



Independent Evaluation Commission for assessing the integrity of candidates
for the position of member in the self-administration bodies of judges and prosecutors

Comisia independentă de evaluare a integrității candidaților la funcția
de membru în organele de autoadministrare ale judecătorilor și procurorilor

*Decision No. 4 of 6 December 2023 on the Resumed Evaluation of Aliona MIRON
Candidate for the Superior Council of Magistracy*

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 Commission”) deliberated in private on 6 December 2023. The members participating were:

1. Herman von HEBEL
2. Victoria HENLEY
3. Nadejda HRIPTIEVSCHI
4. Tatiana RĂDUCANU
5. Nona TSOTSORIA

The Commission delivers the following decision, which was adopted on that date:

I. The procedure

Aliona MIRON, judge at the Supreme Court of Justice (“the candidate”), was on the list of candidates submitted by the Superior Council of Magistracy to the Commission on 6 April 2022 for evaluation for the position of member of the Superior Council of Magistracy.

The candidate was appointed as a judge for five years on 21 April 2009 to serve in Chisinau Court, Riscani Office. The candidate was appointed as a judge until the retirement age on 30 April 2014. The candidate was appointed member of the Disciplinary College for six years on 20 October 2017. On 9 September 2021, the candidate was appointed as judge at the Supreme Court of Justice.

The candidate was initially evaluated by the Commission (hereinafter “initial evaluation”) starting on 8 July 2022. The candidate submitted the voluntary ethics questionnaire on 5 July 2022. On 14 July 2022, the candidate submitted a completed Declaration of assets and personal interests for the past five years (hereinafter “five-year declaration”) as required by art. 9 para. (2) of Law No. 26/2022 on certain measures relating to the selection of candidates for position as a member of the self-administration bodies of the judges and prosecutors (hereinafter “Law No. 26/2022”), which includes the list of close persons in the judiciary, prosecution and public service, as required by the same article. During the initial evaluation, the Commission collected information from multiple sources.¹

¹ The sources from which information was obtained concerning evaluated candidates generally included the National Integrity Authority, State Fiscal Service, General Inspectorate of Border Police, financial institutions, public institutions, open sources such as social media and investigative journalism reports and reports from members of civil society. Not all sources produced information concerning each candidate and not all of the information produced by sources about a candidate was pertinent to the Commission’s assessment. All information received was carefully screened for accuracy and relevance.

The candidate also responded to written questions and requests for information from the Commission.² The candidate did not request access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022 and therefore did not receive the materials. On 30 November 2022, the candidate participated in a public hearing before the Commission. The Commission issued its decision failing the candidate on 11 January 2023.

On 5 February 2023, the candidate appealed the Commission's decision to the Supreme Court of Justice (hereinafter "SCJ") pursuant to art. 14 para. (1) and (2) of Law No. 26/2022. On 1 August 2023, the SCJ special panel for examining the appeals against the decisions of the Commission (hereinafter "SCJ special panel") issued its decision accepting the candidate's appeal, annulling the decision of the Commission and ordering the re-evaluation of the candidate.

The Commission commenced the resumed evaluation of the candidate on 8 September 2023. The candidate responded to two written questions from the Commission, including six sub-questions and two requests for further documentation. The Commission collected additional information from various sources as needed to address the issues being considered in the resumed evaluation.

II. The law relating to the evaluation and resumed evaluation

Law No. 180/2023 for the interpretation of certain provisions of Law No. 26/2022 on some measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors and Law No. 65/2023 on external evaluation of judges and candidates for the position of judge at the Supreme Court of Justice of 7 July 2023 (hereinafter "Law No. 180/2023"), states that, for the purpose of art. 3 para. (2) and art. 4 para. (2) of Law No. 26/2022, the Commission is not a public authority under the Administrative Code. The SCJ special panel concluded that Law No. 180/2023 consolidated the understanding that the Evaluation Commission is a public authority specific in its way, i.e. is not a legal entity of public law. The SCJ special panel further stated that, pursuant to art. 72 para. (6) of Law No. 100/2017 regarding the normative acts, an interpretative normative act shall not have retroactive effects, except for cases when the interpretation of sanctioning provisions would create a more favorable situation. The SCJ special panel ordered a resumed evaluation, which took place after the entry into force of Law No. 180/2023; thus, Law No. 180/2023 applies to the resumed evaluation.

Guided by the aim of upholding the fundamental principles of the rule of law (art.1 para. (3) of Constitution), sovereignty and state power (art. 2 of Constitution), the Commission's decisions are adopted in accordance with the law, pursue the legitimate aims listed in Law No. 26/2022, and the outcome is necessary for a democratic society to achieve the aim or aims concerned.³ The

² The Commission sent three rounds of questions to the candidate, including 37 questions, 102 sub-questions and 32 requests for further documentation.

³ *Mutatis mutandis, Xhoxhaj v. Albania*, no. 15227/19, para. 378, 31 May 2021; *Nikëhasani v. Albania*, no. 58997/18, para. 93, 13 December 2022.

Commission's evaluation of candidates' integrity consists of verifying their ethical integrity and financial integrity (art. 8 para. (1) of Law No. 26/2022) in order to increase the integrity of future members of the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies, as well as the society's trust in the activity of the self-administration bodies of judges and prosecutors and in the justice system overall (preamble to Law No. 26/2022). Increasing the confidence of society in the judicial system and the proper functioning of these institutions concern matters of great public interest.⁴ The Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe (hereinafter "Venice Commission and the DGI") observed that the integrity evaluation is not being applied to judges or prosecutors with respect to their roles as such judges or prosecutors and is thus not engaging the independence of their role. However, it is a crucial part of the Moldovan structure of governing the justice system that judges and prosecutors serve from time to time on the self-administration bodies and noted that these are more than administrative positions; they are crucial roles in ensuring the good governance of these bodies in the justice system. Accordingly, the Venice Commission and the DGI further observed that the personal integrity of the members that constitute the Superior Councils (of judges and prosecutors) is an essential element to the nature of such bodies; it ensures the confidence of citizens in justice institutions – trust in magistrates and their integrity. In a society that respects the fundamental values of democracy, citizens' trust in the action of the Superior Councils depends very much, or essentially, on the personal integrity, competence, and credibility of its membership.⁵ Venice Commission Opinion No. 1069/2022 specifically noted that the creation of ad hoc bodies to assess the integrity of judges and prosecutors is based on the assumption that the justice system has extremely serious deficiencies and that there are systemic doubts about the integrity of magistrates.⁶

Regarding the justification for vetting procedures, both in the Albanian and Ukrainian contexts, the Venice Commission repeatedly commented that the extraordinary measures to vet judges and prosecutors were "not only justified" but were "necessary for Albania to protect itself from the scourge of corruption which, if not addressed, could completely destroy its judicial system".⁷ In those contexts, the Venice Commission also took into account existing major problems with corruption and incompetence in the judiciary, political influence on judges' appointments in the previous period, and the almost complete lack of public confidence in either the honesty or the competence of the judiciary.⁸ In a 2019 opinion on a draft law in Moldova that included vetting

⁴ *Baka v. Hungary* [GC], no. 20261/12, para. 171, 23 June 2016; *Morice v. France* [GC], no. 29369/10, para. 125, ECHR 2015.

⁵ Joint opinion No. 1069/2021 of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts, 13 December 2021 (hereinafter "Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022"), para. 15 and 11.

⁶ Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, paras. 11-12.

⁷ Venice Commission Final Opinion No. 824/2015 on the revised draft constitutional amendments on the judiciary of Albania, 15 January 2016, para. 52.

