

Case # 3-16/23

2-23021809-01-3-13022023

JUDGMENT

In the name of the Law

SUPREME COURT OF JUSTICE

1 August 2023

Chişinău municipality

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

In the panel:

Presiding judge

Judges

Tamara Chişca-Doneva

Mariana Pitic

Ion Guzun

Clerk

Stanislav UNGUREANU

With participation:

of the appellant

Alexei Paniş

represent
atives of the
respondent,
lawyers
Roger Gladei
Valeriu Cernei

having examined in a public court hearing, within the procedure of administrative litigation, the appeal submitted by Alexei Paniş against the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, seeking the annulment of Decision No. 21 of 24 January 2023, regarding the candidacy of Alexei Paniş for the position of member of the Superior Council of Magistracy, and ordering the resumption of the candidate's evaluation procedure,

finds:

Arguments of participants to the proceedings:

On 13 February 2023, Alexei Paniș submitted an appeal against the decision of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 21 of 24 January 2023, regarding the candidacy of Alexei Paniș for the position of member of the Superior Council of Magistracy. He requested the annulment of the decision and the resumption of the evaluation procedure.

In the reasoning of the action, it was invoked that, by the decree of the President of the Republic of Moldova No. 74 of March 15, 2017, he was appointed to the position of judge at the Chisinau Court.

In 2021, based on art. 3¹ of the Law on the Superior Council of Magistracy No. 947 of July 19, 1996, he submitted an application to participate in the competition for the selection for the position of member of the Superior Council of Magistracy.

Through 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 March 10, 2022, new provisions were introduced regarding the mandatory stage of the selection process for candidates and their election or appointment to positions.

Subsequently, based on art. 15 para. (4) of Law No. 26/2022, the Evaluation Rules of the Independent Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors was adopted.

The appellant argued that on January 12, 2023, a public hearing took place with candidate Alexei Paniș before the Evaluation Commission. On February 7, 2023, he was notified via email of decision No. 21 of January 24, 2023, "regarding candidate Alexei Paniș, candidate for the position of member of the Superior Council of Magistracy." According to this decision, the Evaluation Commission, based on art. 8, para. (1), para. (2) lit. (a) and (c), para. (4) lit. (a) and (b), and para. (5) lit. (b), (c), (d), and (e), as well as art. 13, para. (5) of Law No. 26/2022, concluded that candidate Alexei Paniș did not meet the integrity criteria. This was due to serious doubts regarding the candidate's compliance with ethical and financial integrity criteria, resulting in the candidate not passing the evaluation.

The appellant highlighted that one of the members of the Evaluation Commission, namely Vitalie Miron, issued a dissenting opinion regarding decision No. 21 of January 24, 2023. In this opinion, Miron expressed his disagreement with the Evaluation Commission's position and emphasized that Judge Alexei Paniș, a candidate for the position of member of the Superior Council of Magistracy, met the integrity criteria stipulated by Law No. 26/2022.

In Alexei Paniș's opinion, the decision of the Evaluation Commission, no. 21 of January 24, 2023, issued in relation to his candidacy for the position of member of the Superior Council of Magistracy, is illegal and has been influenced by political factors. He asserts that the decision was primarily guided by the desires of the President of the Republic of Moldova, Maia Sandu, and interest groups that are aligned with the current regime.

One of the primary arguments raised by the appellant regarding the illegality of the Evaluation Commission's decision is the participation in the administrative procedure of individuals who were not entitled to do so. Specifically, the members Tatiana Răducanu and Nadejda Hriptievschi are mentioned, with the claim that they did not carry out their mandate with impartiality and objectivity. This is alleged to contravene the provisions of art. 7, lit. d) and e), of Law no. 26/2022, as well as the Rules of Procedure of the Evaluation Commission, which regulate conflicts of interest.

In this context, the appellant has mentioned that on September 19, 2019, a group of approximately 80 judges, including himself, submitted a request to the Superior Council of Magistracy (CSM) based on art. 232, para. (2), of Law no. 514/1995 on the judicial organization. They requested the convening and announcement of the date for an extraordinary general assembly of judges to be held on September 20, 2019. However, the Superior Council of Magistracy disregarded the judges' request and refused to convene the assembly. As a result, an administrative litigation action was initiated in which the magistrates sought to defend their rights enshrined in Law no. 514/1995.

Furthermore, the events that took place in the autumn of 2019 regarding the organization of the extraordinary general assembly of judges were extensively discussed in society. Two members of the Evaluation Commission, Tatiana Răducanu and Nadejda Hriptievschi, played a significant role in this matter. They, along with certain political actors, strongly criticized the actions of the judges who participated in the extraordinary general assembly of judges and called for the boycott of future assemblies.

Similarly, Nadejda Hriptievschi, in her capacity as an expert and program director at the Legal Resources Center of Moldova, repeatedly expressed her opinions in the media about the events related to the extraordinary general assembly of judges in 2019. She openly criticized the judges who opted for the assembly and participated in it. Furthermore, Nadejda Hriptievschi not only criticized the legality of the actions but also displayed a derogatory attitude towards the professional skills of the judges who took part in the assembly.

Therefore, the appellant has argued that there are circumstances that raise serious concerns about the impartiality and objectivity of the members of the Evaluation Commission, Tatiana Răducanu and Nadejda Hriptievschi. This is because these members have previously publicly expressed their personal critical and defamatory views regarding a portion of judges, including the appellant Alexei Paniș. In essence, these commission members have divided the body of judges into two groups: the "good" judges who did not participate in the extraordinary general assembly of judges in 2019, and the "compromised" judges who did participate in the assembly.

However, the Evaluation Commission rejected the requests for recusal submitted by the candidate Alexei Paniș against the members Tatiana Răducanu and Nadejda Hriptievschi, without analyzing and addressing the arguments raised regarding the lack of impartiality on the part of these members. This situation has tainted *ab initio* the final decision from the perspective of the legality of the evaluation procedure for the candidate for the position of a member of the Superior Council of Magistracy, Alexei Paniș.

Furthermore, the appellant argued that the evaluation procedure conducted on him as a candidate for the position of a member of the Superior Council of Magistracy, as well as decision no. 21 of January 24, 2023, through which he did not pass the evaluation on the grounds of not meeting the criteria of ethical and financial integrity, have been politically influenced.

In this context, it is well-known that the extraordinary evaluation process of judges was a prominent part of the governing party's election campaign and a key electoral promise during the campaign of the President of the Republic of Moldova, Maia Sandu.

Even though the provisions of Law no. 26/2022 do not grant the Evaluation Commission the power to assess and analyze decisions issued by candidates in their capacity as judges or to analyze and comment on how they handled specific cases, the Evaluation Commission, both during the written questions' round and in the candidate's public hearing, as well as directly in decision no. 21 of January 24, 2022, showed a particular interest in a specific administrative litigation case handled by Judge Alexei Paniș. This case was initiated by former President of the Chisinau Court of Appeal, Vladislav Clima, against President of the Republic of Moldova, Maia Sandu, challenging the decree by which he was dismissed from the judicial administrative position of president of the Chisinau Court of Appeal.

The appellant argued that on January 27, 2022, during a period when Law no. 26/2022 was still in the process of being drafted, President of the Republic of Moldova, Maia Sandu, directly threatened judges with an "external evaluation process," specifically referring to the administrative litigation case Clima vs. the Presidency of the Republic of Moldova, which was being examined by Judge Alexei Paniș. In her remarks, she did not hesitate to characterize the actions of the court as "actions of the mafia system that doesn't give up to maintain influence," and she mentioned the consequences of the external evaluation.

Later on, by the decree of October 25, 2021, of the President of the Republic of Moldova, Maia Sandu, the Supreme Security Council was established, including Mrs. Tatiana Răducanu as the president of the Board of Directors of the Civic Association "Center for Legal Resources."

Even though Tatiana Răducanu was included in the composition of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, she continues to be a member of the Supreme

Security Council and even participates in its meetings.

Thus, in the appellant's opinion, it is questionable how Tatiana Răducanu maintains her decision-making autonomy from the Public Association "Center for Legal Resources," as required by art. 4 para. (1) of Law No. 26/2022 if she is not suspended from the position of President of the Board of the public association. If she is indeed suspended from this position, it is unclear in what capacity she continues her activity within the Supreme Security Council.

Similarly, the appellant mentioned that by the decree of June 10, 2021, of the President of the Republic of Moldova, Maia Sandu, the Anti-Corruption Consultative Committee was established alongside the President of the Republic of Moldova, and Nadejda Hriptievschi was included in its composition.

Despite being included in the composition of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Nadejda Hriptievschi continues to be a member of the Anti-Corruption Consultative Committee alongside the President of the Republic of Moldova.

In this context, the appellant concluded that both the members of the Supreme Security Council and those of the Anti-Corruption Consultative Committee alongside the President of the Republic of Moldova are appointed by the President outside of a competition, favoring appointments based on loyalty. Their mere presence within the composition of the Evaluation Commission is sufficient to suggest not only a conflict of interest but also a genuine mechanism for influencing the evaluation procedure. Both entities serve as consultative bodies alongside the President of the Republic of Moldova and include individuals close to the President who share similar views in the fields of social, political, or judicial matters.

The appellant argued that an event confirming this fact was the statement made by the President of the Republic of Moldova, Maia Sandu, on December 30, 2022. In this statement, she publicly threatened judges and acknowledged her influence over the external evaluation process, stating that "to maintain popular support for reform, it would be advisable to see more involvement and responsibility from the judges, especially since the evaluation process awaits them, and their behavior today will matter for their evaluation scores."

In the appellant's view, for an objective and impartial observer, these circumstances are more than sufficient to conclude that a politically controlled process is taking place, aiming to capture the judiciary and eliminate inconvenient judges from the system.

Similarly, another proof of political influence on the external evaluation process is the accessing and processing of personal data of candidates from among the judges subject to verification by the Secretariat of the Parliament of the Republic of Moldova, in the interests of the pre-vetting commission. This fact was confirmed by the Report on facts no. 004-A-1/22 prepared by the bailiff on November 9, 2022, and the response from the Secretariat of the Parliament, no. SG-3-nr.521, of November 2, 2022.

The appellant pointed out that the Report of findings no. 004c-10/2022, drawn up by the bailiff on November 9, 2022, confirms that the Secretariat of the Parliament of the Republic of Moldova, where the parliamentary majority is held by representatives of the PAS political party, promoters of the "external evaluation," whose president is also the president of the PAS political party, accessed the personal data of Judge Alexei Paniș repeatedly. The accesses occurred during the period when the evaluation of Judge Paniș was being conducted by the Evaluation Commission. Furthermore, in response to the appellant's query, the Secretariat of the Parliament of the Republic of Moldova confirmed in letter no. DPA-P-4482/22 of October 20, 2022, that this access was related to the evaluation process of the appellant and recommended directing the query to the Evaluation Commission for further information.

In response to the query regarding the reasons for which the Secretariat of the Parliament is involved in the interests of an independent commission, the Evaluation Commission provided a vague explanation in its response no. 94-e.0 of December 9, 2022. The Commission stated that they are not responsible for the actions of other authorities.

