that although the applicant did not present detailed evidence regarding each work, she presented documents, information, statements, even pictures from different periods of time showing the progress of the construction and showing the volume of the works carried out and the veracity of the descriptions in the replies given. Moreover, the Commission did not comply with the applicant's request even at the public hearing for the latter's mother to be heard.

In this sense, the special panel points out that, art. 85 para. (2) of the Administrative Code provides that, during the investigation of the state of affairs, participants in the administrative procedure are obliged to cooperate with the public authority and to indicate the evidence and facts known to them, to submit the documents they hold.

With regard to the value of the dwelling house and the difference between the value of the property owned by the applicant's mother and the property owned by the applicant Aliona Miron, the Special Court notes that the dwelling house owned by the applicant's family was not put into operation, the value of the dwelling house transferred to the applicant's family was determined according to an evaluation report from 2017, while the value of the house owned by the applicant's parents was established by the cadastral body at the time of registration of the final reception report of the dwelling house in 2022.

These circumstances were to be taken into account by the Evaluation Commission, as well as the repair works in the applicant's house, which were carried out by the applicant's family members, and from the moment of acquiring ownership of the dwelling house, the applicant and her family carried out works repair, at the time of evaluation the rooms were not finished.

The Evaluation Commission argued that there is a lack of coherent and credible evidence regarding the costs of building the house, but the special panel of judges mentions that this conclusion is a declaratory one not confirmed by any evidence, all the more so, that it contradicts the applicant's documents and statements. According to art. 87 para. (1) of the Administrative Code, the public authority shall be guided by

the evidence it considers necessary, according to discretionary law, to investigate the state of affairs. In particular, it may: (a) request information of all kinds; b) to hear participants, witnesses and experts/specialists or to request written statements from them; c) request documents and files; d) by reporting things directly, create their own impression of a case or the situation on the ground (investigation of evidence on the spot). During the public hearings, the applicant informed the Commission that on the date of acquiring ownership of the dwelling house (2018), the house had been transmitted in white version, and the applicant's mother had also sent her several construction materials, purchased by her previously, while the Commission compared the price of the house from 2017 with the one from 2022.

It should be noted that the Commission did not question the financial capacity of the applicant's parents to grant the financial aid necessary to finance the applicant's construction.

In this regard, the Panel of Judges points out that, in fact, in 2018 a lifetime maintenance contract was concluded between the applicant and her mother, the need to conclude the lifetime maintenance contract is not a fictitious one, the applicant's father being declared an incapacitated person, therefore it is not a donation, and the Commission neglected the reality of strong ties of kinship, affection and mutual support.

The applicant Aliona Miron explained both during the public hearings and during the court hearing that, at the date of acquiring the ownership right over the house (2018), the house was transmitted in white version, her mother also sent her construction materials, previously purchased by her, holding some bills as follows.

According to the fiscal invoices issued by SC „Simplex-CO" SRL no.1511 of August 22, 2016 in the amount of 62,055 MDL; Series. AAA No. 8439597 of 22 March 2017 in amount of 4721 MDL; series. AAA No. 8439989 from April 27, 2017 in the amount of 2284 MDL; series. AAA No. 8439879 from April 11, 2017 in the amount of 6281 MDL; CEC no.9196 of May 26, 2017 in the amount of 2970 MDL; invoice no.11646 of 02 May 2017 in the amount of 1267 MDL; invoice issued by SRL Volta no. VC00000017077 of 10 May 2017 in the amount of 14 768 MDL; CEC no.9642 of 30 May 2017 in the amount of 386 MDL; invoice no. ATm000000004035 of June 14, 2017 in the amount of 249.5 MDL; fiscal invoice issued by SC „Simplex-CO" SRL series. AAB No. 2034628 from 27 April 2017 in the amount of 26 806 MDL; consumer receipt SRL „Bunescu Plus" from August 21, 2017 in the amount of 54 100 MDL; invoice issued by SRL GTRADE GROUP in the amount of 31 427.10 MDL; fiscal invoice no.33575 issued by SC „Simplex-CO" SRL from September 27, 2017 in the amount of 104 881 MDL, show that from 2017-2018 the mother of the applicant Roscovan Veronica purchased construction materials for both houses. Moreover, Roscovan Veronica concluded with the entrepreneur Marcu Stefan an enterprise contract no.01 of March 13, 2017, by which the contractor undertook to carry out the work - installation of the heating system of 2 houses str. P.Barbalat no.9-11, in the total amount of 80 500 MDL, within 40 days. Also, according to the fiscal invoice no. 52312 of January 11, 2018, Marcu Stefan purchased construction materials in the amount of 18,325 MDL.

