



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. 5 of 21 December 2023 on the Resumed Evaluation of Angela BOSTAN, 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 23 November 2023 and 21 December 2023. The members participating were:

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

Nadejda HRIPTIEVSCHI was recused from this matter and did not participate.

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

I. The procedure

Judge Angela BOSTAN, judge at the Chisinau Court of Appeal (“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 on 4 October 2006 to serve in Cahul Court. The candidate was appointed as a judge until the retirement age on 25 October 2011. On 22 February 2013, the candidate was appointed to serve in Hincesti Court as vice-president. On 4 February 2015, the candidate was appointed to serve as a judge in Chisinau Court of Appeal.

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 15 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 sources¹.

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

The candidate also responded to written questions and requests for information from the Commission². 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 28 October 2022, the candidate participated in a public hearing before the Commission. The Commission issued its decision failing the candidate on 9 December 2022. The Dissenting Opinion of one of the Commission Members was issued on 12 December 2022.

On 9 January 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 ("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 five written questions from the Commission, including 16 sub-questions and 11 requests for further documentation. The Commission collected additional information from various sources as needed to address the issues being considered in the resumed evaluation.

The candidate received a statement of facts and serious doubts from the Commission on 1 November 2023. Following the candidate's lawyer request, on 13 November 2023, he was given access to the resumed evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022. The candidate responded to the statement of facts and serious doubts on 8 November 2023. On 21 November 2023, the candidate was provided with an Addendum to the statement of facts and serious doubts. The candidate requested a public hearing. On 23 November 2023, the candidate appeared at a hearing before the Commission. The candidate provided further documentation and explanation on the candidate's initiative after the hearing.

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

by sources about a candidate was pertinent to the Commission's assessment. All information received was carefully screened for accuracy and relevance.

² The Commission sent 4 rounds of questions to the candidate, including 29 questions, 67 sub-questions and 28 requests for further documentation.

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 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

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.

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.

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 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:

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 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.

- 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 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 behavior and impartiality, adopted on 19 November 2002 ("CCJE (2002) Op. No. 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) 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

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.

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, *Kudła 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, ECtHR 2004-VIII.

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

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”.

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

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

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

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 is not perceived as 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 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

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

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.

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 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 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

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.

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.

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. 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

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.

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

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).

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 declaration 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 15 July 2022, the 45-day period for the Commission's collection of information ended on 29 August 2022. Thus, after 29 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 para. (1) and (8) and consequently, the time restrictions on the Commission's collection of information have been removed.

Issue 1. Source of funds for financing the apartment registered in the candidate's mother's name in Chisinau municipality and the habitation right declared by the candidate in relation to this apartment

a. The facts

On 8 August 2018, an apartment of 74.0 sq.m. in Chisinau municipality was registered in the name of the candidate's mother. The apartment was purchased for the contractual price of 973,500 MDL (49,067 EUR). The apartment is located in the center of Chisinau and the building was put into operation by the construction company Basconslux L.L.C in 2011. In the written communication with the Commission during the initial evaluation, the candidate provided the Commission with the sales-purchase contract for the apartment. The candidate provided a

statement produced by her mother, listing the following four sources of funds for the purchase of the apartment in 2018: (1) income obtained from the mother's patent-based activity at a local market, which ended at some point between 2010 - 2013, (2) sale of an inherited apartment in Cahul municipality by the candidate's mother in 2007, (3) the financial contribution of a close relative of the candidate's mother (hereinafter "R.C.") and (4) the financial contribution of the candidate's brother, working abroad for the last 17 years.

A. Income from patent-based activity of candidate's mother

According to the candidate and her mother, the first source of funds for purchasing the apartment in Chisinau was savings accumulated through the mother's entrepreneurial activities at a local market, which ended at some point between 2010 - 2013. During the initial evaluation, the candidate claimed that her mother sold various goods at the local market, as well as agricultural food production from her household, that would have been obtained from the 2.2 hectares of agricultural land and 0.5 hectares planted with vineyards and orchards. The candidate further emphasized that her mother was an active and involved person, even after she retired, and that she was able to maintain and take care of the two hectares of agricultural lands she owns – which allowed her to secure additional income.

During the initial evaluation, both in writing and at the hearing, the candidate insisted that her mother carried out her commercial activity based on an entrepreneurial patent at the local market in her village. The only documentation provided by the candidate in this regard was her mother's statement, explaining she engaged in such activity until sometime between 2010 - 2013. While her exact income was not documented due to the tax-exempt nature of entrepreneurial patents, the candidate's mother estimated, according to the candidate, that her combined income from the patent-based activity, personal savings, and donations from a close relative totaled 20,000 EUR. At the hearing during the initial evaluation, the candidate emphasized her reluctance to make speculative declarations regarding her mother's earnings, deeming it an inaccurate approach. Additionally, the candidate noted that her mother preferred to keep her money in cash due to mistrust of the Moldovan banking system.

The information that the Commission obtained from financial institutions and databases during the resumed evaluation revealed that the candidate mother's annual pension, between 2007 and 2018, ranged from 6,522 MDL to 16,746 MDL. The amount of CEP varied between 2007 to 2017 from 11,340 MDL to 23,304 MDL per year. Based on the Commission's calculations, it appears that the candidate's mother's expenses exceeded her income by an average of about 4,725 MDL (est. 238 EUR in 2018) each year during the period of 2007 to July 2018.

In the written communication during the resumed evaluation, the Commission sought clarification from the candidate regarding her mother's entrepreneurial activity. Due to the legal exemption of income from entrepreneurial patents from State Tax Service (hereinafter "STS") records, coupled with its potential variability, the Commission was unable to independently assess these earnings

and requested the candidate's cooperation. In response, the candidate expressed her inability to estimate her mother's annual/monthly income from this activity or to provide any personal notes or other income records.

During the resumed evaluation, the Commission received a letter from Carpineni Village Hall confirming that the candidate's mother worked as a merchant at the local market in her village during the period from September 1999 to March 2012. The local administration further clarified that they did not possess any documentation that could establish whether the candidate's mother held an entrepreneurial patent during this period or not.

The Commission also sent a request to the Hincesti branch of STS (hereinafter "Hincesti Tax branch") asking if any entrepreneurial patents were issued in the candidate's mother name during the period of 2007 to 2012, since the local branch of STS is responsible for issuing patents and collecting taxes for patents, according to Law No. 93/1998 on entrepreneurial patent. The response of the Hincesti Tax branch indicated that the candidate's mother did not have any patents issued in her name during the period of 1 January 2007 – 31 December 2012. Neither the local authority nor the STS responsible for supervising the issuance, extension, suspension and other actions related to activity based on a patent have any confirmatory information in this regard.

The Commission asked the candidate why she insisted that her mother had a patent issued in her name. The candidate stated only in her answer to the statement of facts and serious doubts during the resumed evaluation that "in this regard, I have requested information from Hincesti State Tax Service and I am waiting for the answer". At the hearing during the resumed evaluation, the candidate specified that she had requested additional information from STS, and in its answer, there was information that a patent was first issued to her mother in 1999 and probably, extended in later years. The candidate was asked to submit the information to the Commission upon receipt. The candidate produced a letter from STS dated 13 March 2023 stating that, on 7 March 2023, the candidate's mother had requested information about the periods during which she held a patent and about the legal regime of holding such a certificate. The STS letter confirms that the candidate's mother held an entrepreneur's patent series AA No. 019947 during the period of 1 September 1999 – 30 November 1999. The STS did not list records of any other patents in any other time period held by the candidate's mother. According to information the Commission collected during the resumed evaluation, the candidate's mother had no legal entities registered in her name for doing business before or after 2012.

At the hearing during the resumed evaluation, the candidate was repeatedly asked about her mother's earnings. The candidate responded stating that, "when my mother made 100 - 200 USD per month, it was very, very good [...] and she used to convert the money earned into foreign currency, because that way offered her more security". The candidate also stated that her mother could have earned several tens of thousands of MDL per year, but certainly not more than that, expressing concerns about a possible inaccurate approach to assessing her mother's income. Also, the candidate emphasized that her mother's activity was not constant, and for that reason her

mother probably did not always have an active entrepreneurial patent. The candidate stated that she only knows that her mother's merchant activity began a long time ago under an entrepreneurial patent. She further clarified that "after initial issuance, the patent is typically renewed for specific periods, but not always with perfect adherence to legal procedures and timing". The candidate specified that when she was making statements about her mother's patent, she "started from her mother's statements, and obviously she could not supervise entirely the way her mother carried out her obligation to extend or suspend that patent, as she didn't share a common household with her mother".