Furthermore, Alexei Paniș, the appellant, has argued that both Nadejda Hriptievschi personally and individuals closely associated with Tatiana Răducanu have been donors to the governing party's election campaign, a fact confirmed in the financial management report of the PAS

political party for the period January 1, 2018, to March 20, 2018. Additionally, Nadejda Hriptievschi was a strong supporter of the President of the Republic of Moldova, Maia Sandu, during the electoral campaign.

In the view of the appellant, another significant factor that has compromised the evaluation process is the influence of politically affiliated non-governmental organizations (NGOs). It is well-known that the Minister of Justice, Sergiu Litvinco, and the head of the Center for Legal Resources of Moldova (CRJM), Vladislav Gribincea, are closely related - they are brothers-in-law.

The appellant considered relevant the fact that two members of the Evaluation Commission are representatives of CRJM, namely Nadejda Hriptievschi and Tatiana Răducanu. Additionally, Elena Prohnițchi, the head of the Evaluation Commission's secretariat, is a former member of CRJM's board of directors. According to the information available to the appellant, Ilie Chirtoacă's wife, the president of CRJM, is also involved in the work of the Evaluation Commission's secretariat.

Although CRJM may not appear to be directly involved in the evaluation process, Vladislav Gribincea, in particular, has repeatedly expressed his public stance on the evaluation process and has even attempted to describe the mechanisms of this process, appearing as a spokesperson.

The appellant mentioned that, according to the response from the Public Institution "Public Services Agency " no. 01/289dp of November 8, 2022, personal data of the candidate Alexei Paniș, a judge at the Chișinău Court, contained in the Real Estate Registry, were accessed by the Public Association "Institute for Policies and European Reforms," of which Iulian Groza serves as executive director and a member of the board of directors. Among other roles, Iulian Groza is also a member of the Supreme Security Council, appointed by the decree of the President of the Republic of Moldova, Maia Sandu.

At the same time, Iulian Groza acknowledged in the public space that he accessed the personal data of the candidates subject to the evaluation process and invoked a „noble” reason to assist in the process of evaluating magistrates.

In this respect, the appellant noted that public associations cannot replace a public authority if this is not established by law and could provide expertise only on the basis of open sources.

Thus, in the appellant's view, the cumulation of those circumstances indicates that the work of the Evaluation Commission was not independent.

Successively, the appellant claimed that, although, art. 12 para. (4) lit. c) of Law no. 26/2022 and art. 83 of the Administrative Code guarantees him the right to take knowledge of the materials examined by the Evaluation Commission in the evaluation process, this right was violated by the Evaluation Commission. However, on 9 January 2023, when he came to the premises where the Evaluation Commission was operating, the head of the secretariat refused to make all the materials available to him and sent him a folder containing copies of some documents, 90% of documents which he personally submitted to the Evaluation Commission in the rounds of questions. And, at his insistence on presenting all the materials, the head of the secretariat explained that the Evaluation Commission presents only the documents it deems relevant.

According to the appellant, there is an error in the text of Decision No. 21 of January 24, 2023, where the Evaluation Commission incorrectly stated that on January 9, 2023, the candidate was granted access to evaluation materials in accordance with art. 12 para. (4) lit. (c) of Law No. 26/2022. However, the appellant refutes this statement by presenting a self-certified receipt on January 9, 2023, explicitly indicating he was not provided access to all evaluation materials. Furthermore, the appellant states that he raised this issue during the public hearing on January 12, 2023. However, the Evaluation Commission allegedly ignored this argument and the provisions of art. 12 para. (4) lit. (c) of Law No. 26/2022.

The appellant asserts that the evaluation procedure conducted regarding them was not fair, as his right to defense was violated due to not being informed about the evidence presented by the Evaluation Commission.

Additionally, significant errors were allegedly made during the analysis of the evaluation materials and the translation process, leading to a breach of art. 10 para. (9) of Law No. 26/2022 and art. 85 para. (3) of the Administrative Code.

The appellant highlights that in the case of candidate Alexei Paniș, the Evaluation Commission conducted four rounds of written questions prior to the public hearing on January 12, 2023. The appellant promptly and in good faith responded to all the Commission's questions within a short period of four days, two of which were non-working days. However, the appellant alleges that the wording of the questions posed by the Evaluation Commission reflects their inability to read and analyze the information from the documents they possessed, or to fully understand and explain the precise meaning of legal norms.

To exemplify, the appellant has stated that:

- In Round 1, question no. 8 point b): The Commission referred to art. 40 of the Tax Code and accused him of not fulfilling his tax obligations, even though para. (6) of the same article excludes the question itself;
- In Round 1, question no. 15: The Commission, having the bank statements referred to, did not correctly identify the opening date of the bank accounts.
- In Round 2, question no. 5: The Commission did not examine the extract from the Public Services Agency (PSA) to correctly identify the date of vehicle purchase;
- In Round 2, question no. 7: The Commission did not differentiate between the terms "cadastral value of the asset" and "contractual value of the asset";
- In Round 2, question no. 8: The Commission did not examine the bank statement and erroneously accused the candidate that on January 21, 2022, someone had deposited an amount of 38,050 EUR into his account.
- In Round 2, question no. 9: The Commission arbitrarily invented the fact of incurring investment expenses in the amount of 550,000 MDL;
- In Round 2, question no. 10: The Commission arbitrarily invented the fact of incurring expenses of 550,000 MDL for investments and did not correctly read the information from the PSA extracts regarding the owner of vehicle.
- In Round 3, question no. 1: The Commission did not distinguish between the "actual value of the property," "cadastral value," and "contractual value";
- In Round 3, question no. 4: The Commission did not examine the bank statement, and for this reason, it was unable to understand that the candidate was repaying credit installments from this bank account. Consequently, the Commission asked the candidate to explain how the returned money was used by the bank;
- Round 3, questions no. 7, 8, and 9: The Commission did not analyze the bank statement and was unable to perform a mathematical calculation of the turnover, thus asking the candidate to explain how the money returned to the bank was utilized;
- Round 3, question no. 11: The Commission was unable to identify a bank account belonging to his wife, which was indicated in the declaration of assets and personal interests.

Alexei Paniș pointed out that, according to the Rule of Procedure of the Independent Commission for assessing the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors, the Commission's meetings, as well as all written and electronic communications between its members and between members and the secretariat, are conducted in English, except for public hearings, which will be held in Romanian with simultaneous or consecutive interpretation into English.

In this context, Alexei Paniș noted that three of the members of the Evaluation Commission, Herman von Hebel, Victoria Henley, and Nona Tsotsoria, are not citizens of the Republic of Moldova and are not familiar with the official language.

Consequently, the Evaluation Commission should have benefited from qualified translation services. However, the evaluation materials confirm that this process failed, as in Round 2 of questions, question No. 2 presented to the Evaluation Commission contained a mistranslation, where distinct terms such as "lawyer" and "legal expert" were confused. In the same text, due to this incorrect translation, the Commission noted certain facts that did not actually exist, such as allegations by candidate Alexei Paniș regarding the way Dorel Musteață appointed

himself as the President of the Chişinău Court of Appeals.

Furthermore, from the English version of the public hearing of candidate Alexei Paniş on January 12, 2023, it is evident that the translation process was also flawed. Members of the Evaluation Commission were not provided with a complete translation of all the information presented by the candidate during the hearing.

In the view of the appellant, even more concerning is the fact that Evaluation Commission member Nona Tsotsoria, who is not a citizen of the Republic of Moldova and does not speak Romanian, did not wear the headphones through which interpretation should have been provided during the hearing. This happened even though the candidate was responding to questions specifically posed by this member and was attempting to explain the alleged factual situation.

The appellant has characterized this behavior as serious and illegal, which explains why the Evaluation Commission did not even want to hear his explanations.

Additionally, the appellant considered the findings made by the Evaluation Commission from the European Court of Human Rights judgment in the case of *Xhoxhai v. Albania* (15227/19) to be irrelevant. Specifically, this case dealt with the reversal of the burden of proof in the evaluation process of judges. However, the appellant argued that the situation in Albania involved constitutional changes that did not take place in the Republic of Moldova. Therefore, it should be taken into account that, according to art. 46 para. (3) of the Constitution of the Republic of Moldova, the legality of acquisition is presumed.

Subsequently, the appellant argued that the members of the Evaluation Commission intentionally violated the provisions of Law no. 26/2022, specifically art. 8 para. (4) lit. (b), which states that a candidate meets the financial integrity criterion if the Evaluation Commission determines that the candidate's acquired assets in the last 15 years correspond to the declared income.

In this case, however, the Evaluation Commission thoroughly analyzed the real estate assets acquired by the candidate's father, Ştefan Paniş, starting from the year 2000, which is 22 years ago, exceeding by seven years the time-limit allowed by Law no. 26/2022. During that period, the candidate Alexei Paniş was not even serving as a judge and was only 12 years old.

The Evaluation Commission, contrary to Law no. 26/2022, intentionally extended the analysis beyond the permitted 15-year period. It scrutinized the transactions of land acquisition made by his father over several years in various localities within the Floreşti district.

The appellant noted that from the administrative case materials, it's not clear on the basis of which document and by which authority the Evaluation Commission established the total area of agricultural land owned by his father. These lands are not consolidated, but divided and located in different localities within the Floreşti district. Moreover, the information held by PSA as well as the annual declarations of assets and personal interests submitted by Ştefan Paniş, indicate these lands separately.

Similarly, in the appellant's view, the Evaluation Commission erroneously and unfoundedly concluded that there are serious doubts regarding the candidate Alexei Paniş's compliance with the ethical integrity criterion and the financial integrity criterion, in relation to the source of funds for the 300,000 MDL loan and the salary card of the candidate's father used by the candidate in 2022.

However, it is uncertain what doubts the Evaluation Commission identified regarding the sources of funds for the loan granted by his father in the amount of 300,000 MDL, considering that in 2021 his parents earned over 1,800,000 MDL from salary payments and leasing agricultural land. Thus, the legal conclusion that there are doubts about the origin of the funds amounting to 300,000 MDL loaned by Ştefan Paniş to candidate Alexei Paniş lacks legal logic.

Furthermore, the Evaluation Commission unjustifiably based its suspicions on a report of findings by the National Integrity Authority issued in 2021 regarding his father, Ştefan Paniş. However, during that investigation, Ştefan Paniş's assets for the years 2012-2020 were examined, while in this case, the loan amount was provided in 2021, from earnings recorded in 2021. Therefore, the findings of the National Integrity Authority's report issued in 2021 are not relevant to this case, as they pertain to a period prior to the year when the loan was granted.

Moreover, according to art. 23 para. (7) of the Law on Declaration of Assets and Personal

Interests No. 133 of June 17, 2016, the National Integrity Authority's decision issued in 2021 regarding Ștefan Paniș, the father of candidate Alexei Paniș, is not final and does not have legal effects since it has been challenged and is currently under judicial review for legality.

As a result, the Evaluation Commission could not consider this report as evidence, since it is not final and does not have legal effects. However, by displaying double standards, the Evaluation Commission did not consider the conclusive findings issued by the National Integrity Authority in decisions no. 1162/16 of November 25, 2021, and no. 578/02 of October 24, 2022. In these decisions, it was definitively concluded that there was no substantial difference between the obtained income, expenses, and acquired assets for Ștefan Paniș, and for Alexei Paniș, there was no appearance of non-disclosure of conflicts of interest, incompatibilities, or restrictions.