The statements of Brînză Ion and Tomaș Constantin attached to the case materials confirm that they carried out repair works in both houses during 2017-2018.

In this regard, the court panel emphasizes that in 2017, when the repair works of the houses were carried out, there was no infrastructure in the area, namely access roads such as water, gas, electricity were missing, respectively with the creation of the infrastructure, the prices of the related land evolved significantly, turning into a luxury neighborhood.

In conclusion, the Court Panel points out that the reports demonstrate that at the time of concluding the donation contract in March 2018, the works on both houses were much more advanced than at the time of the valuation of the house in 2017. The value of the dwelling house transferred to the applicant's family was determined according to an evaluation report from 2017, while the value of the dwelling house owned by the applicant's parents was established by the cadastral body at the time of registration of the final reception report of the dwelling house in 2022.

The Commission formally questioned the costs incurred by the applicant in carrying out the repair works of the dwelling house, without analysing the bank account statements submitted by the applicant, as well as completely ignoring the loans contracted by the applicant's family for the execution of the repair works of the dwelling house .

In this context, the special panel of judges mentions that the applicant attached to the file materials Technical Opinion no. 17 of 03.02.2023, according to which, the degree of execution of constructions at the current date is approximately 81%, therefore, the construction has evolved only 11% since the date of the last assessment submitted to the commission (evaluation of March 2017).

These circumstances definitively clarify any doubt of the Commission regarding the income declaration for the last 5 years, in which the applicant indicated a single purchase of more than 25,000 MDL, as the rest of the construction expenses were borne by her mother between 2017 and 2018, and since March 2018 the expenses have been less than 25,000 MDL.

The special panel reports that the applicant Aliona Miron made available to the Commission all bank statements, which reflect the construction expenses, but at the same time could not prove non-existent facts, so the applicant could not prove a denial. However, the Commission, on the basis of a false presumption, requires proof of impossible circumstances, which follows from the wrong conclusion.

Therefore, the applicant cannot be charged with proving non-existent circumstances. In those circumstances, it becomes clear that the Commission's statement of reasons in the section 'costs of building houses' is superficial in nature, being the result of a refusal to examine even the documents submitted by the applicant, which is why that finding of the Commission is erroneous.

The Evaluation Commission also failed to assess the evidence/documents submitted by the applicant, in particular: - statement from bank accounts, confirming the purchase of construction materials from salary; pictures from the house, confirming that the building has not yet been finished and put into operation; video recording presented at the court hearing, confirming that the applicant and her husband were carrying out repair works on the house, proof of credit transfer to the husband's account by BC "Moldova-Agroindbank" JSC; credit agreement (revolving credit card from September 4, 2019).

Moreover, Law no. 26/2022 uses only in art.13 para. (5) the phrase "serious doubts" regarding the candidate's compliance with the requirements set out in Article

8 which have not been removed by the evaluated person. The law does not define the content of this significantly new concept for the national legal system.

The panel notes that the text of "serious doubts" in Article 13 para. (5) of Law no. 26/2022 establishes a derogation from the standard of proof stipulated in art. 93 of the Administrative Code, this very article opens the way for such derogation, including under the conditions of art. 2 para. (2) of the Administrative Code.

At the same time, the text of "serious doubts" is not compatible with formalism and subjectivity from public authority. This standard depends on the outcome of the evaluation of the evidence so that a factual circumstance with a high level of probability other than the standard beyond doubt can be considered established.

Thus, if the candidate under evaluation presents logical arguments and explanations to the Commission, truthful with the socio-economic context of the Republic of Moldova, then the probability that a fact happened in one way or another balances, and any doubt must be treated in favor of the candidate, and this is a principle rooted in the idea of the rule of law.

The panel points out that the applicant Aliona Miron presented sufficient arguments that the facts happened in that manner, and the Commission erroneously did not accept these arguments.

The Commission had no serious doubts (Art. 13 para. (5) of Law no. 26/2022), regarding the candidate's compliance with the financial and ethical integrity criterion according to art. 8 para. (2) letter c) and financial integrity according to art. 8 para. (4) letters a) and b) and para. (5) (a) b), c) and d) of Law no. 26/2022, on bank account turnover, as the information provided by the candidate from the bank alleviated the Commission's concerns on this issue.

According to the decision, the Commission found serious doubts about candidate Aliona Miron's compliance with ethical and financial integrity criteria regarding inconsistencies in the activity of the bank account in EURO.