Also, at the hearing, the candidate stated for the first time that her mother sold not only agricultural products and household goods at the local market, as stated before, but also "had an occasional handicraft activity, through which she was buying raw materials from a wholesale market in Chisinau, and with a neighbor had sewn different goods like bed linens and quilts and was selling them at the local market in the village, mostly on Sundays". The candidate explained that her mother "brought the raw materials from Chisinau, in these big bags, sometimes in the late evenings [...] this was an enormous job and I am not ashamed that my mother worked [...] she was working as a teacher, having a rather small pension, worked all her life as an educator and teacher, and at the time when she retired she had enough willingness and desire to achieve certain priorities". The candidate pointed out that the whole community knows about her mother's handicraft and merchant activity, while the candidate had not mentioned this activity during the initial evaluation. The candidate also stated that occasionally on Thursdays, her mother sold agricultural products from her household at the local market.

The Commission also checked the e-Cadaster system to identify the land plots owned by the candidate's mother. The property records showed only one land plot of 0.04 ha owned by the candidate's mother, intended for a garden in her village, that was obtained from local authorities in 2012. The Commission did not identify the 2 ha of agricultural land plot allegedly owned by the candidate's mother until 2012. In her response to the statement of facts and serious doubts, during the resumed evaluation, the candidate stated that "the land plot of 0.04 ha owned by the candidate's mother, was not acquired in 2012, and it is not only 0.04 ha, but about 0.50 ha". The candidate specified that this land is owned by her mother and is part of the land next to her house. The candidate further clarified that her mother also uses 1.8 ha of agricultural land allocated to the candidate's father as civil restitution for property confiscated in 1949 during the period of political repression. The candidate provided two copies of authentication titles of the landowner's right in the name of her father, confirming the information provided earlier. Additionally, the candidate informed the Commission that this land generates additional income for her mother.

At the hearing during the resumed evaluation, the candidate was asked to estimate the income and expenses her mother incurred in the management of the land plots. The candidate stated that she is not aware of the income received and expenses incurred in that activity but mentioned that sometimes her brother helped her mother with the maintenance of the land plots, and, at other

times, the agricultural work was managed by her mother, who has been paying the cost for the people helping her with the agricultural work.

B. Sale of an apartment in 2007

At the hearing during the initial evaluation, the candidate stated that her mother had also contributed the proceeds from the sale of an apartment in Cahul municipality in 2007 to the purchase of the apartment in 2018. After the hearing, the candidate provided further information about the sale of this apartment, which her mother had inherited from her mother's brother, and had sold on 1 August 2007 for 108,756 MDL (est. 6,500 EUR at the time of sale). The candidate provided a copy of the sales-purchase contract for this apartment.

C. R.C.'s contribution

According to the candidate's and her mother's statements, the third source of funds for the purchase of the apartment were contributions from R.C., a close family member of her mother, who had been working and living in the Russian Federation since 1993. During the initial evaluation, the candidate provided a statement from R.C., indicating that R.C. had contributed to the purchase of the apartment from personal savings. Bank statements were produced for the period of June to September 2016, confirming international transfers made by R.C. to the candidate's mother totaling 6,300 EUR (est. 139,244 MDL). In written communication with the Commission and at the hearing during the initial evaluation, the candidate stated that R.C. also donated 3,000 USD (est. 55,470 MDL) to her mother during a holiday in the Republic of Moldova in 2017. The candidate confirmed that R.C.'s total contribution towards the apartment purchase was approximately 10,000 USD. The candidate explained that, in addition to 6,300 EUR sent via international bank transfers and 3,000 USD donated in person, R.C. financially supported the candidate's mother through the years. The candidate also stated that her mother could have used some of those donations to cover ongoing purchases and needs. During the resumed evaluation, the Commission received additional information confirming several international bank transfers from R.C. to the candidate's mother: 150 USD (est. 1,960 DML) in 2013, 150 USD (est. 2,098 MDL) in 2014 and 200 USD (est. 3,772 MDL) in 2015.

All of the candidate's mother's sources of income identified during the initial and resumed evaluation, along with CEP expenses, are incorporated in the table below:

Table No. 1. Detailed income and expenditures of candidate's mother in MDL

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
INCOMES												
Pension MDL	6,522	6,789	9,096	9,882	10,569	11,538	12,390	13,200	14,205	15,570	16,746	10,298
Sale of Cahul Apartment	108,756	-	-	-	-	-	-	-	-	-	-	-

International transfers from RC	-	-	-	-	-	-	1,960	2,098	3,772	139,244	-	-
Donations in cash from R.C.	-	-	-	-	-	-	-	-	-	-	55,470	-
EXPENDITURES												
CEP	11,340	11,640	11,604	13,164	14,676	15,252	17,940	18,276	20,628	21,372	23,304	14,308
BALANCE												
	103,938	-4,851	-2,508	-3,282	-4,107	-3,714	-5,550	-5,076	-6,423	133,442	48,912	-4,010

Based on all the sources of income identified in the Table, including the sale of the apartment in 2007 and R. C's financial contributions and expenses, the maximum available cash savings that the candidate's mother might have had available during the 12 years prior to the purchase of the apartment, calculated according to the Annex: Unjustified Wealth to the Evaluation Rules³⁸ was as follows:

Table No. 2 Maximum available cash savings of candidate's mother

<i>Column 1 Incoming cash flows</i>	<i>Column 2 Outgoing cash flows</i>	<i>Column 3 Balance (C1- C2)</i>
Incoming cash flows cumulated from the Table above for the period 2007 - July 2018	Outgoing cash flows (CEP) cumulated from the Table above for the period 2007 – July 2018	Cash savings that could have been made in the period 2007 – July 2019 based on formula C3=C1-C2
448,105 MDL	193,504 MDL	254,601 MDL

Based on those calculations, the candidate's mother could have saved a maximum of 254,601 MDL (est. 12,833 EUR) during the period of 2007 - July 2018.

D. Brother's loan and cash savings totaling 50,000 EUR

The fourth source of funds for the purchase of the apartment in Chisinau according to the candidate was a financial contribution from the candidate's brother. In written communication with the candidate during the initial evaluation, she provided the Commission with a copy of a residence permit issued in her brother's name by one of the European countries and a salary payment excerpt for her brother, confirming that between 2005 - 2018, he received the total

³⁸ https://vetting.md/wp-content/uploads/2023/09/EvalRules_ENG_amended_09.2023.pdf.

amount of 246,514 EUR as salary in that country. The candidate also submitted two patently contradictory statements from her brother about his contribution to the purchase of the apartment.

During the initial evaluation, in his first statement of 4 August 2022 submitted with the candidate's answers to the first round of questions from the Commission, the brother stated that "his contribution was 30,000 EUR, of which 20,000 EUR was from a loan taken from a foreign bank to which he added to his savings, gathered during the 17 years [...] and sent the money to his mother, [...] therefore, his contribution for the purchased apartment was 30,000 (thirty thousand) EUR". With her answers to the second round of the Commission's questions, the candidate submitted a bank statement from the foreign bank that revealed that the loan of 20,000 EUR was received by the candidate's brother on 4 April 2019. Considering that the documents provided by the candidate showed that the loan was contracted eight months after the apartment was purchased [in April 2019], the Commission asked the candidate for a clarification. In response, the candidate's brother produced a second, notarized statement of 14 October 2022. According to this second statement, he contributed 30,000 EUR to the purchase of the apartment from his personal savings and also took a loan of 20,000 EUR in April 2019 for repairs and purchases of furniture and appliances for the apartment. During the hearing in the initial evaluation, the candidate reiterated that her brother contributed 30,000 EUR to the purchase of the apartment and later contracted a loan of 20,000 EUR from a foreign bank to improve the condition of the apartment and create decent living conditions for his mother. Regarding the inconsistencies between her brother's first and second statements, the candidate stated that "it was probably a matter of expression, related also to the conditions in which this statement was written, explaining that her brother was at work, in a hurry when the candidate asked for an explanation and he did not even have a piece of paper to write, and the lack of concreteness was due to the conditions in which the statement was written".

The candidate also mentioned during the initial evaluation that when the apartment was purchased, it was in a livable condition, but some improvements were needed and that the work on the apartment started in the spring or summer of 2019 and lasted until autumn of that year. During the initial evaluation, the candidate confirmed that her mother started living in the apartment at the end of 2018. The candidate also stated that she only gave some recommendations for items to be purchased for the apartment; her brother paid for those purchases entirely from the loan of 20,000 EUR taken in 2019 and also probably from his own savings. The candidate emphasized that she has no further information about the exact amount of money spent on the improvements and furniture, as all of the expenses were covered by her brother. A bank statement regarding her brother's loan provided by the candidate during the initial evaluation indicated the purpose of the loan, the number and amounts of monthly payments. This was the only documentation provided by the candidate during the initial evaluation regarding the loan of 20,000 EUR contracted by her brother.