Similarly, in the appellant's view, the conclusions of the Evaluation Commission regarding the use of his father's bank card in 2022 confirm that the Commission members did not listen to the explanations he provided during the public hearing. Essentially, the Evaluation Commission claims that there is doubt about the origin of his father's salary funds, which were paid as a salary from the state budget to the salary card.

Likewise, the appellant has considered that, in this case, the Evaluation Commission has artificially constructed the existence of doubts regarding the manner of selling the Kia Sorento car in 2017 and the alleged failure to complete the transaction in accordance with the requirements of the current legislation.

The appellant pointed out that both during the questions' rounds and in the public hearing, he explained that the disposal of the mentioned vehicle and its re-registration took place within a subdivision of the Public Institution "Public Services Agency," under a standardized sale-purchase contract, a procedure that was accepted by the state authorities.

In this situation, the Evaluation Commission was obligated to request the documents related to the re-registration process of the KIA Sorento vehicle from the Public Institution "Public Services Agency," as all the documents are in possession of the state authorities. They should have analyzed these documents according to art. 92 of the Administrative Code.

Furthermore, in drawing the conclusion that the KIA Sorento vehicle was sold in 2017 at the same price it was purchased for in 2012, the Evaluation Commission did not give consideration to the arguments presented by candidate Alexei Paniș that the reference currency for the vehicle at the time of purchase was the US dollar, which was valued at 11.69 MDL for 1 US dollar on January 1, 2012, and 20.12 MDL for 1 US dollar on January 1, 2017.

Accordingly, the identical value of the Kia Sorento vehicle upon its purchase in 2012 and its subsequent sale in 2017 can be attributed to the phenomenon of inflation, and that in relation to the exchange rate of the US dollar, the vehicle was sold at a price 72% lower than its purchase price. This is because between 2012 and 2017, the value of the Moldovan leu depreciated by 72% against the US dollar.

Furthermore, the appellant deemed the conclusion of the Evaluation Commission regarding the authenticity of the cash expenses of 300,000 MDL as absurd. This is because the Evaluation Commission considers that a candidate does not meet the financial integrity criteria when it is definitively established that the candidate has legally obtained the funds but has not presented confirmatory documents regarding their expenditure.

All the more so, during the rounds of questions and in the public hearing, candidate Alexei Paniș explained that in addition to the expenses for purchasing the immovable property, he also incurred current consumption expenses in 2018. Thus, the remaining balance from the funds after the property purchase and covering the consumption expenses was used at the beginning of 2019 for purchasing construction materials and advance payment for the start of construction works.

Thus, in the view of the appellant, the Evaluation Commission erroneously assumed that the funds held in cash by candidate Alexei Paniș in 2018 were to be included in the asset and personal interest declaration submitted in 2019. However, at the time of submitting the declaration on March 29, 2019, he did not possess cash funds exceeding 15 times the average salary in the economy, and therefore, he was not obligated to declare them.

Subsequently, the appellant asserted that the members of the Evaluation Commission unjustifiably deemed that the public statements made by Judge Alexei Paniș on January 19, 2022,

were unethical. However, both the provisions of the Code of Ethics and Professional Conduct for Judges (adopted through General Assembly of Judges Decision No. 8 on September 11, 2015) and the Bangalore Principles on Judicial Conduct recognize the right of judges to freedom of expression.

Moreover, the appellant argued that, even more so, in the spirit of art. 10 of the European Convention on Human Rights, his comments did not pertain to cases being handled by Judge Alexei Paniș and did not refer to individuals who played a role as participants in pending cases or those he had adjudicated.

In the appellant's view, the explanations he provided to Ziarul de Gardă were ethical, as he was asked to comment on the accusations made by SIS employee Eugen Rurac in a note signed by him and sent to the Superior Council of Magistracy, which subsequently became public knowledge.

The appellant pointed out that none of the individuals mentioned in his statements - Eugen Rurac, Dorel Musteață, or Domnica Manole (the current President of the Constitutional Court and a former judge, who was criminally charged by former prosecutor Eugen Rurac, but dropped the charges after a change in government) - deemed his statements as contrary to judicial ethics, offensive, or disturbing. They did not report his statements to the Disciplinary Board of Judges, did not request a right of reply, and did not subsequently come forward in the public space to refute the allegations he made in the interview with Ziarul de Gardă.

The appellant reiterated that, through intentionally published notes in the public space, he was accused of the crimes of abuse of power and issuing a manifestly illegal judgment. These accusations were attributed to him after issuing only the operative part of a judicial decision in which he annulled a presidential decree that he deemed illegal, before drafting the reasoned judgment.

Thus, through this public attack, he was subjected to pressure during the drafting of the reasoned judgment in that particular case by a representative of the Security and Intelligence Service, a fact prohibited by both national legislation and international standards, including the Opinion of the Consultative Council of European Judges (CCJE) No. 21(2018) on the prevention of corruption among judges, which contains strong recommendations regarding the involvement of intelligence services in procedures concerning the integrity of judges.

Furthermore, the Association of Judges of Moldova and the Association of Magistrates of Romania issued strong public reactions on January 17, 2022, regarding the pressures exerted, which were extensively covered in the media in both the Republic of Moldova and Romania. These two professional associations spoke out on January 17, 2022, while he provided a commentary for Ziarul de Gardă on January 19, 2022, expressing solidarity with his fellow judges against the attack on judicial independence.

During the statements, he did not disclose, comment on, or use information that he became aware of in the exercise of his duties as a judge. Instead, he exclusively worked with facts that were known to the public about Eugen Rurac's previous activities.

Therefore, the appellant considered that he exclusively exercised his right to freedom of expression, refuting the defamatory statements made in Eugen Rurac's note, such as accusations of committing abuse and issuing an illegal ruling, engaging in conflicts of interest, or usurping any powers in the state. All his statements adhered to the criteria of reasonableness and moderation, and they did not constitute defamation against any mentioned individuals. These statements were value judgments with sufficient factual basis, as provided by the Law on Freedom of Expression no. 64 of April 23, 2010. The communication in question did not violate any of the principles outlined in art. 9 para. (6) of the Code of Ethics and Professional Conduct for Judges.

Consequently, the appellant asserted that the alleged disciplinary violations attributed to him by the Evaluation Commission are baseless. These allegations include claims that he acted in a manner that undermines honor, professional integrity, and the prestige of the judiciary to the extent that it affects public trust in the judiciary. However, his statements made on January 19, 2022, occurred just two days after an attack on the independence of the judiciary was criticized by two professional associations of judges from two different countries (the Association of Judges of Moldova and the Association of Magistrates of Romania).

The Evaluation Commission treated his conduct in the present case as a serious infringement, although the Disciplinary Board imposed the mildest disciplinary sanction on it, which implies that the disciplinary body did not find in his actions a serious violation.

Furthermore, the members of the Evaluation Commission did not even want to be acquainted with the content of the notes signed by Eugen Rurac, nor did they consider the decision of refusal to initiate criminal proceedings and the dismissal of the criminal case issued on August 29, 2022, by the Anti-Corruption Prosecutor's Office concerning him. This document makes it clear that he was investigated specifically based on the accusations made by Eugen Rurac through those notes from the SIS that he commented on publicly.

In the appellant's opinion, exercising the right to reply as a judge cannot be deemed a serious violation of ethics and professional conduct rules. In conclusion, the appellant believed that he was supposed to pass the evaluation as a candidate for the position of a member in the Superior Council of Magistracy.

On February 20, 2023, the Independent Commission for assessing the integrity of candidates for positions of members in the self-administration bodies of judges and prosecutors, represented by Vitalie Miron, submitted a statement requesting the dismissal of the appeal submitted by Alexei Paniş.

In the justification of the statement, the respondent argued that they diligently and in good faith fulfilled all the obligations stipulated by Law no. 26/2022. When certain ambiguities were identified, they offered the appellant the opportunity to clarify them by presenting additional data and information, providing him with an ample timeframe. As such, the Evaluation Commission deemed its decision no. 21 of January 24, 2023, as legal and well-founded, while the appellant's allegations were deemed unsubstantiated and lacking evidentiary support.

The respondent noted that in accordance with Law no. 26/2022, the burden of proof lies with the candidate throughout the evaluation process. In the initial phase, the Commission is obligated to accumulate data and information, exercising its legal powers and respecting legal obligations. However, when uncertainties arise and in order to clarify them, the Commission offers the candidate the opportunity to present additional data and information (art. 10, para. (7) of Law no. 26/2022). The presentation of additional data and information is a right, not an obligation, of the candidate (art. 12, para. (4) of Law no. 26/2022). However, the failure to exercise this right (by refusal, explicit or tacit, or by presenting incomplete or inconclusive data) may lead the Commission to conclude that there are serious doubts that the candidate meets the integrity criteria (art. 13, para. (5) of Law no. 26/2022). Consequently, it is in the candidate's interest to assume the burden of proof, and this legislative transfer not only does not violate but also effectively safeguards the candidate's rights.

The Evaluation Commission noted that the rationale behind transferring the burden of proof to the candidate has been developed at an international level. The European Commission for Democracy through Law (Venice Commission) pointed out that in a system of vetting and integrity checks, it can be entirely legitimate to transfer the burden of proof from the state to the judge/prosecutor seeking recruitment or appointment to a position (Venice Commission Opinion no. 1064/2021 of February 9, 2022, on the development of the vetting process in the judicial system, Kosovo; page 68). On the other hand, the process of reappointment turns all employees into applicants, and the burden of proof falls on these individuals, who must prove their fitness for the specific position (*ibidem*, page 95).

The Evaluation Commission explained that the integrity evaluation process and the decision of the Evaluation Commission No. 21 of January 24, 2023, do not affect the professional status of the candidate. The Commission does not substitute or take over the functions of a public body in the Republic of Moldova. The decision not to pass the evaluation serves as the legal basis for disqualifying the candidate from elections or competitions, and no other legal effects stem from it.

Furthermore, according to point 39 of the Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe (Opinion No.

1069/2021 of December 13, 2021, Moldova), the revised draft law clearly indicates that the results of the integrity evaluation will have no impact on the candidate's judicial career.

The Evaluation Commission noted that in its activity, it does not determine the existence or absence of the candidate's compliance with the integrity criteria, but rather the existence or absence of serious doubts regarding compliance.

Therefore, the conclusion of the Evaluation Commission's decision regarding the existence of serious doubts regarding the appellant's compliance with ethical and financial integrity criteria pertains to the decision's appropriateness, while the court is obligated to exercise legality control over the decision and is not entitled to conduct appropriateness review.

Subsequently, the respondent deemed the appellant's objections regarding the applicability of provisions of the Administrative Code to be unfounded in this case, except for the ones found in other sections apart from Book Three. According to art. 4 para. (2) of Law No. 26/2022, in its activities, the Evaluation Commission shall comply with the Constitution of the Republic of Moldova, this law, and other legal acts regulating related areas. The Evaluation Commission operates on the basis of its own Rules of Procedure, approved by it.