⁸ Joint opinion No. 801/2015 of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) on the Law on the Judicial System and the Status

of SCJ judges, the Venice Commission and the DGI took note of the assessment made by the authorities, in particular, two resolutions of the European Parliament⁹ that “*in the last years the justice system has shown an unprecedented lack of independence and submission to oligarchic interests*” and that “*national and international institutions have declared the Republic of Moldova a captured state.*”¹⁰ The Venice Commission and the DGI also noted that it ultimately fell within the competence of the Moldovan authorities to decide whether the prevailing situation in the Moldovan judiciary creates sufficient basis for subjecting all judges and prosecutors, as well as members of the Superior Council of Magistracy and Superior Council of Prosecutors, to extraordinary integrity assessments.¹¹ As the European Court of Human Rights (hereinafter “ECtHR”) has held on many occasions, national authorities, in principle, are better placed than an international court to evaluate local needs and conditions.¹² A recent opinion of the Venice Commission in relation to Georgia reached similar conclusions about the need for an inclusive national consultative process to address possible reform measures including evaluating the integrity of members of that nation’s High Council of Judges in light of persistent allegations of lack of integrity in the High Council. The opinion expressly noted the temporary option of using mixed national/international advisory boards to facilitate that procedure.¹³

Art. 8 para. (2) of Law No. 26/2022 provides that a candidate is deemed to meet the criterion of ethical integrity if:

- a) 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;
- b) there are no reasonable suspicions that the candidate has committed corruption acts, acts related to corruption, or corruptible acts, within the meaning of the Law on Integrity No. 82/2017;
- c) has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions, and/or limitations.

A number of versions of ethical codes applied to judges over the period of time covered by the evaluation. The codes were *Judge’s Code of Professional Ethics*, adopted at the Conference of

of Judges and amendments to the Law on the High Council of Justice of Ukraine, 23 March 2015, paras. 72-74.

⁹ Resolution of 5 July 2018 on the political crisis in Moldova following the invalidation of the mayoral elections in Chişinău (2018/2783(RSP) and the resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova (2017/2281(INI).

¹⁰ Interim joint opinion No. 966/2019 of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on the reform of the Supreme Court of Justice and the Prosecutor’s Office, 14 October 2019, para. 46.

¹¹ Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 42.

¹² See, *inter alia*, *M.A. v. Denmark* [GC], no. 6697/18, para. 147, 9 July 2021; *THÖRN v. SWEDEN*, 24547/18, para. 48, 1 September 2022; see also Protocol No. 15, which entered into force on 1 August 2021.

¹³ Venice Commission Follow-up Opinion No. CDL-AD(2023)033 to Previous Opinions Concerning the Organic Law on Common Courts, Georgia, 9 October 2023, paras. 10, 11, 24.

Judges on 4 February 2000, *Judge's Code of Ethics*, approved by the Superior Council of Magistracy decision No. 366/15 on 29 November 2007, *Judge's Code of Ethics and Professional Conduct*, approved by decision No. 8 of the General Assembly of Judges of 11 September 2015, amended by decision no. 12 of the General Assembly of Judges of 11 March 2016, as well as the *Commentary to the Code of Judges' Ethics and Professional Conduct*, approved by Superior Council of Magistracy's decision No. 230/12 of 8 May 2018. Since 2018, the *Guide for Judges' Integrity* approved by the Superior Council of Magistracy's decision No. 318/16 of 3 July 2018 is another relevant source to assess judicial integrity issues.

Also, the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity as The Bangalore Draft Code of Judicial Conduct 2001 and as revised at the Round Table Meeting of Chief Justices on 25 - 26 November 2002 and endorsed by United Nations Social and Economic Council, resolution 2006/ 23 ("Bangalore Principles of Judicial Conduct") provide relevant guidance.

Opinion No. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. N° 3") provides further guidance.]

Art. 8 para. (4) of Law No. 26/2022 provides that a candidate shall be deemed to meet the criterion of *financial integrity* if:

- a) the candidate's assets have been declared in the manner established by law;
- b) the Evaluation Commission finds that his/her wealth acquired in the last 15 years corresponds to the declared revenues.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of the assets of persons close to candidates, as defined in Law No. 133/2016 on the declaration of assets and personal interests, as well as of the persons referred to in art. 33 para. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

Art. 8 para. (5) of Law No. 26/2022 provides that in order to assess the applicant's financial integrity, the Commission is required to verify the following:

- a) compliance by the candidate with the tax regime in the part related to the payment of taxes when using the means and income derived from the property held, as well as taxable income and the payment of import duty and export duty;
- b) compliance by the candidate with the regime of declaring assets and personal interests;
- c) the method of acquiring the property owned or possessed by the candidate or persons referred to in art. 2 para. (2) as well as the expenses associated with the maintenance of such assets;
- d) the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2);

- e) existence or not of loan, credit, leasing, insurance, or other contracts capable of providing financial benefits, in which the candidate, the person defined in art. 2 para. (2) thereof, or the legal entity in which they are beneficial owners, is a contracting party;
- f) whether or not donations exist, in which the candidate or the person established in art. 2 para. (2) has the status of donor or recipient of donation;
- g) other relevant aspects to clarify the origin and justification of the candidate's wealth.

In assessing and deciding upon the criteria related to financial and ethical integrity, the Commission shall not depend on the findings of other bodies competent in the field concerned (art. 8 para. (6) of Law No. 26/2022). The Commission is required to assess the information gathered about candidates using its own judgment, 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 (art. 10 para. (9) of Law No. 26/2022).

The Evaluation Commission has functional independence and decision-making autonomy from any individual or legal entity, irrespective of their legal form, as well as from political factions and development partners that participated in appointing its members (art. 4 para. (1) of Law No. 26/2022).

A candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate's compliance with the requirements of art. 8 of Law No. 26/2022 which have not been mitigated by the evaluated person (art. 13 para. (5) of Law No. 26/2022). In this regard, a distinction should be made between the "*vetting of serving members*" and the "*pre-vetting of candidates*" to a position on these bodies. Integrity checks targeted at the candidates for the position of Superior Council of Magistracy, Superior Council of Prosecutors and their specialized bodies (as per Law No. 26/2022) represent a filtering process and not a judicial vetting process. As such they may be considered, if implemented properly, as striking a balance between the benefits of the measure, in terms of contributing to the confidence of judiciary, and its possible negative effects.¹⁴ This important distinction between vetting and pre-vetting processes was highlighted in another recent Venice Commission Report on vetting in Kosovo, which stated that "[i]n a system of prior integrity checks, the decision not to recruit a candidate can be justified in case of mere doubt, on the basis of a risk assessment. However, the decision to negatively assess a current post holder should be linked to an indication of impropriety, for instance inexplicable wealth, even if it cannot be proven beyond doubt that this wealth does come from illegal sources". Also, "[i]n other investigations like wider integrity checking the burden of proof will be discharged on the balance of probability".¹⁵ In the case of Law No. 26/2022, art. 13 para. (6)

¹⁴ Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 14 and para. 43.

¹⁵ Venice Commission, CDL-AD (2022)011-e, Kosovo - Opinion on the Concept Paper on the Vetting of Judges and Prosecutors and draft amendments to the Constitution, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), para. 10 and para. 9.

makes clear that the results of the assessment by the Commission, set forth in the evaluation decision, constitute legal grounds for not admitting the respective candidate to the elections or competition. The law provides no other legal consequences of the evaluation decision; the negative decision of the Evaluation Commission does not affect in any way the judge or prosecutor's career, but only prevents him or her from running for office as a member of the Council.¹⁶

According to well-established ECtHR case law, there is no right to a favorable outcome¹⁷ and there is, in principle, no right under the Convention to hold a public post related to the administration of justice.¹⁸ As a matter of principle, States have a legitimate interest in regulating public service positions.¹⁹ In adopting Law No. 26/2022, the Moldovan Parliament required candidates for membership on the Superior Council of Magistracy and the Superior Council of Prosecutors to undergo the extraordinary assessment by the Commission as a part of the election/appointment process.