During the resumed evaluation, the Commission sought to clarify all the aspects related to the loan of 20,000 EUR contracted in 2019, the cash savings that the candidate's brother used to

contribute to the purchase of the apartment and the method by which the 20,000 EUR was brought to the Republic of Moldova. In the bank statement regarding the loan from the foreign bank which the candidate had previously provided, in the section "Purpose," the following information was listed: *AUP auto usata da privato (IT) - purchase of a used car from a private individual (ENG)*.

In written communication during the resumed evaluation, the Commission asked the candidate to provide an explanation about this information. The candidate stated that she did not have and could not obtain such information, as she was unable to reach her brother. The Commission repeatedly requested a copy of the loan agreement from the candidate, as her brother had expressed his willingness through the candidate during the initial evaluation to provide a copy upon request. In her responses to the Commission, the candidate stated that she does not have a full copy of the loan agreement to provide to the Commission, does not have information about the purpose of the loan declared by her brother, when the loan agreement in the amount of 20,000 EUR was repaid or any other information in this regard.

At the hearing during the resumed evaluation, the candidate stated that she had had a conflict with her brother over her requests to provide additional documentation and specified that she could not reach him for additional information. Therefore, the candidate stated that the purpose of the loan "might have been declared in a general manner for the purchase of a car, as my brother indeed intended to buy a new car, but definitely not for the amount of 20,000 EUR".

During the resumed evaluation, the Commission also sought to clarify the source of funds of the candidate's brother to accumulate cash savings of 30,000 EUR. When asked by the Commission whether the amounts listed for her brother's salary in the documents she submitted during the initial evaluation were gross or net amounts and to clarify precisely the net amounts her brother received annually after deducting all tax and social obligations, and to estimate the living and maintenance costs her brother incurred each year between 2005 - 2017 in the European country where he was working, the candidate stated that she does not have the ability to clarify the exact net amounts her brother received annually nor is she able to estimate his annual maintenance costs for the period 2005 - 2017 because she does not share a common household with her brother.

During the initial evaluation, in his second statement, which was notarized, the candidate's brother indicated that the money earned by him abroad was sent to his mother via international transfers, transport parcels carried by bus or delivered in cash when he was in the Republic of Moldova on holidays. During the resumed evaluation, the Commission asked for banking information from all Moldovan national commercial banks concerning any bank transfers from the candidate's brother to candidate's mother for the period of 2007 to 2021. No banking institution furnished information concerning any transfers and indicated that they have no information about transfers in the name of candidate's mother from her son. At the hearing during the resumed evaluation, confronted with the fact that the Commission did not identify any bank transfers in the name of her mother from her brother, the candidate explained that "she does not know for what period the national banks keep the records about transfers" and specified that "her

brother used primarily the parcel transport method, as it was cheaper and much more convenient for him, since he was working all the time”. At the hearing in the resumed evaluation, the candidate also mentioned from her recollection one of the banks through which her mother received money from her son. During the resumed evaluation, the mentioned bank provided information to the Commission confirming that no transactions in the name of the candidate’s mother and/or her brother had occurred.

At the resumed evaluation hearing, the Commission also asked the candidate when her brother started to send the 30,000 EUR for the purchase of the apartment, considering that the decision to purchase the property, according to the candidate’s statements during the initial evaluation, was made after her mother’s accident in 2017. The candidate explained that “her brother had been sending the 30,000 EUR to her mother over the 5 - 6 years prior to 2018, and that only the final decision to purchase the apartment was made in 2017”.

E. The habitation right declared by the candidate in relation to her mother’s apartment

According to the candidate’s declarations of assets and personal interests (hereinafter “annual declaration”) submitted for 2020 (as amended) and 2021 to the National Integrity Authority (hereinafter “NIA”), the candidate declared her residency visa in an apartment located in Hincești municipality, which she owns. In the same declarations, the candidate also declared habitation right in two other places: a house in Hincești municipality, owned by her son, and the apartment in Chisinau municipality, which is registered to her mother as owner.

In the first version of her annual declaration for 2020, submitted to NIA on 29 March 2021, the candidate did not include a right of habitation in the apartment in Chisinau municipality registered in her mother’s name. The candidate explained that she had not indicated the right of habitation in her first declaration because she was not sure that she had the obligation to do so under Law No. 133/2016 on the declaration of assets and personal interests. The candidate mentioned that she had not calculated the number of days that she had actually lived in this flat with her mother. She submitted a corrected annual declaration to NIA for 2020, declaring a right of habitation in this apartment, as well.

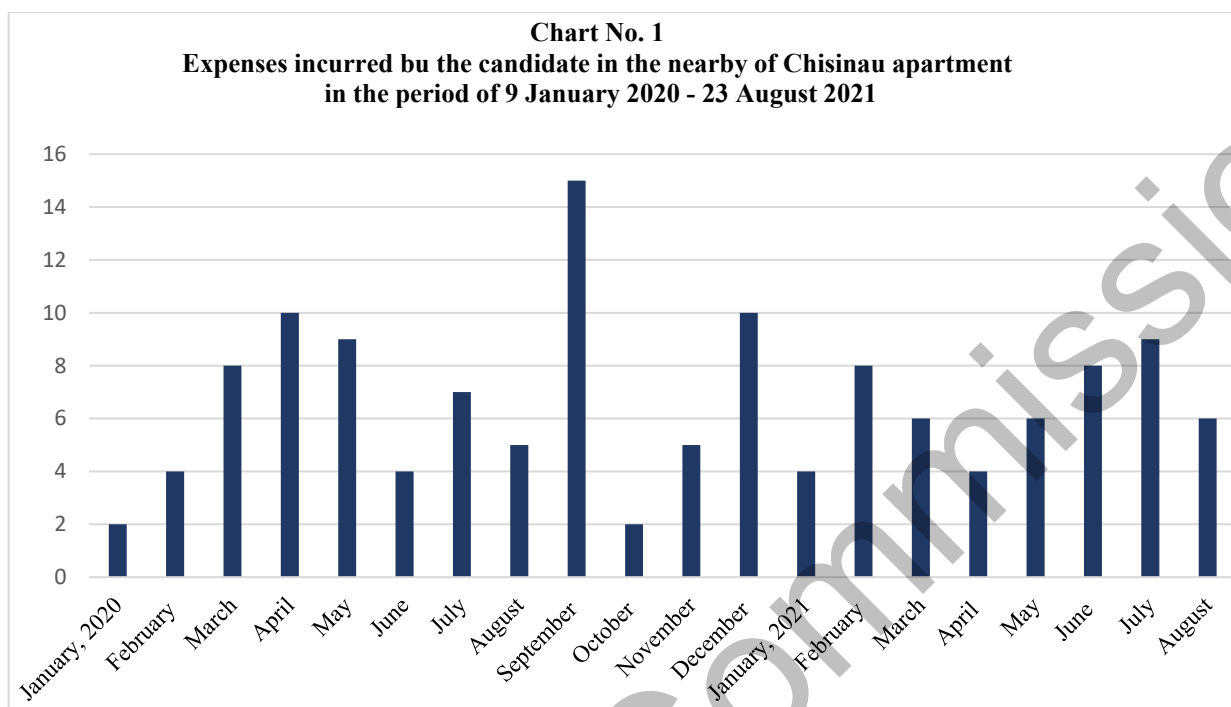
At the hearing during the initial evaluation, the candidate clarified that during the period 2020 – 2021, she lived and resided *de facto* in two different properties: the apartment of her mother in Chisinau municipality and the candidate’s son’s house in Hincești municipality. The candidate emphasized that she had moved temporarily to Chisinau due to her mother’s health problems as she was her mother’s only caretaker at that time. The candidate emphasized that she stayed at the Chisinau apartment with the express consent and permission of her brother and her mother. She also indicated that none of the close persons who had financially contributed to the purchase of the apartment had registered their temporary or permanent residency visa in this apartment after the apartment was purchased in 2018.

According to information concerning the candidate's bank account, 111,338 MDL was debited from the candidate's bank account in payments made near her mother's apartment during the period from 9 January 2020 to 23 August 2021. This included 180 cash withdrawals totaling 70,200 MDL and 132 payments totaling 41,138 MDL in the supermarket situated on the ground floor of the building where the candidate's mother's apartment is located. According to the record of the transactions in the candidate's bank account, there were on average 9.33 transactions per month in 2020 and 8.5 transactions per month in 2021 in the neighborhood surrounding the apartment. By comparison, bank records related to the candidate's account show 20 transactions totaling 23,939 MDL recorded as expenditures in Hincesti municipality during the period of 2020 – 2021. According to the bank records, the candidate had an average of 2.16 transactions per month in the neighborhood of the Hincesti apartment in 2020 and 1.4 transactions per month in 2021.

At the hearing during the resumed evaluation, when asked about the time she spent in the apartment in Chisinau municipality, the candidate stated that she is unable even to provide an estimate and explained that the fact that she purchased something in Chisinau municipality did not necessarily mean that she stayed in the apartment overnight as the apartment is located on her way to Hincesti municipality. Also, the candidate mentioned that she tried to avoid crowded places during the pandemic period, and therefore did shopping in Chisinau municipality both for herself and for her mother. Asked who paid for the utilities for the apartment in Chisinau municipality, the candidate stated that she paid the bills most of the time, and continues to do so as part of her support for her mother.