Therefore, the Evaluation Commission operates based on Law No. 26/2022 and its own Rules of Procedure, approved by itself, and not in accordance with the Administrative Code. The adjudication of appeals against the decisions of the Commission takes place according to the procedure provided for in Book Three of the Administrative Code.

As a result, the Commission was not bound by the provisions of art. 15, art. 22, art. 82, art. 85 para. (3), art. 87, art. 92, and art. 93 of the Administrative Code. Consequently, it did not perform administrative operations and was not obligated to investigate ex officio the factual situation, as well as to prepare the candidate's file according to the requirements of the Administrative Code.

Furthermore, the respondent considered the appellant's arguments regarding the alleged lack of independence of certain Commission members and the supposed influence of politicians and politically-affiliated NGOs on the evaluation process as irrelevant. This is because these allegations do not constitute serious procedural errors that would affect the fairness of the appellant's evaluation procedure, nor are they circumstances that could have led to the appellant's successful evaluation. The irrelevance of these aspects is confirmed by the fact that they do not constitute the subject matter of the appealed decision.

Furthermore, the respondent emphasized that the decision does not state neither that a candidate fails to meet the integrity criteria nor the commission of any violations on the part of candidates. The decision that a candidate fails or passes constitutes an evaluation by the Commission, exercising its legal discretion, depending on whether it identifies the existence or absence of serious doubts regarding the candidate's compliance with the requirements outlined in art. 8 of Law No. 26/2022, which have not been removed by the candidate. The court lacks a legal basis to pronounce on this Commission's assessment, as it pertains to the appropriateness of the decision, which cannot be subjected to judicial review.

It is therefore for the Commission to assess whether or not certain circumstances are sufficient to establish the existence or absence of serious doubts about compliance. This is because this specific issue is related to the appropriateness of the decision, which is not subject to judicial review. The respondent stated that regarding the loan contracted by the appellant from his father, the Commission found serious doubts due to the fact that the candidate acquired this loan while his father was undergoing an integrity verification procedure. As such, the aspects raised by the appellant, such as the alleged deliberate extension of the legally permissible period and the attempt to establish the total land area and analyze these transactions, are irrelevant. This is because the Commission did not identify any serious doubts concerning these transactions and assets mentioned by the appellant.

According to the respondent, the appellant's argument regarding the Commission's decision to consider a report issued by NAI concerning his father, which is not final, while not considering other definitive acts from the same authority that attest to the absence of violations concerning the candidate or his father, is irrelevant. The respondent emphasized that the Commission did not base its conclusions solely on NAI's findings and was not dependent on the

NAI's findings invoked by the appellant.

Regarding the issue of the sale of the vehicle without formalizing a legal agreement in accordance with the law, the respondent emphasized that art. 210 para. (1) of the Civil Code (in the version in force until March 1, 2019) establishes the clear and certain obligation of the appellant to conclude a written legal transaction for the sale of the vehicle, in accordance with legal provisions.

In the court hearing, the appellant, Alexei Paniș, presented his appeal against Decision No. 21 of January 24, 2023, regarding his candidacy, requesting its acceptance based on the factual and legal reasons stated in the appeal.

During the court hearing, the representatives of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, lawyers Roger Gladei and Valeriu Cernei, presented the arguments stated in their submission, requesting the rejection of the appeal as unfounded.

Court assessment

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.

Timeline for examination of the appeal

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.

According to the interim President's decision of the Supreme Court of Justice, no. 29 of March 29, 2022, modified by decision no. 35 of April 14, 2022, a special panel of judges was established to examine appeals against decisions made by the Independent Commission for assessing the integrity of candidates for positions in the self-administration bodies of judges and prosecutors. The panel consisted of Vladimir Timofti as the president, along with judges Ala Cobăneanu and Svetlana Filincova, with Dumitru Mardari as the alternate judge.

It should be noted that the appeal submitted by Alexei Paniș was registered with the Supreme Court of Justice on February 13, 2023. According to the case assignment record, this case was allocated to Judge-Rapporteur Svetlana Filincova through the Integrated Case Management System on the same date, February 13, 2023 (vol. I, page 1).

In this case, it's important to note that the appeal filed by Alexei Paniș was registered with the Supreme Court of Justice on February 13, 2023. According to the case assignment record, the case was assigned to judge-rapporteur Svetlana Filincova through the Integrated Case Management System on February 13, 2023 (vol. I, page 1).

By the ruling of February 14, 2023, issued by Judge-Rapporteur Svetlana Filincova, a member of the special panel established within the framework of the Supreme Court of Justice to review appeals from candidates for positions in the self-administration bodies of judges and prosecutors, the appeal lodged by Alexei Paniș against the Evaluation Commission was accepted for consideration in the administrative litigation procedure. The participants in the legal proceedings were summoned to the court hearing scheduled for February 24, 2023, at 10:00 AM, in courtroom no. 4, located within the premises of the Supreme Court of Justice on 18 Petru Rareș Street, Chișinău (vol. I, pages 76-78-42).

On February 20, 2023, within the established deadline set by the court, the Evaluation Commission provided a response to the appeal submitted by Alexei Paniș regarding the annulment of Decision No. 21 of January 24, 2023 (vol. I, pages 84-100).

According to the minutes of the court hearing on February 24, 2023, the special panel accepted the appeals of the appellant, Alexei Paniș, obligated the Evaluation Commission to present all materials related to the case of candidate Alexei Paniș, and postponed the examination of the case to March 13, 2023, at 10:00 AM (vol. I, pages 130-133).

By 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 resignation requests of judges Ala Cobăneanu and Svetlana Filincova from the Supreme Court of Justice, relieving them from their positions starting from March 1, 2023.

By the ruling of March 2, 2023, issued by the interim President of the Supreme Court of Justice, it was ordered that the cases pending before judges Ala Cobăneanu and Svetlana Filincova, which were filed based on the appeals against the decisions of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, will be transferred to the Procedural Records Section of Civil, Commercial, and Administrative Litigation Cases for redistribution through the Integrated Case Management System to other judges (Volume I, pages 156-158).

By the order of the interim President of the Supreme Court of Justice No. 33 of March 2, 2023, "Regarding the Amendment of Orders No. 29 of March 29, 2022, and No. 35 of April 14, 2022," the composition of the special panel was changed as follows: Vladimir Timofti - President, Judge; Dumitru Mardari and Mariana Pitic - Judges, Galina Stratulat - Alternate Judge.

In connection with the fact that judges Mariana Pitic and Galina Stratulat were on sick leave for a period exceeding 10 days, by the order of the interim President of the Supreme Court of Justice No. 34 of March 2, 2023, "Regarding the Amendment of Order No. 33 of March 2, 2023," the composition of the special panel was changed as follows: Vladimir Timofti - President, Judge; Tamara Chișca-Doneva and Dumitru Mardari - Judges, Ion Guzun - Alternate Judge.

According to the repeated case allocation record of March 2, 2023, at 13:15, the present case was assigned to the rapporteur judge Dumitru Mardari, who is a member of the special panel, as follows: Vladimir Timofti - President and Tamara Chișca-Doneva - Judge. (vol. 1, page 136).

During the court hearing on March 13, 2023, the case was examined on its merits. The parties' explanations were heard in accordance with art. 213 of the Civil Procedure Code, evidence was examined as per art. 224 of the Civil Procedure Code, and pleadings were heard as outlined in art. 233 of the Civil Procedure Code.

Furthermore, according to art. 14, para. (9) of Law No. 26 of March 10, 2022, it was decided that the deliberation and issuance of the decision would take place on March 16, 2023, by posting it on the official webpage of the Supreme Court of Justice.

On March 16, 2023, at 08:30 AM, the appellant Alexei Paniș submitted a request for the resumption of the examination of the case on its merits and for the obligation of the Evaluation Commission to provide all materials related to the evaluation procedure of the candidate Alexei Paniș (vol. I, pages 163-165).

By the decision of March 16, 2023, of the Supreme Court of Justice, the deliberation and issuance of the decision were postponed to March 20, 2023, at 10:00 AM, in accordance with art. 14, para. (9) of Law No. 26/2022 (vol. I, pages 171-172).

According to the information note of March 20, 2023, from the interim President of the Supreme Court of Justice, given that the rapporteur judge Dumitru Mardari has been on sick leave since March 17, 2023, and based on the decision of the Superior Council of Magistracy (CSM) No. 68/3 of February 23, 2023, modified by CSM decision No. 103/4 of March 16, 2023, accepting the resignation request of Judge Dumitru Mardari from the Supreme Court of Justice and releasing him from his duties starting from March 20, 2023, the issuance of the decision in the present case has been postponed to March 23, 2023 (vol. I, page 173).

Through the ruling of March 20, 2023, of the interim President of the Supreme Court of Justice, it was ordered that the cases within the jurisdiction of Judge Dumitru Mardari, filed based on appeals against the decisions of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, shall be transferred to the Section for Procedural Records of Civil, Commercial, and Administrative Litigation cases for redistribution to other judges via the Integrated Case Management System (ICMS) (vol. I, pages 177-179).

By the ruling no. 39 of March 20, 2023, of the interim President of the Supreme Court of Justice, the composition of the special panel was modified as follows: Vladimir Timofti - presiding judge; Tamara Chișca-Doneva and Mariana Pitic - judges; Ion Guzun - alternate judge.

According to the re-assignment record of March 21, 2023, at 10:41 AM, the present case was assigned to Judge Mariana Pitic as the reporting judge, who is a member of the special panel, as follows: Vladimir Timofti - presiding judge and Tamara Chișca-Doneva - judge (vol. I, page 180).

By the ruling of March 23, 2023, the special panel established within the Supreme Court of Justice, consisting of Vladimir Timofti - presiding judge, Tamara Chișca-Doneva and Mariana Pitic - judges, ordered ex officio the resumption of the examination of the present case, and scheduled a court hearing for March 28, 2023, at 10:30 AM (vol. I, pages 184-187).

By the Decision of the Superior Council of Magistracy no. 66/3 of February 23, 2023, the resignation request of Judge Vladimir Timofti of the Supreme Court of Justice was accepted, and his release from the position of judge at the Supreme Court of Justice was ordered as of March 27, 2023.

By the order of the Interim President of the Supreme Court of Justice no. 46 of March 28, 2023, "Regarding the amendment of order no. 39 of March 20, 2023", the composition of the special court panel was changed as follows: Tamara Chișca-Doneva - presiding judge; Mariana Pitic and Maria Ghervas - judges. The rest of the provisions of the Interim President's order no. 39 of March 20, 2023, have been maintained, including the provisions of the Interim President's order no. 34 of March 2, 2023, where Ion Guzun was designated as the alternate judge.

By the decision of March 28, 2023, the special panel established within the framework of the Supreme Court of Justice, composed of Tamara Chișca-Doneva - presiding judge, Maria Ghervas, and Mariana Pitic - judges, ordered the resumption of the examination of the present case (vol. I, p. 192-195).

Considering that Judge Maria Ghervas, who was included as a member of the special panel by the order of the Interim President of the Supreme Court of Justice no. 46 of March 28, 2023, was unable to study the case materials before the scheduled court hearing on the same date - March 28, 2023, the examination of the case was postponed to April 3, 2023, at 10:00 AM.