In the vetting context, once the evaluating body has identified integrity issues, the burden of proof shifts to the candidate. This approach has been found permissible by the ECtHR, even in the vetting of sitting judges who may lose their positions or otherwise be sanctioned as a consequence of the evaluation. In *Xhoxhaj v. Albania*,²⁰ the ECtHR stated that “it is not per se arbitrary, for the purposes of the ‘civil’ limb of Article 6 para. 1 of the Convention, that the burden of proof shifted onto the applicant in the vetting proceedings after the IQC [Independent Qualification Commission] had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file”. Interpreting doubts to the detriment of the person who has not provided the required information has been a standard in national integrity-related legislation in the Republic of Moldova.²¹ Art. 13 para. (5) of Law No. 26/2022 expressly requires the Commission to adhere to this approach since the law states that “a candidate shall be deemed not to meet the integrity criteria if serious doubts have been found as to the candidate’s compliance with the requirements laid down in art. 8, which the evaluated person has not mitigated”.

¹⁶Section 115 of the Constitutional Court Decision Concerning Exceptions of Unconstitutionality of some provisions of Law No. 26 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 42/2023, 6 April 2023; see also Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022, para. 15 and 39.

¹⁷ See, *Kudla v. Poland* [GC], no. 30210/96, para. 157, ECHR 2000-XI, *Hilal v. the United Kingdom*, no. 45276/99, para. 78, ECHR 2001-II, *Andronicou and Constantinou v. Cyprus*, 9 October 1997, para. 201, *Reports of Judgments and Decisions* 1997-VI.

¹⁸ See, *Grzęda v. Poland* [GC], no. 43572/18, para. 270, 15 March 2022, *Denisov v. Ukraine* [GC], no. 76639/11, para. 46, 25 September 2018 and *Dzhidzheva-Trendafilova v. Bulgaria* (dec.), no. 12628/09, para. 38, 9 October 2012.

¹⁹ See, *Naidin v. Romania*, no. 38162/07, §49, 21 October 2014, and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, para. 52, ECHR 2004-VIII.

²⁰ *Xhoxhaj v. Albania*, no. 15227/19, para. 352, 31 May 2021.

²¹ See, for example, art. 33 para. (9) and (10) of Law No. 132/2016 on the National Integrity Authority.

Venice Commission Opinion No. 1069/2022 observed that “(i)n a normally functioning regime, the integrity of magistrates to be elected by their peers should, by nature, result from the qualities, personal conditions, integrity and professional competence that allowed for the appointment as judges or prosecutors. Once the status of magistrate has been acquired, the qualities of integrity and competence must be presumed until proven otherwise, which can only result from disciplinary or functional performance assessment through appropriate legal procedures” (emphasis added). The Strategy of Ensuring the Independence and Integrity of the Judiciary for 2022 - 2025, approved by the Law No. 211/2021, acknowledged the public perception of lack of integrity of the actors of the judiciary (Objective 1.1) and stated that ensuring the integrity of actors in the judiciary has been declared as a national objective through various international commitments and national documents (Objective 1.2). The Strategy further stated that, “(i)n the current conditions of the Republic of Moldova, in order to achieve this objective, it is necessary to ensure an effective verification of judges and prosecutors in terms of integrity, interests, but also professionalism, which will be carried out through an extraordinary (external) evaluation mechanism, similar to the practices of other states in Europe that started this exercise following the approval of the mechanism by the international competent forums” (same Objective 1.2).

In this context, for example, one cannot conclude from the fact that a candidate never received a disciplinary sanction or has not received a decision of the National Integrity Authority regarding his/her wealth or annual assets declarations that the candidate has complied with the integrity criteria. Disciplinary enforcement in the justice system has been weak in the Republic of Moldova. The Group of States against Corruption (GRECO) noted “the view that the SCM did not react to reported misconduct of judges in a sufficiently determined manner. Numerous cases are reported in the media and are allegedly not acted upon by the SCM. Decisions are reportedly not well explained, available sanctions are not used to their full extent and the GET [GRECO Evaluation Team] was given examples of judges being allowed to resign at their own request instead of being dismissed, in order to be entitled to legal allowances and social benefits. This sends out unfortunate messages that misconduct and lack of diligence are tolerated with no effective deterrents”.²² A joint report of four Moldovan CSOs mirrors these findings and documents cases where disciplinary liability of judges failed.²³ As of March 2023 – seven years later – GRECO found some of its recommendations on the disciplinary liability of judges to be still only “partly implemented”.²⁴ The Organization for Economic Co-operation and Development (OECD) concluded as well that “some grounds for disciplinary liability were found to be vague [...]. Overall application of disciplinary and dismissal procedures are not perceived impartial by non-governmental stakeholders and routine application of proportionate and dissuasive sanctions is lacking”.²⁵ Regarding “criminal investigations of judges” the International Commission of Jurists observed in 2019 that “some criminal investigations of judges, including

²² GRECO’s Fourth Evaluation Report, Republic of Moldova, 1 July 2016, para. 135.

²³ Transparency International, and others, State Capture: the Case of the Republic of Moldova, 2017, p. 21.

²⁴ GRECO’s Fourth Evaluation Report, Second Interim Compliance Report, Republic of Moldova, 24 March 2023, para. 43, 49, 60.

²⁵ OECD, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, Moldova, 2022, p. 51

for corruption, have been undertaken since 2013, but still with few final results”.²⁶ Concerns about the lack of accountability arise as early as when judges start their career: In 2016, GRECO was “deeply concerned by indications that candidates presenting integrity risks are appointed as judges”.²⁷

The Informative Note accompanying the draft Law No. 26/2022 stated that, “The current legal framework that regulates the procedure for verifying candidates for membership positions in the Superior Council of Magistracy and the Superior Council of Prosecutors and in their specialized bodies is insufficient, because currently the persons who are candidates for the respective positions are not subject to verification from the point of view of integrity. [...] The identified problems may be resolved by instituting an integrity filter”. The core pillars of the integrity filter created by Law No. 26/2022 (exhaustive financial and ethical integrity criteria, the right of the candidate to bring evidence and dismiss the serious doubts of the Commission, the Commission’s functional independence) were aimed to ensure that the presumption of integrity may be overturned based on evidence.

It has thus become a key element of the functional independence of the Commission that it “shall not depend on the findings of other bodies competent in the field concerned” (art. 8 para. (6) of Law No. 26/2022). This approach requires the Commission to make its own evaluation, based on the documents and information collected from the candidates and third parties (including public and private persons – art. 10 paras. (2) and (3) of Law No. 26/2022) and not merely rely on the previous facts, including disciplinary proceedings or the absence thereof. The Venice Commission did not raise a concern about this approach in connection with Law No. 26/2022.²⁸ For comparison, a similar provision is included in item 1.5.3 in the Methodology (2021) of the Ukrainian Ethics Council, referred to by the Venice Commission as an example regulating the evaluation of candidates.²⁹ The Constitutional Court has also referred to this approach, as follows: The Court notes that the provision containing the contested text established that upon evaluation of the ethical and financial integrity of candidates for membership of the Superior Council of Magistracy, the Evaluation Commission “shall not depend on the findings of other bodies with competences in the field concerned”.³⁰ The legislator allowed the Commission to make its own

²⁶ International Commission of Jurists, *The Undelivered Promise of an Independent Judiciary in Moldova*, 2019, p. 35.