After the hearing during the resumed evaluation, the candidate provided a written explanation regarding the residences in Hincesti and Chisinau municipalities during the period of 2018 - 2022. In that document, the candidate specified that her apartment in Hincesti municipality is not habitable, having been adapted to an office space.

Also, during the hearing in the resumed evaluation, the candidate specified that her mother lives in the apartment in Chisinau municipality mainly during the cold period of the year and that in summer she travels to her village, as the household in the village is not connected to natural gas and is hard to maintain during the cold period. Bank records of transactions in the candidate's bank account, show that no significant difference was identified between summer and winter periods of the year, except the payments made in September, 2020. For transactions in Chisinau during the period of 9 January, 2020 to 23 August 2021, the frequency appears in the chart below:



b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate's wealth acquired in the past 15 years corresponds to the declared revenues as per art. 8 para. (4) lit. b) of Law No. 26/2022.

According to art. 8 para. (5) lit. c) and d) of Law No. 26/2022, in assessing the candidate's financial integrity, the Commission is required to verify the method of acquiring the goods in the property or possession of the candidate or the persons specified in art. 2 para. (2), as well as the expenses related to the maintenance of these goods and the sources of income of the candidate and, as the case may be, of the persons specified in art. 2 para. (2).

According to art. 2 para. (2) of Law No. 26/2022, in the context of the evaluation of the candidates mentioned in para. (1) the wealth of persons close to the candidates is also verified, as defined in Law no. 133/2016 on the declaration of assets and personal interests, as well as the persons mentioned in art. 33 para. (4) and (5) of Law no. 132/2016 on the National Integrity Authority.

Art. 8 para. (2) lit. a) of Law No. 26/2022 provides that 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 capacity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal profession and an impartial observer.

According to Commission's Evaluation Rules, art. 2 para. (2), in assessing a candidate's ethical integrity, the Commission may take into account the gravity or severity, the surrounding context, and the wilfulness, of any integrity incident, and as to minor incidents, whether there has been a sufficient passage of time without further reoccurrences. While determining the gravity, the Commission will take into account all circumstances, including but not limited to:

- a. whether the incident was a single event;
- b. causing no or insignificant damage to private or public interests (including public trust) – such as the occasion of an ordinary traffic violation;
- c. or not being perceived by an objective observer as an attitude of disrespect for the social order arising from disregard for its rules and regulations.

The Evaluation Rules state that 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 as they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions (art. 3 para. (1)).

“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 any person related through blood or adoption to the subject of the declaration (parent, brother/sister, grandparent, nephew/niece, uncle/aunt) and any 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. 1 para. (1) of the Law No. 93 on entrepreneurial patent of 15 September 1998 (in force 2007) provides that the entrepreneur's patent, hereinafter referred to as the patent, is a nominative state certificate, which certifies the right to carry out the type of entrepreneurial activity indicated in it during a certain period of time.

Art. 4 para. (1) of the Law No. 93 on entrepreneurial patent of 15 September 1998, provides that the patent applicant submits an application to the territorial fiscal inspectorate in the area of which he is domiciled or at the place of the intended activity. In the case provided - in paragraph (7), the applicant - submits the application to the respective town hall.

Art. 4 para. (7) of the Law No. 93 on entrepreneurial patent of 15 September 1998, provides that the patent can be issued by the town hall in whose jurisdiction the applicant intends to carry out his activity based on the patent, if the tax inspectorate (office) is not located in the respective locality. The patent issued by the municipality is valid only in the territory administered by it.

Art. 14 para. (2) of the Law No. 93 on entrepreneurial patent of 15 September 1998, provides that upon payment of the patent tax, the fiscal authority or, as the case may be, the town hall issues the patent holder the coupon(s) cut from the patent duplicate, confirming that the patent is valid until a set term, and makes the respective entry on the back of the patent.

Art. 15 para. (1) of the Law No. 93 on entrepreneurial patent of 15 September 1998, provides that the responsibility for applying the provisions of this law regarding the issuance of the patent and the extension of its validity period, as well as for the collection of the respective tax, is borne by the territorial fiscal authorities and, as the case may be, the town halls.

c. Reasoning

In the decision of 1 August 2023, the SCJ special panel concluded that the Commission found unjustified serious doubts in relation to the sources of income of the candidate's mother to contribute to the purchase of the apartment. The SCJ special panel based its conclusion on the fact that the Commission was supposed to "assess the gathered materials about the candidate, and to base serious doubts only on pertinent direct evidence, not on abstract hypotheses taken out of the social-economic context of the Republic of Moldova".

Also, the SCJ special panel stated that the Commission had not taken into account the income obtained by the candidate's mother from her patent-based entrepreneurial activity for the period of time when income would have been obtained, and that the Commission did not make any reference to the tax legislation related to income obtained from entrepreneurial activity. The SCJ special panel accepted the candidate's argument that the income earned under entrepreneurial patent is not taxable and subject of tax declarations. Thus, the SCJ special panel concluded that "the income earned based on the entrepreneurial certificate is not subject to book-keeping and it can vary from hundreds and thousands up to millions of lei".

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 about the claimed sources of funds for the apartment purchase. Official records show that the candidate's mother did not hold a patent, except for two months in 1999. The Commission also received data confirming no records from Moldovan national commercial banks about any bank transfers in the name of candidate's mother from her son.

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. 26/2022, as well as the expenses associated with the maintenance of such assets, and their sources of income.

The apartment of 74 sq.m. in Chisinau municipality, registered in the name of the candidate's mother and for which the candidate holds a right of habitation, was of particular importance in examining the candidate's compliance with the criteria of ethical and financial integrity. The details about the financial contributions generated inconsistencies about the money used to purchase an apartment in the candidate's mother's name in 2018.

With respect to the supposed contribution to the apartment from her mother's cash savings, the Commission calculated the income and expenses of the candidate's mother in conformity with the Annex: Unjustified Wealth to the Evaluation Rules in order to assess the mother's ability to accumulate cash savings. Those calculations show that the candidate mother's pension was lower than the CEP for each year in the period of 2007 – July 2018. Taking into account income from other sources, including the proceeds from the sale of the apartment in 2007 and the financial contribution of her close family member [R.C.], the maximum possible cash savings of the candidate's mother amounted to 254,601 MDL (est. 12,833 EUR) over the years 2007 – 2018. That amount falls short of the 19,000 EUR contributed from all sources other than the candidate's brother's supposed contribution of 30,000 EUR.

At the hearing during the initial evaluation, the candidate admitted herself that "[...] the aunt transferred, and still transfers some financial help to her sister, who is her only relative" and that "by the way, I realize that this money was also used by the mother for other needs, because, obviously, the pension she was receiving at that time [...] had additional needs to clarify certain situations". However, even if those additional resources are added to the candidate's mother's income, the calculations in the income/expense table for the candidate's mother show expense imbalances each year from 2008 to 2015 and in 2018. The imbalances identified for each year, suggest that the candidate's mother was spending those contributions, rather than accumulating them in the form of savings. The bank transfers received by the candidate's mother in 2013 - 2015 from R.C. appear more like a contribution for current expenses, because of their small amounts.

The Commission also attempted to verify the candidate's statements about her mother's patent-based activity and the income generated by that activity as funds contributed to the purchase of the apartment in 2018. The candidate's mother stated that her activity as a merchant at the local market in the village ended sometime between 2010 - 2013. According to the information received by the Commission from local public authority, the candidate's mother worked at the local market only until March 2012. Neither the local public authority nor the fiscal authority confirmed the candidate's statements about patents issued in the candidate's mother's name, and the law requires local and tax authorities to keep records of them. Confronted with the information from authorities about the lack of patents issued in her mother's name for the period of 2007 - 2013, the candidate initially maintained that she had received an answer from the tax authority, confirming that her mother was issued a patent for the first time in 1999 which was probably extended in later years, but the candidate produced no documents in this regard. The candidate also claimed during the resumed evaluation that she had requested information from the STS and was awaiting their response. When the Commission asked the candidate to provide STS's response, the candidate produced an answer of the STS of 13 March 2023, long before the resumed evaluation, which only confirmed that the candidate's mother was issued with a patent for 2 months for the period of September – November 1999.

The documents presented by the candidate during the resumed evaluation make clear that the candidate learned back in March 2023 from STS that no patents were issued after 1999 in the name of her mother, but the candidate kept insisting that her mother had a patent. Instead of alleviating the Commission's doubts, the candidate's evasiveness and misrepresentations about the patents affected her credibility in relation to her statements about her mother's supposed income from patent-based activities.