The applicant removed the ambiguities arising in relation to the activity of the euro bank account, given that the documents submitted by the Commission had raised doubts as to the correctness and veracity of the documents obtained by the Commission and submitted to the applicant.

From this point of view, the Panel notes that until the public hearing of the applicant Aliona Miron (respectively throughout the evaluation process), the Commission did not have a person competent to analyze the financial data, finding serious doubts regarding the applicant, which belongs exclusively to the competence of the financial analyst.

However, the Commission started a competition to hire a financial analyst only on December 8, 2022, i.e. 8 days after the applicant's public hearings.

It is attested that, due to the erroneous interpretation of both the information provided by the applicant Aliona Miron and that collected by the Commission, it led to the erroneous finding of serious doubts regarding the financial aspects imputed, moreover, subsequently removed both in the grounds of the appeal and in the documents submitted to the court.

In conclusion, the Panel notes that the assimilation of financial information in the absence of a competent analyst in this regard constitutes an error attributable to serious violations of the valuation procedure.

According to Art. 10 para. (9) of Law no. 26/2022 The Evaluation Commission

appreciates the materials accumulated according to its intimate conviction, formed as a result of multiaspectual, complete and objective research of the information. None of the submitted materials has a predetermined probative force without its assessment by the Evaluation Commission.

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

The special panel attests that the applicant showed an active attitude, made every effort and diligence to provide the Commission with the requested information and, on the other hand, the Commission adopted a purely accusatory position, and, to the detriment of the applicant's actions, refused to obtain the relevant data invoked.

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

Point 7 of the Evaluation Regulations of the Independent Commission for assessing the integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors, pursuant to Law No. 26/2022, adopted at the meeting of the Evaluation Commission on 02 May 2022, provides that the cooperation or non-cooperation of a candidate during the evaluation process may be taken into account by the Commission to determine whether the candidate has removed serious doubts as to whether the candidate complies with the criteria of ethical and financial integrity set out in Article 8 of Law no. 26/2022. In the case, there is an active behavior of the candidate in providing additional information to remove the ambiguities detected by the Evaluation Commission.

The special panel concludes that by presenting the explanations and clarifications from the candidate on the issues raised by the Evaluation Commission and the further manifestation, during the court hearing when examining the present appeal application, of an active behavior, by Aliona Miron, the doubts of the Evaluation Commission regarding the candidate's compliance with the financial and ethical integrity criteria have been removed.

The special panel reports that violations of financial and ethical integrity were assessed by the Commission strictly subjectively and isolated from the historical-social context, which affects the security of legal relations. In general, the legal system admits the retroactive effect of the law if it favors the legal position of the person, but this effect cannot be projected on the fault of legal interpretation.

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

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

Therefore, the special panel of judges mentions that both from the applicant's arguments and from the materials investigated in the court, it is found that there are circumstances that could lead to the promotion of her evaluation by the Commission

and which justify the resumption of the candidate's evaluation procedure, removing the serious doubts formulated by the Evaluation Commission regarding Aliona Miron's compliance with the ethical and financial integrity criteria established by art. 8 of the Law on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors no. 26 of 10 March 2022, regarding the source of funds for a loan of EUR 10,000 and declarations to the National Authority of Integrity and Commission on the loan; construction costs of the house of 190 sq. m. located in mun. Chisinau.

At the same time, the special panel points out that according to art. 10 para. (2)–(3) of the Law on certain measures related to the selection of candidates for membership in the self-administration bodies of judges and prosecutors no. 26 of 10 March 2022, the Evaluation Commission and its secretariat shall have free of charge and real-time access to information systems containing data necessary for the fulfilment of its mandate, namely for assessing the ethical integrity and financial integrity of candidates, under the conditions of the legislation on data exchange and interoperability, except for information falling under the provisions of Law no. 245/2008 on state secret.

In the process of assessing the integrity of candidates, the Evaluation Commission has the right to request from natural and legal persons of public or private law, including financial institutions, the documents and information necessary to carry out the evaluation. The requested information shall be submitted to the Evaluation Commission free of charge, including electronically, no later than 10 days from the date of the request.

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

Therefore, from the legal norms cited, it is inferred that in case of uncertainty, the Evaluation Commission may request, at any stage of the evaluation procedure, additional data and information from the candidate.

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

The notion of a fair trial includes the fundamental right to an adversarial procedure in court. It is closely linked to the principle of equality of arms in adversarial proceedings.

The applicability of the adversarial principle to the proceedings in front of the Evaluation Commission, *inter alia*, also results from the rule of Article 43 of the Administrative Code, which states that judicial examination of administrative cases is carried out on the basis of the adversarial principle and equal procedural rights of the participants in the process.