²⁷ GRECO’s Fourth Evaluation Report, Republic of Moldova, 1 July 2016, para. 101.

²⁸ See Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022 and Joint Opinion of the Venice Commission and DGI on the Draft law on the external assessment of judges and prosecutors, 14 March 2023, para. 49-50.

²⁹ See Venice Commission Opinion No. 1109/2022 on the draft law on amending some legislative acts of Ukraine regarding improving procedure for selecting candidate judges for the Constitutional Court of Ukraine on a competitive basis, 19 December 2022, para. 54.

³⁰ See Section 128 of the Constitutional Court Decision Concerning Exceptions of Unconstitutionality of some provisions of Law No. 26 on measures related to the selection of candidates for the positions of members in the self-administration bodies of judges and prosecutors, Decision No. 42/2023, 6 April 2023. See also the Constitutional Court Judgment No. 9 of 7 April 2022 on the constitutional control of Law No. 26/2022.

conclusions while assessing the integrity criteria and rendering decisions and that has been upheld by the Constitutional Court.

In assessing and deciding upon the criteria related to financial and ethical integrity in accordance with the provisions of the Law No. 26/2022 (in particular, art. 10 para. (9)), the Commission is guided and bound by the principles of non-discrimination and equal treatment, which implies that the Commission will treat equally persons in analogous or relatively similar situations.³¹ It also means that the Commission will treat differently persons whose situations are significantly different.³² According to art. 19 of Law No. 121/2012 on ensuring equality, a person that submits a complaint to court must present facts that allow the presumption of a discrimination act, after which the burden to prove that the alleged facts do not constitute discrimination shifts to the defendant, except for facts that are subject to criminal responsibility. In discrimination cases, the ECtHR has established that, once the applicant has shown a difference in treatment, it is for the Government to show that it was justified.³³ The ECtHR has clarified that the elements which characterize different situations, and determine their comparability, must be assessed in light of the subject-matter, objective of the impugned provision and the context in which the alleged discrimination is occurring. The assessment of the question of whether or not two persons or groups are in a comparable situation for the purposes of an analysis of differential treatment and discrimination is both specific and contextual; it can only be based on objective and verifiable elements, and the comparable situations must be considered in their totality, avoiding singling out marginal aspects which would lead to an artificial analysis.³⁴

One crucial component in the evaluation process is asset declarations. The main objectives of asset declarations include monitoring wealth variations of individual politicians and civil servants, in order to dissuade them from misconduct and protect them from false accusations, and to help clarify the full scope of illicit enrichment or other illegal activity by providing additional evidence.³⁵ To determine a candidate's integrity, Law No. 26/2022 requires the Commission to verify what a candidate has disclosed in terms of the acquisition of assets, sources of income, the existence of loans and other agreements that can generate financial benefits, donations and other aspects of the candidate's wealth (art. 8 para.(5)). Loans, for example, have been recognized as a means to cover up a declarant's incoming cash flow from undeclared sources.³⁶ The Commission is also required to scrutinize assets held in the name of a candidate's close persons (Law No.

³¹ *Biao v. Denmark* [GC], no. 38590/10, para. 89, 24 May 2016; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, para. 61, ECHR 2010; *Burden v. the United Kingdom* [GC], no. 13378/05, para. 60, ECHR 2008

³² *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, para. 81, ECHR 2013 (extracts), *Thlimmenos v. Greece* [GC], no. 34369/97, para. 44, ECHR 2000-IV.

³³ *Timishev v. Russia*, nos. 55762/00 and 55974/00, para. 57, 13 December 2005.

³⁴ *Fábián v. Hungary* [GC], no. 78117/13, para. 121, 5 September 2017; *Advisory opinion on the difference in treatment between landowner associations "having a recognized existence on the date of the creation of an approved municipal hunters' association" and those set up after that date*, 13 July 2022, para. 69.

³⁵ OECD (2011), *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, p. 12.

³⁶ Eastern Partnership-Council of Europe Facility Project on "Good Governance and Fight against Corruption", Practitioner manual on processing and analyzing income and asset declarations of public officials, Tilman Hoppe with input from Valts Kalniņš, January 2014, section 7.5.1.3.

26/2022 art. 2 para. (2)). This is because, “(i)t should be recognized that corrupt officials often hide their assets under the names of their relatives, their spouses and other individuals. Therefore, it should be possible to monitor the wealth not only of a public official, but that of close relatives and household members”.³⁷ Law No. 26/2022 also requires the Commission to scrutinize what a candidate did not disclose in asset declarations: “the Evaluation Commission shall verify compliance by the candidate with the legal regime of declaring assets and personal interests” (art. 8 para. (5) lit. b)). Undeclared income or expenditures are relevant for financial integrity, insofar items have not been declared truthfully, and for ethical integrity, including but not limited to insofar they relate to prohibited secondary incomes, tax evasion, or violation of anti-money-laundering provisions.

When the Commission resumes the evaluation of a candidate after the SCJ has accepted the candidate’s appeal and ordered the Commission to re-evaluate the candidate, art. 14 para. (10) of Law No. 26/2022 provides that the provisions regarding the evaluation procedure are applied accordingly.

Art. 19 of the Rules of Procedure of the Independent Evaluation Commission for assessing the integrity of candidates for the position of member in the self-administrative bodies of judges and prosecutors of 2 May 2022, pursuant to Law No. 26/2022, as amended 6 September 2023 (hereinafter “Rules of Procedure”) sets forth the procedures for the resumed evaluation of candidates. The rules permit the candidate to present new evidence regarding the issues that were addressed by the SCJ and referred to the Commission for re-evaluation and only if the candidate was in the impossibility to present previously at the evaluation stage and before the SCJ and the candidate provides sufficient justification to the Commission. The Commission may send questions and requests for documents and information to the candidate to the extent necessary to clarify the issues derived from the SCJ decision. Unless the Commission has issued a decision passing the candidate, it will present a statement of facts and serious doubts to the candidate and a request for the candidate to indicate whether the candidate wishes to participate in a public hearing. Access to the materials collected during the resumed evaluation will be given to the candidate. The Commission may also determine, in accordance with a SCJ decision, either at the request of a candidate or *proprio motu*, to hear a person in a public session to address an issue about which the Commission has indicated it has serious doubts. If at any point during the resumed evaluation the serious doubts about a candidate’s ethical or financial integrity have been removed, the Commission shall issue a decision passing the candidate. During the resumed evaluation, the Commission shall not be obliged to examine circumstances other than those that led to upholding the candidate’s appeal to the SCJ.

Once the resumed evaluation procedure is completed, the Commission shall issue a reasoned decision on passing or failing the resumed evaluation (art. 13 para. (1) of Law No. 26/2022).

³⁷ OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing, p 14.

III. Resumed Evaluation of the candidate

Pursuant to art. 10 para. (1) of Law No. 26/2022 that was in force until 26 December 2022, the Commission was to gather and verify information collected about a candidate no later than 30 days from the receipt of the five-year declarations submitted by the candidate. Art. 10 para. (8) of Law No. 26/2022 provided that this time limit could be extended by another 15 days if the information to be analyzed was complex or due to delayed submission of the requested information. On 9 August 2022, the Commission determined that the criteria set forth in art. 10 para. (8) of Law No. 26/2022 were satisfied with respect to the candidate's evaluation and extended the time for gathering and verifying information by 15 days. As the candidate had submitted a completed five-year declaration to the Commission on 14 July 2022, the 45-day period for the Commission's collection of information ended on 28 August 2022. Thus, after 28 August 2022, the Commission had no legal mandate to request additional data and information from public and private entities, in order to clarify any uncertainties found during the evaluation, while the candidate's ability to collect additional information and submit it to the Commission continued. An amendment to Law No. 26/2022 in force since 27 December 2022 deleted art. 10 paras. (1) and (8) and consequently, the time restrictions on the Commission's collection of information have been removed.