The Commission notes that the candidate was asked multiple times about the income from her mother's activity as entrepreneur, and the candidate explained each time that she did not want to make assumptions. Nonetheless, for the first time during the hearing in the resumed evaluation, the candidate stated that her mother sometimes received about 100 - 200 USD per month, and these were very good results – meaning her earnings did not reach this amount every month. The candidate also mentioned at that hearing about the handicraft activity of her mother, stating that her mother sold not only goods from her household, but also linens and quilts that she created. The candidate did not provide any information about the income from this additional activity, which she had never previously mentioned as a source of income for her mother.

Another financial source that raised serious doubts is the candidate's brother's contribution. During the initial evaluation, two patently contradictory statements were provided to the Commission. In the first statement, the candidate's brother stated that his contribution was 30,000 EUR, of which 20,000 EUR was from a loan taken from a foreign bank and 10,000 EUR was from his personal savings. Once the Commission confronted the candidate with the fact that the date of the loan was eight months after the purchase of the apartment, the candidate then presented it as a loan to pay for improvements to the apartment and the candidate provided another statement of her brother to support that claim. According to his second statement, the candidate's brother had contributed 30,000 EUR to the purchase of the apartment from his personal savings and had taken the loan of 20,000 EUR in April 2019 for repair work and to purchase furniture and equipment for the apartment. However, during the resumed evaluation, it became apparent that the 20,000 EUR loan related to the purchase of a car rather than an investment in house renovations. To address this issue, the Commission requested additional documentation from the candidate, specifically a copy of the loan agreement for the candidate's brother's loan, which the brother had expressed his willingness to provide from the very beginning. The candidate did not provide a copy of the loan agreement during the initial evaluation or during the resumed evaluation. At the hearing during the resumed evaluation, the candidate stated that her brother could have indicated a different purpose in taking the loan, as he indeed intended to exchange his old car. The candidate's claim that the loan was actually taken for renovations, in reality, contradicts her previous statement in the initial evaluation that the purchased apartment was in a habitable condition and did not need any serious improvements. Twenty thousand EUR in improvements represents approximately 40% of the cost of the apartment, a questionable amount for cosmetic repairs and the purchase of some household appliances. It seems very doubtful that the candidate's brother did not remember exactly how much he contributed to the purchase of the apartment when he prepared his first statement. The candidate's attempt to justify the change in

her brother's statement affects the credibility about his contribution as a source for the purchase of the apartment. Initially, the candidate presented the loan as a contribution to the purchase of the apartment, and after she was asked to explain the details related to that loan, the candidate presented it as a source for improvement works for the apartment.

The candidate's assertions regarding the transmission of 30,000 EUR from her brother to her mother also raised concerns due to their inherent ambiguity and contradictions in the candidate's statements. The candidate initially cited international bank transfers, transport parcels carried by bus or delivered in cash as the way the funds were sent; however, at the hearing during the resumed evaluation, when confronted with the absence of any record of international bank transfers in the name of the candidate's mother from her son, the candidate stated that her brother used primarily the parcel transport method. The Commission also expressed its doubts about the candidate's statement about how her mother kept her savings. According to the candidate, all of her mother's accumulated financial resources were kept in cash in the village, due to her mistrust of the Moldovan banking system. Beyond the 30,000 EUR from her son, this includes at least 6,300 EUR and 3,000 USD from her sister, 6,500 EUR from the sale of the apartment in Chisinau municipality, retained for 11 years from 2007 to 2018 and her savings accrued from entrepreneurial activities.

The candidate's habitation right in the Chisinau apartment and the frequency of her financial transactions in the vicinity of the apartment create a strong connection between the candidate and the apartment. In addition, because of the inconsistencies in the information provided about the supposed sources for the purchase of the apartment, the Commission has doubts that the candidate's mother is the real owner of the apartment.

In light of the above circumstances on resumed evaluation of the candidate, the Commission has serious doubts (art. 13 para. (5) of Law No. 26/2022) about the compliance of the candidate with the criterion of financial integrity as per art. 8 para. (4) lit. b) and para. (5) lit. c) and d) of Law No. 26/2022 with respect to the sources of funds used to purchase an apartment in Chisinau municipality in the name of her mother. In light of the candidate's habitation right in this apartment since 2020 and the frequency of transactions in the neighbourhood where the apartment is located, which are considerably more frequent than transactions at other place(s) where she declares residence and doubts about the sources of funds for her mother to purchase the apartment, the Commission has serious doubts whether the candidate's mother or the candidate is the facto owner of this property.

Issue 2. Role assumed by the Candidate at the General Assembly of Judges in 2019

a. The facts

On 13 September 2019, 87 judges from various courts requested that the Superior Council of Magistracy (hereinafter "SCM") convene a General Assembly of Judges (hereinafter "GAJ") on

20 September 2019. Under art. 23² para. (3) of Law No. 514/1995 on Judicial Organization, the General Assembly of Judges may be convened in exceptional situations at the initiative of the SCM or at the request of at least 50 judges within 10 business days from the registration of the request.

An SCM meeting scheduled for 17 September 2019 did not take place because of a lack of quorum, and the next meeting was scheduled for 19 September 2019. Meanwhile, on 18 September 2019, 53 judges challenged the SCM's inaction on the request to convene the GAJ at the Chisinau Court of Appeal, even though the 10 business days that the law allowed for the SCM to convene the GAJ would not elapse until 27 September 2019. At the SCM meeting of 19 September 2019, it was announced that at least five judges withdrew from the request to convene the GAJ because they had not supported the revocation of the mandates of SCM members.

On 20 September 2019, as president of the Administrative Panel of the Chisinau Court of Appeal, the candidate and two other judges examined the request regarding the obligation of the SCM to convene the GAJ. In the Decision of 20 September 2019, the panel determined that the GAJ should be convened on 27 September 2019 and established the agenda for the meeting. The SCM appealed the decision of 20 September 2019, raising several issues, one of which was the jurisdiction of the court to consider the request, because the SCM argued that it had until 27 September 2019 to act on the request to convene the GAJ.

On 24 September 2019, the SCM declined the request for convocation of the GAJ, arguing that organizing the GAJ was discretionary, not mandatory. Moreover, the purpose of the convocation of the GAJ was to revoke the mandates of SCM members, but the signatory judges had not indicated the legal grounds for the revocation. The SCM concluded that the request was not justified and that the revocation of SCM members' mandates was intended "to obstruct the Council to prevent the reforms initiated in the judicial system".

On 26 September 2019, the SCJ rejected the SCM's appeal by a vote of three of the five judges on the panel. The SCJ determined that the term "may" in art. 232 para. (3) of Law No. 514/1995 on Judicial Organization did not grant the SCM discretionary authority to convene the GAJ; instead, the SCM had an obligation to convene the GAJ if requested by 50 judges. The SCJ also clarified that the 10-business day timeframe stipulated by the law pertained to the organization of the GAJ, rather than the SCM's decision to call for it. Two judges provided a dissenting opinion, asserting that the challenged decision should have been nullified because the Chisinau Court of Appeal lacked the jurisdiction to hear the case, which should have fallen under the jurisdiction of the Chisinau Court instead.

On 27 September 2019, the candidate participated in the GAJ that was convened on the basis of the Chisinau Court of Appeal's decision. The 2019 GAJ was a highly publicized event and was closely monitored by civil society, local media, professionals and legal institutions. Searches of news articles related to the 2019 GAJ during the resumed evaluation produced 27 results related

to items published by news channels, news portals, legal associations, professional, etc. Also, 15 articles in English about this event were identified.

The 2019 GAJ also gained widespread attention from the diplomatic community and international legal circles. This attention related to the fact that the law did not provide for the removal of judge members from a judicial self-administration body due to a loss of credibility. According to the Venice Commission's Opinion on the reform of the SCJ dated 14 October 2019, this would have been a practice contrary to European standards. The Venice Commission reiterated that it was necessary to ensure the full respect of the Constitution [of the Republic of Moldova].

Shortly after the GAJ had convened, the US Embassy in the Republic of Moldova³⁹ expressed its concerns about the „reports that the recent Extraordinary General Assembly of judges' decision to remove judges from the Superior Council of Magistrates did not adhere to appropriate legal procedure and may have been intended to block needed reform – including the external vetting of judges and prosecutors, or to shield judges accused of corruption from prosecution”.

Also, the chairman of the Venice Commission⁴⁰ stated after the GAJ was convened that he was very concerned about the “current conflict among the different institutions of the state and called to respect the Constitution, the mandate and the powers of the state institutions”. The chairman called upon the national institutions “to co-operate loyally and productively with each other to find a long-term solution for the independence and integrity of the judiciary and prosecution services in compliance with the Moldovan Constitution and with the international principles of democracy and the rule of law”.