In accordance with Article 23 of the Administrative Code, public authorities and competent courts act in compliance with the principle of equality and non-discrimination. Public authorities and competent courts must treat persons in similar situations equally. Any difference in treatment must be objectively justified. Both in

administrative proceedings and in administrative trials or as a result thereof, no person may enjoy privileges, be disadvantaged, deprived of rights or exempt from obligations on the grounds of race, family origin, sex, language, citizenship, ethnicity, religion, political or ideological beliefs, education, economic situation, social condition.

For the purposes of Article 137 para. (4) of the Administrative Code, if in one case the public authority exercised its discretionary right in a certain way, then in similar cases it is obliged to exercise its discretionary right in the same way. This rule does not apply if the public authority intends to change its practice of exercising discretion in similar cases in the future.

The cited legal norms establish the obligation of public authorities to exercise their discretionary right in a certain way, when in similar cases they are obliged to exercise their discretionary right in the same way.

Thus, if in one case, which raised several issues regarding the non-declaration of accounts, issues regarding the way of declaring the value of a car (the difference being 70,000 MDL) and issues of declaring bank accounts, the Evaluation Commission argued that these omissions of the candidate do not show "serious doubts" regarding the financial and ethical integrity of the candidate, then the Commission shall assess the other candidates in the same manner.

In the present case, although the Commission did not find any issues in the applicant's family's income, the Evaluation Commission took a different approach, considering that the lack of documents (which, moreover, had been submitted to the Commission) showed serious doubts as to the applicant's financial and ethical integrity.

Therefore, in similar situations, the Evaluation Commission acted differently, even though the alleged infringements are similar.

The general principle of equality is one of the fundamental constitutional principles of the constitution, granting a subjective right. It prohibits treating the same facts unequally or unequal things in the same way, unless a different approach would be objectively justified. This traditional formulation also defines the controversial basic structure, and therefore the examination sequence. The basic question is always justification, i.e. whether the weight of (un)equal treatment is compensated by the relevant factual reasons. The degree of justification required varies according to the material severity of the unequal treatment and can range from a simple arbitrary test to a proportionality test.

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

The panel mentions that the decision of the Evaluation Commission does not result in factual elements indicating why candidate Aliona Miron is assessed as dishonest in relation to other evaluated candidates, if the state of affairs is similar.

Thus, the special panel points out that if two subjects are initially treated equally or unequally, it is assessed on the basis of a comparison of legal consequences (on factual equality). Further determination of whether this (un)equal treatment refers to equal or unequal objects is not significantly possible in such an absolute, since two objects can never be equal in all respects, that is, identical; otherwise there would be only one object.

Since the comparison of two objects is always merely the comparison of their properties, what is implied here is an unjudged collection of those properties in which

the objects under consideration differ, oriented towards the test of subsequent justification.

The special panel notes that the Evaluation Commission did not carry out an evaluation by comparison method, at least this is apparent from the content of the decision and the documents of the judicial file, and the administrative file submitted by the Commission.

The principle of equality forbids treating essentially the same things unequally, but it obviously sees this formulation as synonymous with the usual formula, according to which the principle of equality is violated if it is reasonable, resulting from the nature that no objectively plausible issue or reason for legal differentiation or equal treatment can be found.

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

From the preamble of Law no. 26/2022 results that its purpose is to increase the integrity of future members of the Superior Council of Magistracy and their specialized bodies and to increase confidence in the activity of self-administration bodies of judges, but also in general, 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.

The special panel finds that the Evaluation Commission did not carry out an analysis and motivation of the legitimate purpose of the decision issued.

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, but not to transform the judiciary into an insufficient branch of state power and over which interferences / dependencies on political power would hang.

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

Next, the special panel notes that the alleged breaches of financial and ethical integrity were assessed by the Commission strictly in isolation from the socio-economic context, which affects the security of legal relations. In general, the legal system allows retroactive effect of law if it favours the legal position of the person, but this effect cannot be projected by way of legal interpretation.

In the same context, the Special Panel finds that the Commission failed to ensure candidate's right to have effective access to the content of the administrative case file, which gives the candidate the right to become familiar with and make copies of any document and information related to him/her as a participant in an assessment administrative procedure. Obstructing the access to the administrative case file led to violation of another guarantee, i.e. the candidate's right to defense before the Pre-Vetting Commission.