1. Source of funds for a 10,000 EUR loan and declarations to the National Integrity Commission, the National Integrity Authority and the Commission about the loan

a. The facts

In her annual declaration of income and property for the year 2015 and her declarations on assets and personal interests for the years 2016 and 2017 (hereinafter "annual declarations") submitted respectively to the National Integrity Commission and National Integrity Authority (hereinafter "NIA"), the candidate declared a loan of 10,000 EUR, without interest and with no due date, that was contracted in 2015 from a relative of her husband. The loan was contracted from her husband's relative to pay the remaining installments for an apartment that the candidate bought in 2015. In her 2018 annual declaration and all subsequent declarations, including her 2022 annual declaration, the candidate declared a 5,000 EUR loan without interest and with no due date from the same relative.

During the initial evaluation, the candidate at first stated that during 2018 she repaid a part of the loan - 5,000 EUR - in several installments. The candidate also submitted a written statement from the relative corroborating that during 2018 the amount of 5,000 EUR was reimbursed to her. Later, in response to the Commission's questions about how the 5,000 EUR were reimbursed (including the dates of payments), the candidate responded that it was not repaid in monetary amounts or documented in writing. In exchange for the candidate's family's involvement in the care of the relatives, including providing living space, utilities, etc., after the relative had medical

issues and the relatives moved in with the candidate, the relatives decided to cancel the sum of 5,000 EUR from the debt. At the hearing during the initial evaluation, the candidate reiterated that she did not pay back the 5,000 EUR as her husband's relative decided to "forgive" this loan because of all of the help that they had received. The candidate claimed that her husband's relative also refused to have the remaining portion of the loan paid back, but the candidate's husband insisted that they should repay the debt, which is why the candidate continued to declare 5,000 EUR debt remaining on the loan.

The candidate claimed that the source of funds for the loan were the relative's family's savings. The spouse of the relative previously worked as an engineer and later worked abroad. The candidate explained that, besides the savings from salary, the spouse of the relative imported, repaired and sold cars and some household appliances. The candidate did not submit any supporting documents. The official registered income of the husband's relative and the relative's spouse for the five years preceding the loan was an average of 55,850 MDL per year (41,500 MDL – wife; MDL 14,350 - husband), est. 2,700 EUR. According to bank records, in 2011 and 2012 the husband's relative was paying installments on a 7,500 MDL credit contracted in 2011.

Concerning the inconsistency in her annual declarations (the 10,000 EUR and the 5,000 EUR), the candidate stated that she was wrong and made a mistake when she changed the initial amount of the loan from 10,000 EUR to 5,000 EUR.

During the examination of the case by the SCJ, the SCJ special panel permitted the candidate to introduce additional evidence. Specifically, the candidate provided additional explanations and submitted supporting documents regarding the sources of funds related to the 10,000 EUR loan granted in 2015 by her husband's relatives.

The candidate outlined three sources of income for the loan made by the candidate's husband's relatives: (1) revenue derived from importing cars and other goods, (2) business activities based on an entrepreneur's patent, and (3) the leasing and sale of agricultural plots of land. The candidate also stated that her husband's relatives are a childless couple and therefore, their expenses are not high.

During the resumed evaluation the Commission verified information concerning these three sources of income. In relation to the first source, income obtained from importing cars and other goods, the candidate presented a copy of a document issued by the Customs Service at the request of the spouse of the candidate's husband's relative. This document includes two tables: one contains data on "Adeverintele TV-25", which confirms that, between 2006 and 2009, the relative's spouse imported 19 cars produced between 1996 and 2001, and the other "Chitantierele TV-14", indicates that a total of 22 goods (19 cars and three used washing machines) were imported. The imported goods were valued at 589,580 MDL (est. 38,050 EUR in 2009), including taxes in the amount of 121,339 MDL (est. 8,400 EUR in 2009). According to information available to the Commission, from 2007 to 2022, 41 cars were registered in the Republic of

Moldova under the ownership of the candidate's husband's relatives. Furthermore, the candidate provided a written statement from a neighbour of her husband's relatives, who had known them between 1993 and 2016 while they resided in one of the municipalities of Moldova, confirming that "besides the main job that [the relatives] had, they also commercialized vehicles brought from abroad, second-hand household appliances and second-hand clothes".

Regarding the second source of funds, derived from activity based on the entrepreneur's patent, a statement signed by both relatives indicated their involvement in raising and selling animals and animal products. The candidate did not furnish other supporting documentation confirming the income from this source. Records from MConnect revealed that the candidate's husband's relative's spouse held an entrepreneur's patent from 2 November 2012 to 4 January 2013, but these records alone do not substantiate income generation.

Lastly, concerning the third source of funds, the leasing and sale of agricultural plots of land, the candidate presented to the SCJ special panel an excerpt from the e-Cadaster file for one of the properties owned by the relatives in one of the cities of Moldova. According to the e-Cadaster information, the candidate's husband's relatives owned three agricultural plots of land with a total surface area of 4.1326 ha., which were rented to a legal entity from 2007 to 2011, and sold in 2013.

The candidate explained to the SCJ special panel that the 7,500 MDL loan identified by the Commission in the relative's bank account was a deliberate and reasonable financial decision to purchase goods through instalment payments. In support of this, the candidate referenced the relatives' joint statement, asserting that they continue to purchase goods (such as phones or electronics) in instalments despite having bank savings, as it provides economic flexibility.

The Commission analysed the bank accounts belonging to the candidate's husband's relatives which were opened between 2007 - 2013. The Commission did not consider bank accounts that were opened after 2015, the year that the loan was contracted. One of the deposit accounts was opened in November 2011 and closed in August 2014. Six thousand MDL was deposited to this bank account in 2011 at a variable rate. Another is a salary account of the candidate's husband's relative, which had deposits in 2013 in the amount of 2,600 MDL, 34,000 MDL in 2014, 27,930 MDL in 2015.

As for the candidate's obligation to declare this loan from her husband's relative to the NIA, the candidate argued to the SCJ special panel that the forgiveness of 5,000 EUR amounted to a novation of the original agreement between them and the relatives. The SCJ special panel accepted that the candidate was not required to declare a 10,000 EUR loan in her annual declarations because she was no longer obligated to repay the total amount of the loan, as 5,000 EUR had already been forgiven. In light of these explanations, the Commission sent an advisory request to NIA. In its response, NIA confirmed that there was/is no obligation to declare a 5,000 EUR loan in the annual declaration as it was below the threshold for reporting.

b. The law

Art. 8 para. (5) lit. c) and d) of Law No. 26/2022 provides that the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) and the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2). Pursuant to art. 8 para. (5) lit. e), the Commission is also required to verify the existence of loan agreements where the candidate is a contracting party.

Pursuant to art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 a candidate's failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of assets of persons close to candidates, as defined in Law No. 133/2016 on declaration of assets and personal interests, as well as of third persons referred to in art. 33 para. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

"Close persons", as defined in Law No. 133/2016 on declaration of assets and personal interests, are: "husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law).

Art. 4 para. (1) lit. f) of Law No. 1264/2002 on the declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (in effect in 2015) requires the subject of declaration to declare: "debts in the form of debits (including unpaid taxes), mortgages, guarantees issued for the benefit of third parties, loans and credits".