At the hearing during the initial evaluation, the candidate confirmed that she opened the GAJ of 27 September 2019 because the President of the SCM was not present, and that she read aloud the decision of the Administrative Court Panel. She confirmed that she announced that the decision was final and enforceable and that she read the resolution, by which her panel ordered the adoption of the administrative act to enforce the decision of 20 September 2019. The candidate also confirmed that she announced the number of persons in attendance and declared there was a quorum and therefore a deliberative Extraordinary Assembly. She also confirmed that she then proposed to proceed with the agenda and announced that the regulation required the election of a Chairperson and Secretary for the meeting. She then nominated a colleague as President of the GAJ and asked that his candidacy be voted on and that the vote be counted.

At the hearing during the initial evaluation the candidate also explained that she had been asked by her colleagues to open the GAJ in order to give it a status of solemnity as President of the panel that decided upon the action and which made it possible to convene this GAJ. In addition,

³⁹U.S. Embassy statement regarding recent developments in Moldova's justice system available here: [U.S. Embassy statement regarding recent developments in Moldova's justice system - U.S. Embassy in Moldova \(usembassy.gov\)](https://usembassy.gov/statement-regarding-recent-developments-in-moldova-s-justice-system/).

⁴⁰ The statement of the President of the Venice Commission available here: [Venice Commission: Council of Europe \(coe.int\)](https://www.venicecommission.org/en/press-releases/2019/10/14-opinion-on-the-reform-of-the-supreme-council-of-judges/).

in her opening speech, the candidate expressed her personal position on the state of affairs in the judiciary and the need for change. In relation to the expression of her personal opinions, the candidate stated that she considers that it is her right to express her opinions, including critical ones, in relation to the functioning of the judicial system.

In written communication during the resumed evaluation and at the hearing, the candidate denied that she had a “role” in the GAJ and stated that her participation at the meeting was because she is a magistrate, and the GAJ is a judicial self-administration body. The candidate stated that participation in judicial self-administration is her right and that such self-administration represents the real capacity of courts and judges to solve the problems in the functioning of the judicial system, autonomously and responsibly. The candidate also stated that, as a magistrate, she had the right to exercise her freedom of expression within the GAJ, and that she expressed her personal position as a judge participating in the Assembly and not as a judge who had issued the decision regarding convening the GAJ. The candidate emphasized that her presence and the opinions she expressed at this Assembly represented her personal vision on the situation in the judiciary at that time and that she felt that she was criticized and “persecuted” by some SCM members for her opinion.

During the resumed evaluation, in her answer to the statement of facts and serious doubts, the candidate reiterated that at the time of the GAJ, the court decision issued by the panel she was part of, had the force of *res judicata*, and its legality was confirmed and upheld by the SCJ and that the right to freedom of expression was guaranteed to her, including by art. 10 of the European Convention on Human Rights (hereinafter "ECHR").

Regarding the media coverage of this event, the candidate stated that “it was absolutely normal for it to be so, as it was the first time the judicial system publicly reacted critically to the activity of its administrative body, which was directly and explicitly targeted in the Declaration on the Captured State adopted by the Parliament of the Republic of Moldova in July 2019”.

In her written communication with the Commission and at the hearing during the resumed evaluation, the candidate emphasized that “invoking her participation in this event as a doubt about her ethical integrity would constitute a punishment for the critical statements against the activity of the Superior Council of Magistracy (SCM) – an absolutely inadmissible fact that she sees as a method of persecution for the publicly expressed critical position, especially considering the recent ECtHR cases of *Zurek v. Poland* (2022) and *Todorova v. Bulgaria* (2021)”.

In her additional post-hearing explanations provided on 27 November 2023, the candidate referred to point 6 of the Regulation of the General Assembly of Judges, approved by the Decision of the GAJ No. 1 of 23 November 2012 and last amended by Decision No. 11 of the GAJ of 11 March 2016, which states that the General Assembly of Judges may be convened in extraordinary (exceptional) sessions at the initiative of the Supreme Court of Magistracy or at the request of at least 50 judges. The request for the convening of an extraordinary session, signed by judges,

indicating their names, surnames, the court where they work, along with the draft agenda for the extraordinary session, is submitted to the Superior Council of Magistracy. The Council shall announce by decision the date of the extraordinary session of the General Assembly Judges within 10 days from the date of the request, informing the judges within three days in accordance with this Regulation. The candidate further stated that therefore, the indication in the request for the convening of the GAJ, formulated by the complaining judges, was mandatory under the legal regulations mentioned above, and the verification of this condition was carried out by the SCJ panel in accordance with the law.

b. The law

Art. 4 para. (2) of the Judge's Code of Ethics and Professional Conduct (2015) states that the judge shall carry out his/her duties impartially and without prejudice, shall not manifest a preconceived attitude by expression or deeds and shall not allow words, phrases, gestures or other actions that could be interpreted as signs of bias or prejudice.

Art. 5 para. (12) of the Judge's Code of Ethics and Professional Conduct (2015) states that the extrajudicial activities of the judge shall not give rise to any doubt as to his/her impartiality, objectivity or integrity.

Art. 6 para. (2) of the Judge's Code of Ethics and Professional Conduct (2015) states that the judge must refrain from any behavior, action or manifestation that could prejudice the public's trust in the judicial system.

Principle 2.2 of the Bangalore Principles of Judicial Conduct (2002) states that a judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

Principle 3.1 of the Bangalore Principles of Judicial Conduct (2002) states that a judge shall ensure that his or her conduct is above reproach in the view of the reasonable observer.

Principle 3.2. of the Bangalore Principles of Judicial Conduct (2002) states that the behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. [...].

Principle 4.6 of the Bangalore Principles of Judicial Conduct (2002) states that a judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

Principle 4.13 of the Bangalore Principles of Judicial Conduct (2002) states that a judge may form or join associations of judges or participate in other organizations representing the interests of judges.

According to the ECtHR, the freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment (*Delfi AS v. Estonia* [GC], no. 64569/09, para. 131, ECHR 2015; and *Perinçek v.*

Switzerland [GC], no. 27510/08, para.196, ECHR 2015). There is little scope under art. 10 para. 2 of the Convention for restrictions on political speech or on debate on matters of public interest, (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, para. 61, ECHR 1999-IV; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, para. 46, ECHR 2007-IV; and *Axel Springer AG v. Germany* [GC], no. 39954/08, para. 90, 7 February 2012). The remarks on the functioning of the judiciary concern matters of public interest (*Roland Dumas v. France*, no. 34875/07, para. 43, 15 July 2010, and *Morice v. France* [GC], no. 29369/10, para. 125, ECHR 2015, *Kudeshkina v. Russia*, no. 29492/05, para. 86, 26 February 2009). Freedom of expression is subject to exceptions, which must be construed strictly, and the need for any restrictions must be established convincingly (*Baka v. Hungary* [GC], no. 20261/12, para. 158, 23 June 2016).

According to the well-established principles of the ECtHR, given the prominent place among State organs that the judiciary occupies in a democratic society, public officials serving in the judiciary should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called into question (*Wille v. Liechtenstein* [GC], no. 28396/95, para. 64, 28 October 1999). The dissemination of even accurate information must be carried out with moderation and propriety (*Kudeshkina v. Russia*, no. 29492/05, para. 93, 26 February 2009). The discretion should dissuade them from making use of the press, even when provoked (*Olujić v. Croatia*, no. 22330/05, para. 59, 5 May 2009), but also in expressing criticism towards fellow public officers and, in particular, other judges (*Di Giovanni v. Italy*, no. 51160/06, para. 81, July 2013). Judicial authorities, in the exercise of their adjudicatory function, are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges.

The ECtHR emphasised that the judiciary, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties (*Morice v. France* [GC], no. 29369/10, para. 128, ECHR 2015). In order to inspire confidence in the public, the ECtHR requires a tribunal falling within the scope of art. 6 of the ECHR to be impartial. The impartiality normally denotes the absence of prejudice or bias. The existence of impartiality must be determined according to subjective and objective tests. The ECtHR has distinguished between a subjective approach, that is endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (see, *Deli v. the Republic of Moldova*, no. 42010/06, para. 35, 22 October 2019, *Grieves v. the United Kingdom* [GC], no. 57067/00, § 69, ECHR 2003-XII (extracts); *Kyprianou*, cited above, § 118; *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015, with further references; and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], no. 55391/13 and 2 others, § 145, 6 November 2018). In this connection even appearances may be of a certain importance as, “justice must not only be done, it must also be seen to be done” (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86, and *Ramos Nunes de Carvalho e Sá*, cited above, para. 147).