By the decision of the Superior Council of Magistracy no. 33/2 of February 14, 2023, the request for resignation of Judge Maria Ghervas from the Supreme Court of Justice was accepted, and Mrs. Maria Ghervas was relieved from her position as a judge as of March 31, 2023.

Through the decision of the Commission for Exceptional Situations of the Republic of Moldova no. 64 of March 31, 2023, during the state of emergency, as a temporary measure for a period of 30 days, administrative procedures concerning resignation requests submitted by judges of the Supreme Court of Justice were suspended until the effective date of the decision of the Commission for Exceptional Situations of the Republic of Moldova no. 64 of March 31, 2023. This also applied to the legal effects of already accepted requests, in cases where the actual release from duty did not occur by the effective date of the decision of the Commission for Exceptional Situations of the Republic of Moldova no. 64 of March 31, 2023.

According to the certificate issued by the court clerk, the hearing scheduled for April 3, 2023, at 10:00 AM, could not take place due to the fact that the order regarding the composition of the special panel for the examination of appeals against the decisions of the Independent evaluation commission for assessing the integrity of candidates for positions in the self-administration bodies of judges and prosecutors had not been issued. As a result, the hearing of the case was postponed to an undetermined date (vol. I, p. 211).

By the order of the Interim President of the Supreme Court of Justice No. 53 of April 4, 2023, "Regarding the Amendment of Orders No. 46 of March 28, 2023, No. 34 of March 2, 2023, and No. 39 of March 20, 2023," the composition of the special panel stipulated in point No. 1 of the order of the Interim President of the Supreme Court of Justice No. 46 of March 28, 2023, was changed, and a new composition of the special judicial panel for the examination of appeals against the decisions of the independent evaluation commission for assessing the integrity of candidates for positions in the self-administration bodies of judges and prosecutors was instituted as follows: Tamara Chișca-Doneva – presiding judge; Mariana Pitic and Ion Guzun – judges; Maria Ghervas – alternate judge.

By the order of April 6, 2023, the special panel established within the Supreme Court of Justice, composed of Tamara Chișca-Doneva – presiding judge, Ion Guzun and Mariana Pitic –

judges, ordered the resumption of the examination of the current case (vol. I, pages 212-215).

During the court hearing on April 6, 2023, the case was examined in detail, explanations of the parties were heard in accordance with art. 213 of the Civil Procedure Code, evidence was examined in accordance with art. 224 of the Civil Procedure Code.

Furthermore, the hearing of pleadings was postponed, in accordance with art. 233 of the Civil Procedure Code, until the Constitutional Court's ruling on the constitutionality exceptions raised in similar cases concerning certain provisions of Law No. 26 of March 10, 2022.

On April 6, 2023, by Decision No. 42, the Constitutional Court ruled on the inadmissibility of complaints no. 75g/2023, 76g/2023, 77g/2023, 86g/2023, 87g/2023, 88g/2023, 89g/2023, 90g/2023, 96g/2023, 101g/2023, and 102g/2023 regarding the unconstitutionality exceptions related to certain provisions of Law No. 26 of March 10, 2022.

As a result of the Constitutional Court's ruling on April 6, 2023, the participants in the proceedings were summoned for the next court hearing scheduled for April 10, 2023, at 16:30 (vol. I, page 216). However, this hearing was canceled due to the fact that on April 10, 2023, at 10:33, the Evaluation Commission submitted a request for the recusal of Judge Mariana Pitic (vol. I, page 217).

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

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

The motion to disqualify Judge Mariana Pitic was distributed electronically via the Integrated Case Management Program on 15 May 2023 and was examined at the hearing of 23 May 2023, the deliberation and outcome regarding it having been postponed until 25 May 2023 (vol. I, f.d. 224, 229-232).

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 (vol. I, f.d. 233-238).

The participants in the proceedings were summoned to the next hearing on the case on 07 July 2023, at 10.30.

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

The Law No 180 of 7 June 2023 reinforced the understanding that the Commission is a

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

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

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

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

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

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

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

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

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

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

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

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

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

Thus, based on the aforementioned, the Special Panel mentions that the cases to which the Pre-Vetting Commission's representatives referred, initiated upon the applications of Anatolie Țurcanu (No 3-5/23) and Natalia Clevadî (No 3- 13/23) do not form unitary case-law. The role of case-law is to interpret and apply the law to specific cases. Respectively, not every decision that differs from another decision represents a case-law divergence.

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

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

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

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

Admissibility of the action

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 of judges notes that through the action submitted, the appellant Alexei Paniş asserts the violation of a right through administrative activity, as per art. 189 para. (1) of the Administrative Code. Specifically, he claims that Decision No. 21 of January 24, 2023, by the Evaluation Commission, infringed upon his rights: the right to be elected to the position of member of the Superior Council of Magistracy (art. 14 of the Law on the Status of the Judge No. 544/1995), the right to judicial self-administration (art. 231 of the Law on Judicial Organization No. 514/1995), the right to dignity and professional reputation of a judge, the fundamental right to judicial independence and immovability (art. 16 of the Constitution of the Republic of Moldova), the fundamental right to administration (art. 39 of the Constitution of the Republic of Moldova), the right to a favorable evaluation decision for candidate Alexei Paniş.

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

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

In this context, note that 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 21 of 24 January 2023 was submitted by e-mail to the plaintiff, Alexei Panis, on 4 January 2023, which is confirmed by an abstract from the e-mail, attached to case materials (vol. I, f.d.a. 609 (fila dosarul administrativ).

The Special Panel concludes that the appeal application filed by Alexei Panis is admissible because the plaintiff complied with Article 14(1) of Law No 26/2022, being filed to the Supreme Court of Justice on 9 January 2023, within the time frame laid down in the law.

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

The Special Panel, in line with Article 219(3) of the Administrative Code, is not bound by the wording of the motions submitted by the parties to the proceeding, thus the appropriateness argument expressed in the statement of defense by the defendant will be appreciated in terms of admissibility. Effective judicial review involves a full check of factual and legal matters, however it excludes the checking of appropriateness as per Article 225(1) of the Administrative Code and limits the review regarding the discretionary individual administrative act when the law provides for such a reason for issuance. Appropriateness is a matter of admissibility, not a matter of substance in an administrative litigation. The defendant's argument in the submitted statement of defense that the application has to be rejected for the reason of appropriateness is unsubstantiated, as the plaintiff based the application on legality matters, not on appropriateness.

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

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

Regarding the merits of the case, the special panel acknowledges 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 Alexei Paniş 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 content of decision no. 21 of January 24, 2023 reveals that, in relation to the candidate Alexei Paniş, the Evaluation Commission identified three non-compliances, namely: (i) the source of funds for a loan of 300,000 MDL and the money used from the candidate's father's salary card; (ii) the sale of the Kia Sorento car in 2017 and cash investments in the house located in Chişinău in 2018; and (iii) the public statement of the candidate on January 19, 2022.

The Evaluation Commission stated that it has serious doubts (art. 13 paragraph (5) of Law no. 26/2022) regarding the candidate's compliance with the ethical integrity criterion and the financial integrity criterion under art. 8 para. (2) lit. a), para. (4) lit. a) and b), para. (5) lit. c), d) and e) of Law no. 26/2022, in relation to the source of funds for the loan of 300,000 MDL and the candidate's use of his father's salary card in 2022, while his father underwent a verification procedure, which was were not mitigated by the candidate.

The Evaluation Commission noted, upon studying Judge Alexei Paniş's 2021 annual declaration that he declared a loan of 300,000 MDL received in cash from his father, in installments. This raised serious questions for the Evaluation Commission regarding the source of his father's funds to lend this amount to the candidate.

The Commission's conclusion is based on the report of findings issued by the National Integrity Authority on September 8, 2021, which established that between 2012 and 2020, the difference between the wealth acquired by Judge Alexei Paniş's parents and their reported incomes was 1,928,091 MDL. The majority of the income earned by the candidate's parents in 2021 came from leasing agricultural land. These lands were leased to companies owned by the candidate's parents, including LLC "Endo – Grup," where the candidate's father owned an 80% share. This circumstance served as the basis for the initiation of a control procedure by the National Integrity Authority.

The doubts of the Evaluation Commission were further amplified considering that, even though the candidate's father challenged the report of findings issued by the National Integrity Authority on September 8, 2021, the Chisinau Court on December 6, 2022 rejected his action and upheld the validity of the report regarding the candidate's father and all the conclusions made by the integrity authority.

According to the Evaluation Commission, the findings retained by the Court of Appeal in its decision to reject the action aimed at annulling the report issued by the National Integrity Authority on September 8, 2021, are sufficient to give rise to reasonable and serious doubts regarding the source of funds of the candidate's father, which were used for the loan of 300,000 MDL.

Moreover, the Evaluation Commission noted that there is a reasonable doubt regarding the source of funds for the candidate's father's salary card, as per the candidate's declaration, these funds were also received from the leasing of agricultural lands.

The Evaluation Commission deemed the action of Judge Alexei Paniş to accept money from his parents during the verification procedures initiated by the National Integrity Authority in their

name as not compliant to judicial ethics.

Similarly, the Evaluation Commission found concerning the justification provided by candidate Alexei Paniş for accepting the funds from his parents, especially when the latter asked the Commission if "they expected him to take bribes instead of accepting help from his parents." Furthermore, the candidate stated that the very purpose for which his parents acquired goods for him was to ensure that he, as a judge, would resist any temptation to engage in unlawful transactions.

From the analysis of Decision No. 21 of January 24, 2023, regarding the first non-compliance, the special panel considers that the Evaluation Commission unjustifiably raised serious doubts about the source of funds for the loan of 300,000 MDL and the salary card of the candidate's father used by the candidate in 2022, while his father was subjected to a verification procedure. This conclusion was solely based on the report issued by the National Integrity Authority on September 8, 2021, which stated that during the period from 2012 to 2020, the difference between the wealth acquired by the parents of candidate Alexei Paniş and their incomes amounted to 1,928,091 MDL. The special panel notes that, according to art. 23 para. (7) of Law No. 133 of June 17, 2016, on the declaration of assets and personal interests, the reports on findings issued by the National Integrity Authority produce legal effects from the date they become final or from the date the court decision confirming the existence of unjustified assets, incompatibility, or conflict of interest becomes final and irrevocable.

In this case, it is important to note that Alexei Paniş's father, Ştefan Paniş, challenged the report of findings issued by the National Integrity Authority on September 8, 2021, through an administrative litigation action in court. The litigation initiated by him is currently pending before the Supreme Court of Justice.

The special panel of judges notes that the National Integrity Authority itself, through its communication on June 12, 2022, informed the Evaluation Commission that the report of findings issued on September 8, 2021, would only become final and legally effective after the Supreme Court of Justice's decision. This would happen if the Supreme Court rejects Ştefan Paniş's appeal and upholds the decision of the Court of Appeals of Chişinău, which dismissed Ştefan Paniş's action to annul the report of findings (vol. I, page 245).

Therefore, considering that the court decision rejecting the action of the candidate's father to annul the report of findings issued by the National Integrity Authority on September 8, 2021, is not final and irrevocable, the Evaluation Commission erroneously concluded that the rejection by the Court of Appeals of the action to annul the report of findings is sufficient to create reasonable and serious doubts about the source of funds for the 300,000 MDL loan and the funds on the candidate's father's salary card.