Art. 4 para. (1) lit. e) of Law No. 133/2016 on declaration of assets and personal interests (in effect since 2016) requires the subject of declaration to declare "the personal debts of the subject of the declaration, his/her family members or his/her cohabitant in the form of any debt, pledge, mortgage, guarantee issued for the benefit of a third party, loan and/or credit, if the value of the same exceeds the value of 10 average national salaries".

Items 41 and 42 of the Regulation on the way of filling in the declaration of assets and personal interests in electronic form, approved by NIA Order No. 15 of 27 February 2018, pursuant to the Law No. 133/2016 on declaration of assets and personal interests, provides that the subject of the declaration has the obligation to declare the personal debts, including as beneficial owner, of the family members or of his cohabitee in the form of unpaid debts (including taxes), pledge, mortgage, guarantee, issued for the benefit of third parties, credits and / or loans, if their cumulative value exceeds 10 average salaries in the economy at the date of submission of the

declaration and will include in the heading “Initial amount” the amount of the debt in accordance with the legal act, generating the debt.

c. Reasoning

In its decision of 1 August 2023, the SCJ special panel found that the Commission did not verify all of the factual circumstances and did not correctly assess the sources of income of the candidate’s husband’s relatives. The SCJ special panel concluded that the facts established during the examination of the case effectively remove any serious doubts as to the source of income of the 10 000 EUR loan, and the manner in which that obligation was extinguished, including the declaration of the corresponding amount in annual declarations of income and interests. In the context of a multi-faceted, comprehensive and objective review, the Commission undertook a resumed evaluation of the candidate, based on information available at the initial evaluation and any information obtained during the resumed evaluation. During the resumed evaluation the Commission received additional information on this issue and identified additional evidence which the Commission found of particular significance for the resumed evaluation decision as required by Law No. 26/2022.

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests and is required to verify sources of income and methods of acquiring assets by the candidate, family members and close persons to the candidate. The Commission is also required to verify the existence of loans if the candidate is a contracting party.

During the initial evaluation three aspects of the 10,000 EUR loan raised questions. First, the source of funds for the relative to lend 10,000 EUR to the candidate’s family. Second, the inconsistencies in the candidate’s written communication with the Commission and the written statement submitted by the relative as to whether the candidate repaid 5,000 EUR or whether that amount was forgiven. And, finally, the inconsistency in the candidate’s declaration of the loan amount in her annual declarations as 10,000 EUR between 2015 - 2017 and 5,000 EUR between 2018 - 2021.

During the initial evaluation, the source of income for the loan from the husband’s relative and the repayment of the debt were the Commission’s primary concerns. The candidate and the relative claimed that the source of funds for the loan was savings from salaries and from importing and selling automobiles and other goods. The official registered income of the relative and the relative’s spouse for the five years preceding the loan on average was 55,850 MDL per year (est. 2,700 EUR), which raised doubts about their ability to make a loan in an amount that was the equivalent of almost four years of their combined salaries. The Commission also took into account that, according to the bank records, in 2011 and 2012 the relative was paying installments on a 7,500 MDL loan credit contracted from a Moldovan bank in 2011. The Commission’s concerns persisted because no information was provided by the candidate or the relative about the amount of the relatives’ savings or the amount of income generated by the importation and

sale of vehicles and other goods.

The doubts of the Commission were aggravated by the lack of consistency in the statements made by the candidate and the husband's relative about the reduction of the loan amount. The candidate first stated that a part of the loan – 5,000 EUR was repaid in several installments. This was confirmed by the relative's written statement. When asked for the dates and amounts reimbursed, the candidate conceded that the loan was "not repaid in monetary amounts" but was cancelled by the relatives because of the involvement of the candidate's family in care, provision of living space, payment of utilities after the relatives moved in with the candidate and the relative had medical issues. The explanation of the supposed cancellation of 5,000 EUR of the debt was inconsistent with the earlier statements.

As to the inconsistency in the candidate's declaration of the loan amount in her annual declarations for 2015 - 2017 and 2018 - 2021, at the hearing during the initial evaluation, the candidate conceded that she should not have changed the amount of the loan from 10,000 EUR to 5,000 EUR in her 2018 and subsequent annual declarations in light of the requirement that the "initial" amount of the loan be declared, not the amount of remaining debt.

During the examination of the candidate's case before the SCJ special panel, she submitted additional explanations and supporting documents regarding the sources of funds related to the 10,000 EUR loan granted in 2015 by her husband's relatives. The candidate outlined three sources of income for the loan: (1) revenue derived from importing cars and other goods, (2) business activities based on an entrepreneur's patent, and (3) the leasing and sale of agricultural plots of land. All of this information, including supportive documents, was admitted by the SCJ panel as evidence. Therefore, the Commission takes them into account for the purposes of the resumed evaluation.

Out of these three sources of funds, only revenue derived from importing cars and other goods had been mentioned by the candidate during the initial evaluation and no supportive documents had been provided. The Commission reiterates that the candidate was able to collect information and submit it to the Commission in order to remove doubts during the initial evaluation, while the Commission's authority to request additional information after 28 August 2022 was restricted by the legal provisions then in effect.

According to information that became available to the Commission during the resumed evaluation, the relative's spouse imported a total of 22 goods (19 cars and three used washing machines) between 2006 and 2009. The imported goods were valued at 589,580 MDL (est. 38,050 EUR in 2009). The candidate's relative's husband paid taxes in the amount of 121,339 MDL (est. 8,400 EUR in 2009). In addition, from 2007 to 2022, 41 cars were registered under the ownership of the candidate's husband's relatives. The candidate also provided a written statement from a neighbour of her husband's relatives corroborating that the relatives marketed vehicles and second-hand household goods brought from abroad. Thus, the source of income derived from

importing cars and other goods is itself sufficient to mitigate the Commission's doubts about the ability of the candidate's relatives to make the loan of 10,000 EUR in 2015.

The Commission also analysed the candidate's husband's relatives' bank accounts and found that 6,000 MDL was deposited in 2011 into one of the deposit accounts, which was then closed in 2014. The timing of this deposit coincided with the period in 2011 when the candidate's husband's relative was paying instalments on the 7,500 MDL credit agreement. The fact that the relatives took out the loan while depositing a somewhat equivalent amount into their account, corroborates the candidate's claim about the relatives' continuing to borrow under certain circumstances even when they had savings.

Concerning the lack of consistency in the statements made by the candidate about the reduction of the loan amount, the SCJ special panel accepted her explanation that the forgiveness of the 5,000 EUR amounted to extinguishing the obligation. While the Commission is troubled by the differing explanations provided about the reduction of the loan amount, it did not find that this rises to a level creating serious doubts about the candidate's financial integrity. Moreover, the Commission takes note that, starting from 2018 the candidate was not required to declare a 5,000 EUR loan in her annual declarations. Nevertheless, the candidate continued declaring this amount in her annual declarations including the one submitted for 2022.

In conclusion, the Commission notes that the documents obtained and verified by the Commission during the resumed evaluation about the source of funds for the loan (in particular, income derived from importing cars and other goods) demonstrate that her husband's relative had the capacity to accumulate savings in the amount of 10,000 EUR prior to making the loan to the candidate in 2015. Thus, the candidate was able to mitigate the Commission's doubts with respect to the source of funds for the 10,000 EUR loan.

In light of the above circumstances, on resumed evaluation of the candidate the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of ethical integrity as per art. 8 para. (2) lit. c) and financial integrity as per art. 8 para. (4) lit. a) of Law No. 26/2022 with respect to the source of funds for the 10,000 EUR loan, the reduction of the loan and the inconsistent disclosure in her annual of this loan because the candidate mitigated the Commission's concerns regarding this issue by new evidence and explanations provided to the SCJ and to the Commission during the resumed evaluation procedure.