When adjudicating on freedom of expression of judges in cases concerning disciplinary proceedings against judges or their removal or appointment, the ECtHR has to ascertain first whether the measure complained of amounted to an interference with the exercise of the applicant's freedom of expression – in the form of a “formality, condition, restriction or penalty” – or whether the impugned measure merely affected the exercise of the right to hold a public post in the administration of justice, a right not secured in the Convention. In order to answer this question, the ECtHR determines the scope of the measure by putting it in the context of the facts of the case and of the relevant legislation (*Harabin v. Slovakia*, no. 58688/11, 20 November 2012, *Wille v. Liechtenstein* [GC], no. 28396/95, paras.42-43, ECHR 1999-VII, *Poyraz v. Turkey*, no. 15966/06, paras. 55-57, 7 December 2010). The ECtHR takes account of the sequence of relevant events in their entirety, rather than as separate and distinct incidents (*Kövesi v. Romania*, no. 3594/19, para. 188, 5 May 2020, *Miroslava Todorova v. Bulgaria*, no. 40072/13, para. 155, 19 October 2021).

According to the Basic Principles on the Independence of the Judiciary:

“8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.”

⁴¹

The UN Special Rapporteur on the independence of judges and lawyers in his recommendations to the Human rights Council mentioned that:

“101. In exercising their freedom of expression, judges and prosecutors should bear in mind their responsibilities and duties as civil servants, and exercise restraint in expressing their views and opinions in any circumstance when, in the eyes of a reasonable observer, their statement could objectively compromise their office or their independence or impartiality.

102. As a general principle, judges and prosecutors should not be involved in public controversies. However, in limited circumstances they may express their views and opinions on issues that are politically sensitive, for example when they participate in public debates concerning legislation and policies that may affect the judiciary or the prosecution service. In situations where democracy and the rule of law are under threat, judges have a duty to speak out in defense of the constitutional order and the restoration of democracy”.⁴²

The Venice Commission, in its report on the Freedom of Expression of Judges, adopted at its 103rd Plenary Session (Venice, 19-20 June 2015, CDL-AD(2015)018), observed that:

⁴¹ The Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, endorsed by UN General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

⁴² Report on freedom of expression, association and peaceful assembly of judges and prosecutors, paras. 102 -102 submitted by the UN Special Rapporteur on the independence of judges and lawyers, Mr Diego García-Sayán to the Human Rights Council.

“80. European legislative and constitutional provisions and relevant case-law show that the guarantees of the freedom of expression extend also to civil servants, including judges. But the specificity of the duties and responsibilities which are incumbent to judges and the need to ensure impartiality and independence of the judiciary are considered as legitimate aims in order to impose specific restrictions on the freedom of expression, association and assembly of judges including their political activities”.⁴³

According to Opinion No. 3 (2002) of the Consultative Council of European Judges (“CCJE”):
”27. Judges should not be isolated from the society in which they live, since the judicial system can only function properly if judges are in touch with reality. Moreover, as citizens, judges enjoy the fundamental rights and freedoms protected, in particular, by the European Convention on Human Rights (freedom of opinion, religious freedom etc.). They should therefore remain generally free to engage in the extra-professional activities of their choice.

28. However, such activities may jeopardise their impartiality or sometimes even their independence. A reasonable balance therefore needs to be struck between the degree to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties. In the last analysis, the question must always be asked whether, in the particular social context and in the eyes of a reasonable, informed observer, the judge has engaged in an activity which could objectively compromise his or her independence or impartiality.

39. The CCJE considers that rules of professional conduct should require judges to avoid any activities liable to compromise the dignity of their office and to maintain public confidence in the judicial system by minimizing the risk of conflicts of interest. To this end, they should refrain from any supplementary professional activity that would restrict their independence and jeopardize their impartiality. In this context, the CCJE endorses the provision of the European Charter on the Statute for Judges under which judges’ freedom to carry out activities outside their judicial mandate “may not be limited except in so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put before him or her” (para. 4.2) ...It is [...] essential that judges continue to devote the most of their working time to their role as judges, including associated activities, and not be tempted to devote excessive attention to extra-judicial activities. There is obviously a heightened risk of excessive attention being devoted to such activities, if they are permitted for compensation. The precise line between what is permitted and not permitted has however to be drawn on a country-by-country basis [...].⁴⁴

According to Opinion No. 18 of 2015 of the CCJE:

⁴³ Venice Commission Report on the Freedom of Expression of Judges, adopted at its 103rd Plenary Session (Venice, 19-20 June 2015, CDL-AD(2015)018

⁴⁴ Opinion no. 3 (2002) of the CCJE on the principles and rules governing judges’ professional conduct, adopted on 19 November 2002.

”41. In its dealings with the other two powers of state, the judiciary must seek to avoid being seen as guarding only its own interests and so overstating its particular concerns. Rather, the judiciary must take responsibility for the society it serves. The judiciary must show understanding and responsibility towards the needs of the public and the exigencies of the public purse. The judiciary can provide their insights on the possible effect of proposed legislation or executive decisions on the ability of the judiciary to fulfil its constitutional role. Judiciaries must also take care not to oppose all proposed changes in the judicial system by labelling it an attack on judicial independence. But, if judicial independence or the ability of the judicial power to exercise its constitutional role are threatened, or attacked, the judiciary must defend its position fearlessly”.

⁴⁵

According to art. 8 para. (2) of Law No. 26/2022, a candidate shall be 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.

And finally, according to art. 2 para. (2) of the Evaluation Rules, in assessing a candidate’s ethical integrity, the Commission may take into account the gravity or severity, the surrounding context, and the willfulness, of any integrity incident, and as to minor incidents, whether there has been a sufficient passage of time without further reoccurrences. While determining the gravity, the Commission will take into account all circumstances, including but not limited to:

- a. whether the incident was a singular event;
- b. causing no or insignificant damage to private or public interests (including public trust) – such as the occasion of an ordinary traffic violation;
- c. or not being perceived by an objective observer as an attitude of disrespect for the social order arising from disregard for its rules and regulations.

c. Reasoning

In its decision of 1 August 2023, the SCJ special panel stated that the candidate’s behavior as a judge and as a participant in the 2019 General Assembly reveal no deviation from judicial correctness, fairness, honesty and morality and that she did not violate the principle of integrity,

⁴⁵ Opinion no. 18 of the CCJE on the position of the judiciary and its relation with the other powers of state in a modern democracy adopted on 16 October 2015

also stating that [...] actions/activities happening during the assembly are autonomous and do not derive from the summoning decision; they represent a direct enforcement of the law whereby judges exercise their right to judicial self-administration. The panel referred to the provisions of the Judge's Code of Ethics and Judicial Conduct, stating that the judge shall carry out his/her duties without bias and prejudice, shall not express preconceptions in words or deeds and shall not afford words, phrases, gestures or other actions that could be perceived as signs of bias and prejudice and pointed out that the freedom of expression of judges should be recognized. The special panel also concluded that the issue of the judge's impartiality, as well as the issue of apparent bias can only be raised when the case is heard.

In light of the SCJ special panel decision and the information assessed during the resumed evaluation, the Commission is not including this issue in its determination on the candidate's passing or failing the evaluation in the resumed evaluation. At the same time, the Commission cannot agree with the SCJ special panel determination about the candidate's conduct not deviating from ethical standards and that she did not violate the principle of integrity under the criteria established by Law No. 26/2022 for the following reasons.

In its decision on the initial evaluation of the candidate, the Commission noted that when assessing the candidate's conduct at the 27 September 2019 GAJ, the Commission was not evaluating the candidate's attendance at the meeting or her personal opinions as a magistrate. The Commission fully acknowledges that the judges, like all human beings, enjoy the right to freedom of expression. This right is guaranteed by wide range of norms in international and domestic law. The Commission also acknowledges that the judges have the right to participate in judicial self-administration.

The candidate contends that her participation in the Assembly and her actions are fully protected by her right to freedom of expression. In support of her position the candidate referred to two cases of the ECtHR: *Żurek v. Poland*, no. 39650/18, 16 June 2022 and *Miroslava Todorova v. Bulgaria*, no. 40072/13, 19 October 2021. The applicant in the case of *Zurek v. Poland*, was a judge and the spokesperson for the National Council of the Judiciary (NCJ). In that capacity, he had been one of the main critics of the changes to the judiciary initiated by the legislative and executive branches of the Government. The case mainly concerned the applicant's removal from the NCJ before his term had ended and his allegation of a campaign to silence him. The ECtHR scrutinized the measures taken by the authorities in the applicant's case. The ECtHR concluded that accumulation of such measures could be characterized as a strategy aimed at intimidating (or even silencing) the applicant in connection with the views that he had expressed in defense of the rule of law and judicial independence. The ECtHR considered that the impugned measures had a "chilling effect" in that they must have discouraged not only him but also other judges from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary. The applicant in the *Miroslava Todorova v. Bulgaria* case was the President of the Bulgarian Union of Judges (the BUJ). In that capacity she made public statements on many occasions criticizing the actions of the Supreme Judicial Council

(SJC), particularly in connection with certain appointments of court presidents, as well as the Government's judicial policy. Two sets of disciplinary proceedings were brought against the applicant. The SJC ordered a reduction of her salary, followed by her dismissal on the grounds of delays in dealing with her cases. The ECtHR found that the main aim of the disciplinary proceedings against the applicant and of the sanctions imposed on her by the SJC had not been to ensure compliance with the time-limits for concluding cases, but to penalize and intimidate her on account of her criticism of the SJC and the executive.