Furthermore, the Evaluation Commission did not take into account other documents issued by the National Integrity Authority that are final and legally effective, namely the minutes regarding the verification of asset and personal interest declarations no. 578/02 of October 24, 2022, and the minutes no. 1162/16 of November 25, 2021, refusing to initiate a check in relation to Ştefan Paniş.

Through the minutes regarding the verification of asset and personal interest declarations no. 578/02 of October 24, 2022, the National Integrity Authority determined that there is no apparent substantial discrepancy between the earned income, realized expenses, and acquired assets of the declarant Alexei Paniş for the year 2021, and there is no apparent non-disclosure of conflicts of interest, incompatibilities, or restrictions.

Also, through the minutes no. 1162/16 of November 25, 2021, the National Integrity Authority refused to initiate a check regarding Ştefan Paniş, determining that during the year 2020, his family obtained an income of 861,890 MDL from salary payments and leasing of agricultural lands, as well as 500,000 MDL from a bank credit account.

As it is evident from the provisions of art. 10 para. (9) of Law no. 26/2022, the Evaluation Commission was required to comprehensively and objectively examine the information gathered regarding the candidate Alexei Paniş and base its doubts only on pertinent evidence. In this case, however, it is apparent that the Evaluation Commission relied solely on a single indirect piece of evidence, namely the report of findings issued by the National Integrity Authority on September 8, 2021, which is not final and does not have legal effects. This was done to the detriment of other

pieces of evidence, such as the candidate's explanations, documents provided by the candidate to support his position, as well as two other documents drawn up by the same National Integrity Authority, which are final and have legal effects. Moreover, the Evaluation Commission did not provide reasons in Decision no. 21 of January 24, 2023, as to why the candidate's evidence in support of his position, including minutes no. 578/02 of October 24, 2022, and no. 1162/16 of November 25, 2021, drawn up by the National Integrity Authority, were deemed inadmissible as evidence, not pertinent to the case, or not acceptable to the Evaluation Commission.

The special panel of judges validly acknowledges the appellant's argument that the loan amount was granted in 2021 from income registered in 2021, while the report of findings of the National Integrity Authority issued in 2021 regarding his father, Ștefan Paniș, pertains to the period from 2012 to 2020, which is a timeframe prior to the year the loan was granted. Consequently, the report of the National Integrity Authority lacks any legal relevance.

Furthermore, the special panel of judges notes the lack of justification in the Evaluation Commission's conclusion regarding the existence of a reasonable doubt regarding the source of funds for the father's salary card. However, according to the explanations provided by candidate Alexei Paniș and the findings presented by the Evaluation Commission, during 2022, except for the first two months, the appellant used his father's salary card, spending approximately 58,927 MDL. Additionally, it's relevant to mention that during 2022, when Alexei Paniș used his father's salary card, the latter held a public position for which he was remunerated from the state budget.

Therefore, the special panel of judges concludes that these circumstances effectively eliminate any serious doubt regarding the source of funds deposited as salary into Ștefan Paniș's card account in 2022, which was used by his son, Alexei Paniș, while these funds originated from the state budget.

Subsequently, the special panel of judges also notes that Chapter III, point 1) of the Evaluation Commission's decision No. 21 of January 24, 2023, lacks serious and logical justification to explain how candidate Alexei Paniș's actions of taking a loan of 300,000 MDL from his father and using money from his father's salary card were classified by the Evaluation Commission under the criterion of "not meeting the criterion of financial integrity" and "serious violation of the rules of ethics and professional conduct for judges."

The special panel of judges emphasizes that the Evaluation Commission accused the candidate, Alexei Paniș, of a serious violation of the rules of ethics and professional conduct for judges as a consequence of his failure to meet the criterion of financial integrity. Thus, in the absence of a valid conclusion by the Evaluation Commission regarding the candidate's failure to meet the criterion of financial integrity, the conclusion of a serious violation of the rules of ethics and professional conduct for judges is also unjustified. This is due to the causal relationship between these two criteria.

Accordingly, the Special Panel concludes that the Pre-Vetting Commission failed to comply with procedural and substantive legality, in particular when it comes to the correctness of the multi-faceted investigation of its own motion of the factual situation, the reasoning of its decision, and it misinterpreted the legal concepts of "non-compliance with the financial integrity criterion" and "serious doubt" with respect to the source of funds for the loan granted by his father in the amount of 300,000 MDL, and this fact is a reason for ordering resumption of the evaluation procedure of the candidate, because he would have the right to a decision on passing the evaluation.

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 second non-compliance, the Evaluation Commission had serious doubts (art. 13 para. (5) of Law No. 26/2022) regarding the candidate's compliance with the ethical integrity criterion according to art. 8 para. (2) lit. c) and the financial integrity criterion according to art. 8 para. (4) lit. a) and b), para. (5) lit. b), c), d), and e) of Law No. 26/2022, in connection with the accuracy of information and the lack of supporting documents related to the declared selling price of the car and the cash expenses amounting to 300,000 MDL, which were not mitigated by the candidate.

The Evaluation Commission noted that in 2018, the candidate declared in his declaration of assets and personal interests an income, *inter alia*, of 300,000 MDL gained in 2017 from the sale of the Kia Sorento car.

At the request of the Evaluation Commission to provide a copy of a legal document, signed in accordance with art. 210 of the Civil Code, from which the selling price of the vehicle could be determined, the candidate explained that the car was sold based on a verbal agreement, and no sales contract was drafted for the automobile. Furthermore, the candidate argued that the Civil Code did not mandate the need for a written contract for the sale of a car.

Additionally, the Evaluation Commission noted that during the hearing, the candidate specified that when re-registering ownership of the Kia Sorento car in 2017, they signed a standardized purchase-sale contract and paid a fee of 400 MDL to the Public Institution " Public Services Agency".

Thus, the Evaluation Commission noted the contradiction between the initial statement made by candidate Alexei Paniș, which indicated that there was only a verbal agreement when selling the Kia Sorento car in 2017, and the arguments presented during the hearing, where the candidate stated that a standardized purchase-sale contract was signed during the re-registration of the ownership of the Kia Sorento car in 2017, and they paid a fee of 400 MDL to the Public Institution " Public Services Agency".

The Evaluation Commission emphasized that if there indeed existed a standardized purchase-sale contract, candidate Alexei Paniș had the obligation to provide the Commission with a copy of this contract in order to remove doubts regarding the sale price of the car and the accuracy of declaring this income in 2018.

As a consequence, the Evaluation Commission did not accept candidate Alexei Paniș's arguments that civil law did not impose the obligation to conclude a written purchase-sale contract for the sale of the car. The Commission emphasized that the legal effects of signing contracts are stipulated in the law and that parties assume the risk of not concluding a written contract. Therefore, the Commission found serious doubts regarding the sale price of the car, which were not removed by the candidate.

The Evaluation Commission noted that the failure to present a written purchase-sale contract for the car and the absence of any supporting payment documentation (the transaction allegedly occurred in cash, according to the candidate) made it impossible for the Commission to verify the accuracy of the sale price of the car as stated in his 2017 annual declaration. The absence of documentation regarding the sale of the car made it impossible to verify whether the candidate respected the tax regime related to this transaction. This fact, in turn, indicates that the candidate could not remove the Commission's doubts regarding the sale price of the Kia Sorento car in 2017 and the compliance with the associated tax obligations that were required of him.

Subsequently, the Evaluation Commission noted doubts regarding the cash payment of 300,000 MDL received by the candidate as a result of selling the Kia Sorento car in 2017, which were later invested by him in his house in the early months of 2019.

The special panel, after analyzing Decision No. 21 issued by the Evaluation Commission on January 24, 2023, the administrative file of the candidate Alexei Paniș, as well as the relevant arguments presented in the appeal regarding the sale of the Kia Sorento car in 2017, finds that the public authority did not fulfill its obligation to thoroughly, comprehensively, and objectively examine the facts related to the transaction of selling the Kia Sorento car in 2017 and the cash

investments made in 2018 in the house located in Chişinău.

Considering art. 22 of the Administrative Code, public authorities and competent courts are obligated to investigate the facts *ex officio*. They determine the nature and scope of the investigations and are not bound by the presentations of the participants or their requests to present evidence. Facts that are already known to the public authorities or competent courts, facts that are generally notorious, and facts presumed under legal provisions do not need to be proven, unless proven otherwise.

As per art. 85 para. (3) of the Administrative Code, a public authority is obliged to establish *ex officio* the factual aspects of the case that is the subject of the procedure, without being limited to the evidence and statements of the participants. To accomplish this, the public authority determines the purpose of the necessary investigations and their nature.

As per art. 10 para. (2)-(3), (7), and (9) of Law no. 26/2022, the Evaluation Commission and its secretariat have free and real-time access to informational systems containing the necessary data for fulfilling their mandate, specifically for assessing the ethical integrity and financial integrity of candidates, in accordance with legislation concerning data exchange and interoperability, except for information falling under the provisions of the Law on State Secrets no. 245/2008.

Absolutely, in the process of evaluating 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 for conducting the evaluation. The requested information is to be provided to the Evaluation Commission free of charge, including in electronic format, within a maximum of 10 days from the date of the request.

For the purpose of clarifying any identified ambiguities, the Evaluation Commission can request additional data and information from the evaluated candidates at any stage of the evaluation procedure.

The Evaluation Commission shall assess the gathered materials using its own judgement, formed as a result of multi-faceted, comprehensive and objective review of the information. None of the submitted materials has a predetermined probative value without being assessed by the Evaluation Commission.

According to art. 2 para. (1) lit. b) and e) from the Evaluation Rules 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, based on Law no. 26/2022, adopted at the meeting of the Evaluation Commission on May 2, 2022, one of the main stages of the evaluation is the request for standard data on candidates, family members, and other persons involved in the evaluation process from public or private legal entities, including but not limited to banks and other financial institutions, the National Integrity Authority, and the State Tax Service; as well as additional requests for information from individuals and legal entities of public and private law, including financial institutions.

From the aforementioned legal norms, it is beyond any doubt that the Evaluation Commission had the obligation to gather the necessary documents and information for the official investigation of the facts to carry out the evaluation of the candidate Alexei Paniş.

However, in the circumstances of the case, the Evaluation Commission considered that the candidate Alexei Paniş did not remove the doubt regarding the transaction of selling the Kia Sorento automobile in 2017, as he did not present a copy of a legal document signed in accordance with art. 210 of the Civil Code to the Evaluation Committee.

Thus, it can be deduced that, in this case, the Evaluation Commission did not comply with the provisions of art. 22 and art. 85 para. (3) of the Administrative Code, art. 10 of Law No. 26/2022, and art. 2 para. (1) lit. (b) and (e) of the Evaluation Rules based on Law No. 26/2022, adopted at the meeting of the Evaluation Commission on May 2, 2022. The Commission reversed the burden of proof and did not undertake the measures provided by the Special Law and the Internal Regulation to request from the legal entity of public law, specifically the Public Institution

" Public Services Agency," data regarding the sale transaction of the Kia Sorento automobile by Alexei Paniş in 2017 and the basis for re-registering the ownership of the Kia Sorento car from the old owner - Alexei Paniş - to the new owner.