2. Costs of construction of the 190 sq.m. house located in Chisinau municipality

a. The facts

In 2014 the candidate's mother purchased two land plots of 0.055 ha located in Chisinau municipality. The prices stated in the contracts were 242,261 MDL and 241,386 MDL. In 2015,

the candidate's mother started construction of two identical houses, each with a total surface of 190 sq. m. The candidate's mother had the resources to buy the two land plots and build the two houses. The candidate's parents moved into one of the houses in June 2018. According to the 20 March 2022 Certificate regarding the valuation of the property for taxation purposes, the value of the parents' house was 2,450,000 MDL. The other house was transferred to the candidate and her husband on 2 March 2018 through two alienation contracts (a separate contract with each of the candidate's parents) with the condition of maintenance for life. The candidate's mother paid the costs of construction of both houses before she and her husband transferred one of the houses to the candidate and her spouse.

According to the contracts, the candidate's house was 70% finished at the time it was transferred to the candidate and her husband and the cost of the land and the construction was evaluated at 921,676 MDL (two alienation contracts with the condition of life maintenance, hereinafter "alienation contracts", each with half shares from the mother and the father for 460,838 MDL). In her 2018 annual declaration signed on 29 March 2019, the candidate declared the value of the land plot as 242,261 MDL and the value of the house as 679,415 MDL, consistent with the value stated in the contract.

During the initial evaluation, the candidate provided to the Commission the sale-purchase contracts for the plots, the alienation contracts and the 2017 report on the degree of finalization of her house. In response to questions about the cost of construction, the candidate stated that neither she nor her mother knew how much was spent to construct the two houses and the candidate produced no documentation regarding the costs of construction. Accordingly, the candidate did not provide any breakdown of the costs of construction of each of the houses or of the amount spent on the construction of the candidate's house before and after the house was transferred.

The candidate argued that she knew that the source of funds used by her parents was legal and therefore she did not doubt her mother's ability to invest in the property, nor did the candidate consider keeping any record of the expenses. The candidate explained that in 2018, when the alienation contracts were concluded, the degree of finalization of the house was based on a report made in March 2017, a year prior to the alienation contracts. Therefore, when the candidate received the house in 2018, the finalization of the house was more advanced than 70%. The candidate stated that her family did not advance much in the construction after they received the house, which is why they did not make a different evaluation of the degree of finalization. She claimed that the construction work done by her family has been minor: some painting, plastering, installation of the kitchen and other cabinetry. The candidate informed the Commission that most of the building materials were purchased before the house was transferred to her in 2018 and that she bought the additional materials with her salary. According to the candidate, these costs did not reach the threshold amount requiring disclosure in the five-year declaration. Moreover, the candidate's husband did much of the work himself as he has a workshop at home and is skilled in construction. The only construction related expenses declared by the candidate or provided

during the course of the initial evaluation was 60,000 MDL spent in 2021 on plastering exterior house walls which the candidate declared in her five-year declaration submitted to the Commission. On 5 July 2021 the candidate's husband took a loan in the amount of 40,000 MDL to cover these expenses. During the initial evaluation the candidate stated that she did not retain a copy of the agreement, but the existence of the loan could be proved based on bank transactions. The Commission verified the bank statements and concluded that the candidate's husband received a loan for "repair works" which he repaid in installments.

During the examination of her appeal by the SCJ special panel, the candidate presented new evidence concerning expenses incurred in the construction of the house. The candidate submitted 26 checks and invoices relating to the purchase of construction materials between 2016 - 2019 issued by various commercial enterprises operating in the construction business in the total amount of 494,811 MDL (est. 24,004 EUR). The candidate also submitted a technical report dated 3 February 2023 attesting the degree of completion of the construction works that asserts the level of completion of the construction as of that date at 81%.

In her written communication with the Commission during the resumed evaluation, the candidate reiterated that all of the expenses incurred prior to the transfer of the ownership of the house to her in 2018 were paid by her mother, and thereafter, by either the candidate or her husband. The candidate also presented to the Commission a table listing 39 bank transactions involving purchases by the candidate and her husband for construction materials during the period 2018 - 2021 in the total amount of 73,620 MDL (est. 3,724 EUR). The payments range from 176 MDL to 11,061 MDL. The candidate indicated that the list of transactions was not exhaustive and that some other payments had also been made. The candidate stated that the construction work and furnishing of the house have been protracted over several years and continue to the present, depending on their financial wherewithal and available time. The candidate also claimed that some of the expenses were paid in cash and some of the invoices had not been retained. The candidate also indicated that individuals involved in the construction work would be willing to provide witness testimony to the Commission. A comparison between the bank transactions and the checks and invoices mentioned above totalling 494,811 MDL (est. 24,004 EUR), reveals no duplication in the records; the transactions they relate to are separate from one another. Therefore, the Commission took into account the cumulative sum. Thus, the documented costs submitted by the candidate to the SCJ and to the Commission during the resumed evaluation (including checks, invoices and bank transactions) totalled 568,431 MDL (est. 27,142 EUR). According to information available to the Commission, the total income of the candidate and her husband during 2018 - 2021 was 1,709,426 MDL (est. 85,300 EUR).

The candidate also presented to the SCJ special panel and to the Commission photographic evidence comprised of six pictures and a video file of the candidate and several members of her family carrying out repair and construction work on the house. The candidate explained that this evidence illustrated that most of the work had been done with the assistance of family members and that they had sufficient skills to perform the work, which significantly reduced their costs. A

comparison between the state of the house in the video presented during the resumed evaluation and the images provided by the candidate during the initial evaluation confirms that the video predates the initial evaluation.

b. The law

Art. 8 para. (5) lit. c) and d) of Law No. 26/2022 provides that the Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2), as well as the expenses for the maintenance of such assets and the sources of income of the candidate.

Art. 2 para. (2) of Law No. 26/2022 provides that the evaluation of candidates includes a verification of assets of persons close to candidates, as defined in Law No. 133/2016 on declaration of assets and personal interests, as well as of third persons referred to in art. 33 para. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

“Close persons”, as defined in Law No. 133/2016 on declaration of assets and personal interests, are: “husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and person related by affinity with the subject of the declaration (brother-in-law/sister-in-law, father-in-law/mother-in-law, son-in-law/daughter-in-law).

The Evaluation Rules of the Commission provide that the Annex to the Evaluation Rules defines the method for calculating undeclared wealth (art. 3 para. (2) of Evaluation Rules).

Art. 8 para. (5), lit. b), c) and d) of Law No. 26/2022 provides that the Commission is required to verify compliance of the candidate with the legal regime of declaring assets and personal interests.

Pursuant to art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 a candidate’s failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

c. Reasoning

In its decision of 1 August 2023, the SCJ special panel found that the Commission did not consider the evidence and arguments presented by the applicant and that it also failed to obtain additional information *proprio motu* as envisaged by the Law No. 26/2022. The SCJ special panel concluded that by being proactive and presenting explanations and clarifications to the SCJ, the candidate removed the doubts of the Commission regarding her compliance with the financial integrity criterion in relation to the construction costs of the 190 sq. m. house located in Chisinau municipality.

In the context of a multi-faceted, comprehensive and objective review, the Commission undertook a resumed evaluation of the candidate, based on information available at the initial evaluation and any information obtained during the resumed evaluation. During the resumed evaluation, the Commission received additional information on this issue and identified additional evidence which the Commission found of particular significance for the resumed evaluation decision as required by Law No. 26/2022.

The Commission is required to verify the method of acquiring property owned or possessed by the candidate or persons referred to in art. 2 para. (2) of Law No. 26/2023, as well as the expenses associated with the maintenance of such assets, and their sources of income. The Commission is also required to verify the candidate's compliance with the legal regime of declaring assets and personal interests.