In this respect, the Special Panel emphasizes that, according to Article 82 of the Administrative Code, if the administrative procedure is to be carried out in writing as per Article 28 or is carried out in writing, the public authority, when starting the procedure, shall create a digital or hard copy folder that would include all documents and records regarding the said procedure. The digital folder shall include, as appropriate, scanned copies of paper-based documents and the authenticity of these copies shall be confirmed by the electronic signature applied by the responsible person within that public authority, electronic documents, other relevant records and

information in digital format. Scanned digital copies of official documents issued on paper and digital records on which the electronic signature was not applied are used without restriction in the relationship with the public authority and may be included in the administrative case file, unless the regulatory acts require expressly the signature to be applied on these copies/records or the observance of requirements towards electronic documents. When included in the file, a document is referenced with continuous page numbers. Should documents be retrieved from the file for a certain period, a mention shall be made in this respect, which must include: a) name of the retrieved document; b) number of retrieved pages; c) reason for retrieving the document; d) name of the person that ordered the retrieval of the document; e) date when the document is retrieved. This mention shall be included in the file instead of the retrieved document. Administrative case files shall be kept until the expiry of their term of storage, which results from the applicable legal provisions in force.

In line with Article 83 of the Administrative Code, the public authority holding the administrative procedure shall grant, to the participants, access to the administrative case file. Participants shall not have access to draft individual administrative acts before the completion of the procedure. No access to the administrative case file is allowed if that would affect the appropriate performance of duties by the public authority or if it is necessary to maintain a secret protected by law or if it is necessary to protect the rights of participants to the administrative procedure or of third parties. Should it be justified, the public authority holding the administrative procedure may also allow, upon request, access to the file on the premises of another public authority or a diplomatic or consular mission of the Republic of Moldova overseas. When accessing the case file, participants are allowed to take notes or make copies of the file. The cost of copies shall be incurred by every participant individually, which is 0.02 conventional units per page. Electronic copies of the case file, as well as electronic documents and copies thereof shall be provided free of charge.

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

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

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

The Special Panel notes that the State has vested the Pre-Vetting Commission with the prerogative to be guided by certain standards in order to select the candidates with highest integrity for membership, inter alia, in the Superior Council of

Magistracy, who in turn could ensure the proper functioning of the judicial system as a whole, including through the implementation of coherent policies in line with generally accepted standards.

The plaintiff proved to the Special Panel of the Supreme Court of Justice the plausible nature of the elements invoked in her appeal, including the ones related to the correctness and observance of ethical and professional conduct rules.

Also, the Special Panel notes that Venice Commission recommended for the final decision on assessment to be made by the competent court. Despite that, the Special Panel highlights that, for the reason of effective protection of the rights, it has the right and the obligation to conduct a full judicial legality review of the factual and legal matters.

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

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

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

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

The Special Panel notes that the circumstances held by the Pre-Vetting Commission do not fit, from a proportionality perspective, the reasons of candidate Aliona Miron failing the evaluation.

Therefore, the exclusion, not just limitation, of candidate Aliona Miron's right to take part and be elected as a member of the Superior Council of Magistracy 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 issue of proper operation of the judicial self-administration bodies at the moment when the decision was issued and failing the candidate for minor acts, that does not only fail to fit the reasons of not passing the evaluation, but it is also a violation of the mentioned rights.

The Special Panel reiterates that the measure undertaken by the defendant public authority is reasonable only if the interference caused by it is not disproportionate in relation to its purpose. This requirement of the legislator involves a balancing of values protected by law, a weighing of the interests at stake. The bigger the damage caused to the right, the more it is required for the advantage resulting from integrity to be superior.

Therefore, excluding the right of a judge to be a candidate for membership in the Superior Council of Magistracy involves not just an interference, but also 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.

Taking into account the aforementioned, the Special Panel finds that in this case there are legal grounds for annulling the decision of the Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-governing bodies of judges and prosecutors No 15 of 11 January 2023 regarding the candidacy of Aliona Miron.

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

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

d e c i d e s:

To admit the administrative litigation action filed by Aliona Miron against the Independent Commission for assessing the integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors regarding the annulment of Decision no. 15 of 11 January 2023 on Aliona Miron's candidacy and ordering the resumption of the candidate's evaluation procedure.

To annul the decision of the Independent Commission for Assessing the Integrity of Candidates for the Position of Member of the Self-Administration Bodies of Judges and Prosecutors no. 15 of 11 January 2023 on the candidacy of Aliona Miron.

To order the resumption of the evaluation by the independent commission for assessing the integrity of candidates for the position of member of the self-administration bodies of judges and prosecutors of the candidate Aliona Miron.

The decision is irrevocable.

Chairman of the sitting,
Judge

Tamara Chisca-Doneva

Judges Ion Malanciuc

Mariana Pitic