According to art. 10 of Law No. 26/2022 and art. 2 para. (1) of the Evaluation Rules, undoubtedly that, until the stage of formulating questions to candidates, requesting documents from them, and holding public hearings with candidates, the Evaluation Commission has the obligation to independently gather evidence by accessing information systems (*inter alia* the State Transport Registry held by the Public Institution "Public Services Agency") and to request information from legal entities of public or private law, in order to be able to investigate *ex officio* the candidate's factual circumstances.

Thus, art. 88 para. (2), which is an elaboration of the principle of transparency and comprehensibility of administrative procedures as enshrined in art. 32 of the Administrative Code, stipulates that participants in the administrative procedure are not obliged to submit documents or other writs that are no longer in their possession if the public authority can clarify a matter by addressing a request to another public authority.

Therefore, the Evaluation Commission unjustifiably reversed the burden of proof, compelling the appellant to provide a copy of a legal document regarding the sale transaction of the Kia Sorento automobile in 2017.

In this context, the Special Panel of Judges emphasizes as relevant the appellant's argument that between the years 2017 and 2022, he disposed of 4 vehicles, following the same procedure for each of these transactions. However, the Evaluation Commission found serious doubts only regarding the sale transaction of the Kia Sorento automobile in 2017. This situation indicates that the Evaluation Commission treats similar situations differently and inconsistently, despite one of the fundamental principles of administrative procedure being equal treatment according to art. 23 of the Administrative Code.

The general principle of equality is one of the constitutional principles and grants a subjective right to individuals. It prohibits treating the same facts unequally or treating unequal things in the same manner, except where different treatment is objectively justified. This traditional formulation also defines the fundamental controversial structure and hence the sequence of examination. The fundamental question is always about justification, whether the unequal treatment is offset by relevant factual reasons. The required degree of justification varies according to the material severity of the unequal treatment and can range from a mere arbitrary test to a test based on principles of proportionality.

The elements of comparability specifically refer to those provided in art. 8 para. (2) and (4) of Law No. 26/2022, which do not differ significantly. From the administrative file of the candidate and from decision No. 21 of January 24, 2023, it is evident that the Evaluation Commission did not conduct a comparison-based evaluation. The principle of equality forbids essentially treating the same things unequally. The principle of equality is considered violated if there is no plausible and objective reason for legal differentiation or equal treatment.

Subsequently, by analyzing the conclusions of the Evaluation Commission regarding doubts about the cash payment of 300,000 MDL received by the candidate from the sale of the Kia Sorento car in 2017, which were later invested by him in his house in the early months of 2019, the special panel of judges highlights that these doubts arose because, in the opinion of the Evaluation Commission, the candidate did not provide any breakdown of the costs incurred for the construction of the house and did not justify any of his cash expenditures. The candidate explained to the Commission that he was not interested in managing records and keeping receipts.

The special panel of judges notes that the income of 300,000 MDL received from the sale of the Kia Sorento car in 2017 was part of the total amount of 1,507,590 MDL declared by the candidate Alexei Paniş in 2018. Out of this amount, in October 2018, Alexei Paniş used 984,070 MDL (approx. 50,000 EUR) to purchase a house and land located in Chişinău. After the purchase of the house in Chişinău, the remaining money held in cash by candidate Alexei Paniş amounted to 523,590 MDL. However, in the 2018 annual declaration, submitted on March 29, 2019, Alexei Paniş did not declare the possession of cash exceeding 15 average monthly salaries per economy

(92,250 MDL), although according to art. 4 para. (1) lit. (d) of Law no. 133/2016, he was required to declare all cash amounts exceeding the aggregated value of 15 times the average monthly salary per economy (92,250 MDL).

However, regarding this matter, candidate Alexei Paniș explained to the Evaluation Commission that at the time of submitting the 2018 asset and personal interests declaration, specifically on March 29, 2019, he did not possess in cash any monetary resources exceeding the amount of 92,250 MDL (15 times the average monthly salary per economy).

Simultaneously, candidate Alexei Paniș explained to the Evaluation Commission that out of the remaining amount after purchasing the residential house and adjacent land in Chișinău, approximately 200,000 MDL were used for consumption expenditure, while the remaining funds, up to 300,000 MDL, were utilized in the first months of 2019 for investments in the house. Therefore, as of March 29, 2019, he no longer possessed cash resources exceeding the amount of 92,250 MDL (15 times the average monthly salary per economy).

According to the explanations provided by candidate Alexei Paniș to the Evaluation Commission, during the months of January to March in 2019, he paid around 60,000 MDL for the demolition of the old house. Additionally, he purchased construction materials amounting to approximately 231,000 MDL, including sand (20 truckloads x 2,000 MDL per truckload), reinforced concrete (5 tons x 13,000 MDL per ton), cement (20 tons x 1,300 MDL per ton), and limestone (50 cubic meters x 2,000 MDL per cubic meter).

In this line of thought, the special panel considers the conclusion of the Evaluation Commission, which assessed candidate Alexei Paniș's behavior as a demonstration of a lack of appreciation for the importance of responsibility when spending substantial amounts, especially in cash, to be devoid of factual and legal basis. The special panel of judges notes that keeping records, especially for significant payments, is crucial for adhering to the legal regime of declaring assets and personal interests by judges. This regime aims to prevent unjust and illicit enrichment, avoid conflicts of interest in their activities, and hold them accountable for such actions.

However, if the candidate under evaluation provides logical arguments and explanations to the Evaluation Commission that are truthful within the socio-economic context of the Republic of Moldova, then the probability that a fact occurred in one way or another is balanced. In such cases, any doubt should be treated in favor of the candidate. This principle is rooted in the concept of the rule of law.

In the opinion of the special panel, the appellant Alexei Paniș has provided sufficient arguments regarding the investments of 300,000 MDL made by him in his house in Chișinău in the early months of 2019.

The special panel emphasizes that the mentioned violations of financial and ethical integrity were assessed by the Commission strictly in isolation from the historical and social context of the Republic of Moldova, which affects the legal relationships regarding the candidate Alexei Paniș. In general, the legal system allows for the retroactive effect of the law if it favors the legal situation of the individual, but this effect cannot be projected through legal interpretation.

The special panel notes as a principle of jurisprudence that social realism inherently includes legal realism as well. The attribution of violations to the candidate, which have been tolerated and sometimes even accepted and managed by state authorities, such as the acceptance of prices other than market prices in legal documents regarding real estate or vehicles, is not sufficient to overcome the presumption that the candidate lacks financial or ethical integrity.

Furthermore, the submission of the candidacy application for the positions stipulated in art. 3 of Law No. 26/2022 implies a voluntary agreement to undergo integrity assessment, as well as the personal conviction of each candidate that they have adhered to the integrity criteria in the preceding period. This conviction stems from the considerations of legal security and the social context in which they have lived and interacted with citizens and public authorities.

Hence, the circumstances highlighted by the Commission are not regarded by the special panel as a genuine breach of financial integrity. This perspective is grounded in the principle of protecting legitimate trust in the activities of the state's public authorities, which were entrusted

with the duties and powers to react to any inadvertences on the part of the administrative subjects. Moreover, this approach aligns with the principle of legal certainty in its comprehensive context.

Completul de judecată special subliniază că, Comisia de evaluare a imputat candidatului, Alexei

The special panel emphasizes that the Evaluation Commission has attributed to the candidate, Alexei Paniș, a serious breach of ethical rules and professional conduct of judges as a consequence of his alleged failure to meet the criterion of financial integrity. Consequently, since the Evaluation Commission's conclusion regarding the candidate's failure to meet the criterion of financial integrity is unfounded, the conclusion of a serious breach of ethical rules and professional conduct of judges is also unjustified, given the causal relationship between these two criteria. Furthermore, this conclusion arises from the fact that the Evaluation Commission has not explained the nature of the elements constituting the serious breaches of ethical rules and professional conduct of judges.

Subsequently, the special panel notes that Chapter III, point 2) of Decision No. 21 of the Evaluation Commission of January 24, 2023, lacks consistent, well-founded, and logical reasoning as to how exactly the candidate Alexei Paniș violated the legal regime for declaring assets and personal interests, conflicts of interest, incompatibilities, restrictions, and/or limitations, how the failure to declare assets occurred in a manner specified by legislation, and why the Evaluation Commission classified that the wealth acquired by the candidate in the last 15 years does not correspond to the declared income.

In conclusion, the special panel concludes that the decision issued by the Evaluation Commission, contrary to the provisions of art. 21 of the Administrative Code, does not meet the requirements of procedural and substantive legality. The circumstances identified indicate the candidate's right to a favorable evaluation decision from this perspective.

The Evaluation Commission noted that Judge Alexei Paniș launched a broad attack against Eugeniu Rurac and commented on the notifications filed by him on behalf of the Intelligence and Security Service to the National Anticorruption Center, the Prosecutor's Office, and the Superior Council of Magistracy. These notifications concerned the verification of Judge Alexei Paniș's actions in issuing the decision on December 31, 2021, to reinstate Vladislav Clima to the administrative position of the President of the Court of Appeal Chișinău. The candidate's statement was made in response to a news article that reiterated the content of the notification filed by the Intelligence and Security Service.

The Commission found that during the hearing, the candidate asserted that he had the right to respond to the accusations made in the notification and that he did so while adhering to the Code of Ethics and Professional Conduct for Judges. The candidate did not approach the Superior Council of Magistracy to avail himself of the legal remedy existing for attempts to intimidate a judge. However, the candidate did file a complaint against Eugeniu Rurac with the Intelligence and Security Service, but only after making his remarks about Eugeniu Rurac public.

Furthermore, the Evaluation Commission noted that even if the candidate's remarks did not constitute comments on a pending case, the scope, tone, and basis of the remarks made about individual persons were ethically problematic. Even when freedom of expression is permitted to respond to defamatory accusations, such expression must be measured and reasonable, as stipulated by the Code of Ethics and Professional Conduct for Judges. The candidate cited an interview with the President of the Legal, Appointments, and Immunities Committee as the basis for his claims that Eugeniu Rurac was involved in drafting the Decree that was the subject of the Vladislav Clima case. Eugeniu Rurac is not mentioned in the comments made by the President of the Legal, Appointments, and Immunities Committee, and there are only references to discussions among unidentified colleagues. More concerning is that the interview he identified as the basis for his remarks was broadcast one day after the candidate's public comment.

The Evaluation Commission had a different opinion regarding the candidate's remarks about the case that was handled by Eugeniu Rurac when he was a prosecutor, which involved another judge, and the candidate's remarks about the usurpation of power by Judge Dorel Musteață. According to the Commission, these remarks were not appropriate and reasonable.

In the opinion of the Evaluation Commission, Judge Alexei Paniș's comments were

unjustified and denigrating, violating the provisions of the Code of Ethics and Professional Conduct for Judges. His remarks about the alleged management of judicial appointments by Judge Dorel Musteață were also in conflict with ethical provisions that prohibit judges from commenting on the activities of other judges and from denigrating the professional and moral integrity of their colleagues.