During the initial evaluation, questions persisted about two aspects of the Chisinau house, that was transferred to the candidate. First, neither the candidate nor her mother provided any amounts incurred or any documentation of the costs incurred by the candidate's mother for the construction of the two houses. Similarly, there was no detail or documentation about the amount of construction costs incurred before and after the house was transferred to the candidate. The candidate and her mother's claimed inability to provide even an approximation of the costs of construction of two 190 sq. m. houses roughly worth 5,500,000 MDL lacked credibility. Second, in her five-year declaration submitted to the Commission in July 2022, the candidate was required to declare expenditures greater than 25,000 MDL. The candidate declared only a single expense in connection with the completion of construction on the house after it was transferred to her and her husband in March 2018, specifically 60,000 MDL incurred in 2021 for materials and labor involved in plastering the exterior of the house. The Commission took into account that in July 2021 the candidate's husband received a loan of 40,000 MDL to cover repair costs. The Commission also accepted the candidate's explanations that the bank account extracts attested the existence of this loan.

No other expenses were declared or specified by the candidate despite the house being only 70% finished in March 2017. In addition to her claim that her family had done much of the work themselves, the candidate also claimed that much work was done between the 70% finalization report of March 2017 and her family's receipt of the house in March 2018. But the family did not move into the house until December 2019, suggesting that more work was undertaken for the house to be habitable, yet no expenses were declared or provided for that time period. Moreover, it again challenged credibility that only 60,000 MDL and other minor expenses were spent on the candidate's house, valued at 921,676 MDL in 2018 when it was transferred to her, 70% or more completed, while her mother's house was valued at 2,776,881 MDL in 2022 when it was finished. The absence of consistent, credible evidence about construction expenses rendered it difficult for the Commission to verify the sources of funds for the completion of construction of the

candidate's house after it was transferred to her in March 2018 or to verify that construction expenses had been properly declared.

During the examination of the candidate's appeal before the SCJ, the SCJ special panel permitted the candidate to introduce additional evidence concerning expenses incurred in the construction of the house. The candidate submitted 26 checks and invoices relating to the purchase of construction materials between 2016 - 2019 issued by various commercial enterprises operating in the construction business in the total amount of 494,811 MDL (est. 24,004 EUR). The candidate also submitted a technical opinion report of 3 February 2023 attesting the degree of execution of the construction and the connection between the construction work and the project documentation that asserts the level of completion of the construction as of that date at 81%. These documents became available to the Commission for the first time during the resumed evaluation. The Commission reiterates that Law No. 26/2022, in force during the initial evaluation, limited its authority to obtain additional information *proprio motu* after 28 August 2022 and it was only up to the candidate to submit relevant information to mitigate the Commission's concerns, which she failed to do at that time.

In her written communication with the Commission during the resumed evaluation, the candidate reiterated that all the expenses prior to the transfer of the house to her ownership in 2018, had been covered by her mother, and thereafter, by either her or her husband. The Commission was able to verify that 434,828 MDL (est. 20,810 EUR) was spent before 2018. Out of this amount, the candidate's mother covered 411,149 MDL (est. 19,617 EUR), and the candidate's husband 14,555 MDL (est. 734 EUR). It has not been possible to attribute the remaining 9,124 MDL (est. 459 EUR), to anyone. This information corroborates that most of the costs had been incurred before the ownership of the house was transferred to the candidate in 2018. The Commission had no doubt about the candidate's mother's ability to pay these costs. In view of all of the above-mentioned, the Commission finds credible the candidate's assertion that the report made in March 2017 (which assessed the completion level at 70%), a year prior to the alienation contracts, did not reflect the reality, and that the finalization of the house was more advanced than 70% when the candidate received the house in 2018. The Commission also took note of the fact that, as of February 2023, the level of completion of the construction was at 81%. Thus, between 2017 and 2023 the level of construction increased by 11%. This also corroborates that the construction and furnishing of the house is still underway.

That the majority of expenses were borne by the candidate's mother before the house was transferred to the candidate is further corroborated by the list of 39 bank transactions that were incurred during the years 2018 - 2021 involving purchases which the candidate and her husband had made for construction materials in the total amount of 73,620 MDL (est. 3,724 EUR). These payments are modest, ranging from 176 MDL to 11,061 MDL. In total, according to the checks, invoices and bank transactions (including 40,000 MDL received as a loan in 2021), during the period of 2018 - 2021 the candidate's husband invested 98,852 MDL (est. 4,826 EUR) in the house. During the same period the candidate made investments in the amount of 41,770 MDL

(est. 2,121 EUR). The candidate and her spouse had sufficient funds to make these investments in 2018 - 2021. The Commission takes note that the transactions list is not complete and that some other payments might also have been made. A comparison of the bank transactions and the checks and invoices mentioned above in the total amount of 494,811 MDL (est. 24,004 EUR), reveals there was no duplication in the records; the transactions they relate to are separate from one another (among others, the timelines are different). Therefore, the Commission took into account the cumulative sum of the amounts. All in all, in total, the Commission was able to identify 568,431 MDL (est. 27,142 EUR) that the candidate has invested in the house.

The photographic evidence, submitted by the candidate, attests that the candidate, her husband and other members of her family carried out repair and construction work on the house. The Commission accepts that this could have reduced the construction costs. The evidence also shows that, at the time that the video included in the visual materials was made, the candidate's mother's house was much more advanced than the candidate's house. This can explain the difference in their values.

In response to questions from the Commission during the resumed evaluation, the candidate provided timely and detailed information and documentation relating to the construction of the house located in Chisinau municipality. The candidate responded forthrightly and completely. Furthermore, she expressed her readiness to provide any further explanations to the Commission as necessary and also indicated that, upon request, the witness testimony from individuals involved in the construction work could be available to the Commission. Based on the documents and explanations provided during the resumed evaluation, the Commission was able to verify the amount of work done on the 190 sq. m. house in Chisinau municipality by the candidate and her husband and to better assess the costs related to that construction. The Commission was also able to substantiate that most of the expenses were incurred by the mother of the candidate before 2018. Thus, the candidate mitigated the serious doubts of the Commission during the resumed evaluation.

In light of the above circumstances, on resumed evaluation of the candidate the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) as to the candidate's compliance with the criterion of financial integrity as per art. 8 para. (4) lit. b) of Law No. 26/2022 with respect to the costs of construction of the Chisinau house transferred to her and her husband in 2018 because the candidate mitigated the Commission's concerns regarding this issue.

IV. Decision

Upon the resumed evaluation of the candidate pursuant to art. 14 para. (8) lit. b) and para. (10) of Law No. 26/2022; based on art. 8 para. (1), (2) and (4) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate is compliant with the ethical and financial integrity criteria and thus passes the evaluation.

V. Appeal and publication of the decision

Pursuant to art. 14 para. (1) of Law No. 26/2022, the candidate is entitled to appeal this decision within 5 days of receiving the decision.

Pursuant to art. 13 para. (7) of Law No. 26/2022, this decision is sent by email to the candidate and to the institution responsible for organizing the election or competition, which in the present case is the Superior Council of Magistracy. If, within 48 hours of sending the decision, the candidate does not notify the Commission of his or her refusal to publish the decision, the decision shall be published on the website of the Superior Council of Magistracy in a depersonalized form, except for the surname and first name of the candidate that remain public. The Commission will also publish the decision on its website if the candidate does not object to publication.

This decision was adopted unanimously by all participating members of the Commission.

Done in English and Romanian.

Signature:



Herman von HEBEL
Chairman, Commission