The Evaluation Commission noted that although the candidate's action of appealing the decision imposing a disciplinary sanction in the form of a "warning" for this conduct is still pending, the findings made by the Disciplinary Board reinforce the serious doubts of the Commission regarding this issue. The Special Panel of Judges cannot endorse the conclusions of the Evaluation Commission that the public statement made by Judge Alexei Paniș on January 19, 2022 raises serious doubts about the candidate's compliance with the criterion of ethical integrity, as per art. 8 para. (2) lit. (a) of Law No. 26/2022.

As per Article 8(2)(a) of Law No 26/2022, the candidate shall be deemed to meet the criterion of ethical integrity if he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

In context, the Constitutional Court explained in § 118-120 of the Inadmissibility Decision No 42 of 6 April 2023 that, although Law No 26 does not define the meaning of "seriously", "wrongful", and "inexplicable" in Article 8(2)(a), the competent court must consider both the grammatical meaning that the given notion has, depending on the meaning of the notion it modifies, and the legal meaning, which could result from the interpretation of some provisions that regulate similar legal situations.

Although Law No 26 does not define the meaning of "seriously", "wrongful", and "inexplicable" in Article 8(2)(a), the Court must consider the principle of coherent regulatory system.

A systemic interpretation would allow the clarification of these qualifiers. For instance, the interpreter applying Article 8(2)(a) may analyze it in corroboration with Articles 4, 41, and 6 of the Law on disciplinary liability of judges, which represent the common law for the assessment of all candidates for the position of members in the Superior Council of Magistracy.

The Constitutional Court held that by means of the phrase "seriously", the legislator limited the discretionary margin of the Pre-Vetting Commission when assessing the ethical integrity of the candidates. This criterion allows the Commission to decide on failure of the candidate only if it finds violations of ethics and professional conduct that are of a high severity. This means that the candidate can discuss the seriousness of violations found by the Commission before the Special Panel of the Supreme Court of Justice, which could ultimately appreciate the "serious" nature of the found deviation, depending on the specific circumstances of the case.

In the context of the case, it is imperative to specify that the public statement made by Judge Alexei Paniș, which raised serious doubts with the Evaluation Commission about the candidate's compliance with the criterion of ethical integrity, had previously been subject to examination by the Judicial Inspection and the Disciplinary Board within the framework of the Superior Council of Magistracy.

Thus, through Decision No. 16/4 of April 22, 2022, issued by the Plenum of the Disciplinary Board within the Superior Council of Magistracy, it was established that Judge Alexei Paniș of the Chișinău District Court, Rîșcani seat, had committed a disciplinary offense under art. 4, lit. p) of the Law on the Disciplinary Liability of Judges No. 178 of July 25, 2014, and a disciplinary sanction in the form of a warning was imposed on him.

The Special panel notes that, according to art. 6 of the Law on the Disciplinary Liability of Judges No. 178 of July 25, 2014, a warning is the mildest disciplinary sanction.

A warning involves advising the judge about the committed disciplinary offense, with a recommendation to observe legal provisions in the future, cautioning him/her that for a similar disciplinary offense in the future, a more severe sanction could be imposed. The warning is issued in written form. The effective period of the warning is 1 year.

In this case, the Plenary of the Disciplinary Board within the Superior Council of Magistracy

indicated in decision No. 16/4 of April 22, 2022, that it applies the disciplinary sanction to Judge Alexei Paniş in proportion to the gravity of the committed disciplinary offense. The seriousness of the disciplinary offenses is determined by the nature of the committed act and its consequences, which are to be evaluated considering both the effects on the individuals involved in the judicial process in which the act was committed, as well as the effects on the image and prestige of justice. This evaluation also takes into account the personality of the judge who has not previously been subject to disciplinary action.

Therefore, the Plenary of the Disciplinary Board within the Superior Council of Magistracy deemed it proportional and appropriate to apply the mildest disciplinary sanction, in the form of a warning, to Judge Alexei Paniş.

In this context, the special panel of judges considers that the conclusion of the Evaluation Commission regarding serious doubts about the candidate's compliance with the ethical integrity criterion, in connection with his public statement on January 19, 2022, is not in line with the conclusions of the Plenary of the Disciplinary Board within the Superior Council of Magistracy in decision No. 16/4 of April 22, 2022. This fact contradicts the objectives of the Constitutional Court as stated in Decision No. 42 of April 6, 2023 (§118-120), which indicates that the significance of the term "serious" in art. 8 para. (2) lit. a) of Law No. 26/2023 should be analyzed in conjunction with the provisions of art. 4, 4¹, and 6 of Law No. 178/2014 on the disciplinary liability of judges.

Thus, the conclusion of the Evaluation Commission regarding the fact that Judge Alexei Paniş seriously violated the rules of ethics and professional conduct for judges through his public statement on January 19, 2022, is not proportional to his actions, especially considering that the Plenary of the Disciplinary Board within the Superior Council of Magistracy concluded that the actions of Judge Alexei Paniş do not constitute a serious disciplinary offense.

Moreover, according to the materials of the administrative file, Judge Alexei Paniş has challenged the decision no. 16/4 of April 22, 2022, issued by the Plenary of the Disciplinary Board within the Superior Council of Magistracy, and his appeal is still pending (vol. I, pages 221-223).

Therefore, the special panel of judges observes that Chapter III, point 3) of Decision no. 21 issued by the Evaluation Commission on January 24, 2023, lacks a consistent and well-founded reasoning that clarifies how the Evaluation Commission deemed Judge Alexei Paniş's public statement on January 19, 2022, as a "serious violation of the rules of ethics and professional conduct of judges." This is especially significant considering that the *Plenary of the Disciplinary Board within the Superior Council of Magistracy concluded that this action by Judge Alexei Paniş does not constitute a serious disciplinary offense.*

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

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

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

Therefore, the violations identified by the Evaluation Commission do not meet the criteria that would allow it to decide of candidate's failure to pass the evaluation due to serious breaches of ethics and professional conduct rules.

The Special Panel finds that the Pre-Vetting Commission did not analyze and reason the legitimate purpose of the issued decision. The preamble of Law No 26/2022 provides that the purpose of the Law is to increase the integrity of future members of the Superior Council of

Magistracy and its specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and overall in the justice system.

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

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

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

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

According to Article 29(2)(c)-(3) of the Administrative Code, a measure undertaken by public authorities is deemed proportionate if it is reasonable. A measure undertaken by public authorities is reasonable if the interference it causes is not disproportionate compared to its purpose. This requirement involves a balancing of the legally protected values. The more damage is caused to a right, the more it is required for the advantage resulting from the interference to be superior. Note that excluding the right of a judge to be a candidate for membership in the Superior Council of Magistracy involves not just an interference, but rather an improper annulment of the right to be elected into this position. Such a solution cannot be accepted under the rule of law, as it is incompatible with the dignity of a human being and of a judge. The goal of trust in the justice system can be achieved by complex means, but in no way can it be done by reducing to nothing the idea of free, transparent, and competitive election for the membership of the Superior Council of Magistracy and its bodies. The judge, holding such a position, is presumed to have integrity and, should the opposite be proven, than he/she shall be dismissed from the judiciary by means of a disciplinary procedure or another procedure that would take into account the guarantees of his/her independence. The Special Panel notes that the purpose of Law No 26/2022, among other things, is to boost the trust in justice.

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

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

With respect to the plaintiff's argument that the Pre-Vetting Commission made severe procedural errors during the evaluation procedure in terms of violating the language of the

evaluation process, expressed in lack of translation to English of documents and statements submitted by the candidate at the stage when Commission members were collecting and checking data, given that the Commission members Herman von Hebel, Victoria Henley, Nona Tsotsoria, who are English speakers and for whom the Commission Secretariat did not ensure a translation to English, the Special Panel holds the following.

As per Article 10(9) of Law No 26/2022, the Commission shall assess the gathered materials using its own judgement, formed as a result of multi-faceted, comprehensive and objective review of the information. None of the submitted materials has a predetermined probative value without being assessed by the Commission.

This provision leads to the rule of direct research of evidence, freedom of evidence and direct assessment of evidence by the Commission members.

The Special Panel finds that the plaintiff's representatives in the court hearing confirmed that there was no written translation of documents into the language known by the foreign member of the Pre-Vetting Commission, designated by the development partners, which contradicts Article 10(9) of Law No 26/2022, as well as Article 22 and Article 92 of the Administrative Code.

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.

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

In this respect, the Special Panel emphasizes that, according to 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 Alexei Panis, so that the court could fulfil its constitutional task of effective judicial review of factual and legal matters.

Likewise, the special norms, provided in art. 10 para. (5), art. 12 para. (4) lit. c) of Law no. 26/2022 and art. 2 para. (1) lit. g) of the Evaluation Rules pursuant to Law no. 26/2022, adopted at the meeting of the Evaluation Commission of May 2, 2022, guarantees the right of candidates to have access to the materials accumulated by the Evaluation Commission and its secretariat for their evaluation.

According to decision No. 21 of January 24, 2023, on January 9, 2023, the candidate was granted access to the evaluation materials in accordance with art. 12 para. (4) lit. (c) of Law No. 26/2022. However, based on the candidate's statement, it appears that on January 9, 2023, the secretariat of the Evaluation Commission did not provide him with all the administrative case materials (Volume I, p. 77).

According to the candidate's statements, the head of the Evaluation Commission's secretariat refused to provide him with all the administrative case materials and instead presented him with only copies of certain documents, about 90% of which had already been presented by him during the Commission's questioning rounds. Moreover, he was told that the Evaluation Commission only presents documents they deem relevant. This circumstance was also mentioned by candidate Alexei Paniş during the public hearing on January 12, 2023.

The Special panel of judges notes that the violation of candidate Alexei Paniş's right to access evaluation materials was confirmed during the court hearing. According to the minutes of the court hearing on February 24, 2023, the Special panel granted the application of the appellant Alexei Paniş and obligated the Evaluation Commission to provide all materials from candidate Alexei Paniş's file (vol. I, p. 130-133). As a result of the enforcement of the formal ruling of February 24, 2023, by the Supreme Court of Justice, the appellant's representatives presented some documents to the court and the appellant that candidate Alexei Paniş did not have access to at least 3 days prior to the hearing, as stipulated in art. 12 para. (4) lit. (c) of Law No. 26/2022.

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

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

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

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

The Special Panel 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 Alexei Panis failing the evaluation.

Therefore, the exclusion, not just limitation, of candidate Alexei Panis'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 6 of 9 December 2022 regarding the candidacy of Alexei Paniş.

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

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

decides:

The administrative litigation action filed by Alexei Paniş against the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors is accepted. The decision No. 21 of January 24, 2023 regarding Alexei Paniş's candidacy is annulled, and it is ordered to restart the evaluation procedure for the candidate.

The decision of the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors, No. 21 of January 24, 2023, regarding the candidacy of Alexei Paniş is annulled. It is ordered that Alexei Paniş be re-evaluated by the Independent Commission for assessing the integrity of candidates for the positions of members in the self-administration bodies of judges and prosecutors.

The decision is final and cannot be appealed.

Presiding judge,
judge

Tamara Chişca-Doneva

judges

Ion Guzun

Mariana Pitic