Unlike the applicants in the above-mentioned cases, the candidate's evaluation concerns not the views expressed by her on matters related to the functioning of the judiciary, falling within the debate on issues of general interest, but the role she assumed at the GAJ after presiding over the appellate panel that ordered that the General Assembly of Judges be convened. She not only inaugurated the Assembly in lieu of the President of the SCM but also read out the decision and resolution of her Court Panel that mandated the convening of the GAJ. She declared the decision as final and enforceable, confirmed the quorum, and directed the election of the presiding Chairperson and Secretary. Notably, she even nominated a judge for the position of President of the GAJ, essentially overseeing and directing the proceedings that she had ordered be convened.

The candidate's leadership role was considered improper by the Commission because of her participation in the appellate decision that convened the Assembly. As noted by the candidate herself at the hearing during the initial evaluation, she was asked by her colleagues to open the GAJ in order to give it a status of solemnity as President of the panel that decided upon the action, and which made it possible to convene the Assembly. Instead of mitigating the candidate's behavior, as the Commission previously noted, this invitation should have served as a warning to her about the impropriety of her participation, as it lent the weight of her office and role in the appellate decision to the General Assembly proceedings. During the resumed evaluation, the candidate backtracked stating that, at the GAJ, she merely expressed her personal position as a judge participating in the meeting and not as a judge who had issued the decision regarding convening the Assembly. The Commission notes that in view of the sequence of the events and the surrounding circumstances, it would have been impossible to distance the candidate from the decision adopted a few days earlier. Quite to the contrary, her position as the President of the Administrative Panel that decided the case was the precise reason, she was asked by colleagues to open the GAJ. The candidate's participation in the appellate proceedings and her role in convening the GAJ were tantamount to implementing her own decision, which is further heightened by the candidate's apparent strong position in favor of convening the GAJ. Significantly, the candidate noted the heavy media coverage of the event as "absolutely normal for it to be so", characterizing "the Assembly as the first time the judicial system publicly reacted critically to the activity of its administrative body, which was directly and explicitly targeted in the Declaration on the Captured State adopted by the Parliament of the Republic of Moldova in July 2019". The Commission considers that the confusion of roles between a judge and the authority responsible for the enforcement of a judicial decision undermines the principles of impartiality, integrity and objectivity of judges (*mutatis mutandis*, *Kyprianou v. Cyprus*[GC], no.

73797/01, para. 173, ECtHR 2005-XIII, *Deli v. the Republic of Moldova*, no. 42010/06, para. 43, 22 October 2019). The Commission reiterates, that according to the Code of Ethics and Professional Conduct for Judges, the judges' extrajudicial activities should not cast doubt on their impartiality, objectivity, or integrity. As stated by the Consultative Council of European Judges in Opinion No. 3, para. 28, "[...] a reasonable balance therefore needs to be struck between the degree to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties. In the last analysis, the question must always be asked whether, in the particular social context and in the eyes of a reasonable, informed observer, the judge has engaged in an activity which could objectively compromise his or her independence or impartiality". In the view of the Commission, that balance was lost in this instance between the candidate's role in the panel deciding the case and the candidate's assumption of the role implementing that decision by opening the GAJ. In the eyes of a reasonable, informed observer, the candidate's independence and impartiality was thereby compromised.

As already noted, the ECtHR' jurisprudence acknowledges that matters concerning the functioning of the justice system fall within the public interest, enjoying a high degree of protection under the European Convention (see, *Baka v. Hungary [GC]*, no. 20261/12, para. 159, 23 June 2016). Public officials, especially those in the judiciary, are expected to exercise restraint in expressing their views when such expressions might cast doubt on the authority and impartiality of the judiciary. This is crucial because, as the guarantor of justice, the judiciary relies on public confidence to fulfill its duties effectively.

In contrast to the candidate, the applicant in the *Baka case*, who was the President of the Supreme Court and of the National Council of Justice, was expected to express views on the legislative reforms because of the office he held. Moreover, the ethical issue involving the candidate was not the expression of views on judicial reform or the functioning of the judiciary. A number of other candidates being evaluated by the Commission also took part in the 2019 GAJ, but the Commission did not consider their participation and expression of opinions as an ethical issue, as clearly in keeping with their right to freedom of expression. Unlike the judge in the *Baka case* and the other candidates, the candidate had presided over the panel which ordered that the GAJ be convened. Having done so, the judge was ethically bound to refrain from conduct that could cast doubt on the impartiality and integrity of the judiciary. Assuming the role of opening the GAJ that she had ordered be convened inevitably raised doubts about her impartiality and integrity. Her position did not require her to open the GAJ; to the contrary, her role in the appellate decision that convened the Assembly required her not to do so.

The SCJ special panel's statement that a judge's impartiality and apparent bias can only be addressed when the case is being heard overstates the guiding principles of law. Litigants are required to raise issues of judicial bias in the case over which the judge is participating. Disciplinary bodies are often called upon, however, to make determinations about conduct by a judicial officer that may have reflected bias or raised an appearance of bias, especially outside of

court after the judicial proceedings have been completed. For example, a judge was removed from office for conduct that included attending parties related to litigation that the judge had presided over. This included a victory celebration dinner after satisfaction of the judgment in a case in which the judge had rendered a multimillion-dollar judgment. The California Supreme Court found that “attendance at the dinner indisputably gave rise to an appearance of partiality in favor of a litigant and an attorney whose very substantial interests had come before” the judge.⁴⁶ Similarly, a judge was disciplined for attending the premiere of a movie that was the subject of litigation presided over by the judge. The invitation was from the producer of the movie who was the prevailing party in the case.⁴⁷

With respect to the candidate’s appreciation of her participation at the GAJ, the Commission notes that although the candidate herself pointed out she had been asked by her colleagues to open the GAJ because she was President of the panel that issued the decision that made it possible to convene the GAJ, in written communication during the resumed evaluation and at the hearing, the candidate denied that she had a “role” in the Assembly and stated that her participation at the meeting was because she is a magistrate and the General Assembly of Judges is a judicial self-administration body. The candidate’s equivocation on this point undermined her credibility.

The significance of the candidate’s leadership role in the 2019 GAJ lies also in its highly publicized nature and the close monitoring of the event by civil society, local media, professionals, legal institutions and diplomatic community. This context is pivotal in understanding the importance and relevance of the candidate’s actions during the GAJ. With the proceedings subjected to intense public monitoring, the candidate’s conduct becomes even more crucial, given the imperative for judges to uphold the integrity and impartiality of the judiciary. The legal matters discussed during the GAJ, as well as its international visibility, underscore the importance of the candidate exercising restraint in her conduct because of her participation in the decision that convened the GAJ.

As noted above, in light of the SCJ special panel’s decision and the information assessed during the reevaluation, the Commission is not including this issue in its determination on the candidate’s passing or failing the evaluation in the resumed evaluation.

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), para. (4) lit. b) and para. (5) lit. c) and d) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate does not meet the financial integrity criteria as serious doubts have been found as to the candidate’s compliance with the financial integrity criteria and thus fails the evaluation.

⁴⁶ *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 888, 892, 896.

⁴⁷ *Public Admonishment of Judge Judith C. Chirlin* (1995) California Commission on Judicial Performance

The aim of the evaluation of the ethical and financial integrity of candidates for leadership positions in the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies is to increase the integrity of future members of those 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 (art. 8 para. (1) preamble to Law No. 26/2022). When candidates fail the evaluation because there are serious doubts about financial and/or ethical integrity issues, it demonstrates that candidates for leadership positions in the justice system have been scrupulously held to high standards of integrity, increasing the public's confidence in those candidates who pass and are eligible for election as members of the self-administration bodies. Especially considering the critical role of members of the self-administration bodies in the selection, promotion and discipline of their colleagues and in their administration of benefits such as preferential housing programs, it is imperative that the members themselves have demonstrated the highest level of financial and ethical integrity so that they can be expected as leaders to promote high standards for themselves and others.

According to art. 13 para. (1) of Law No. 26/2022, there are only two outcomes for the evaluation of candidates for leadership positions in the self-administration bodies: passing or failing the evaluation. No other measures are available to the Commission. According to the ECtHR, it is consistent with the vetting process to have a more limited scale of measures. (In Albania there were only two measures that could be imposed: dismissal from office or suspension with the obligation to attend a training program.)⁴⁸ For perspective in terms of the proportionality of a fail decision based upon reasonable doubts about a candidate's financial integrity, the ECtHR has repeatedly upheld confiscation orders issued by domestic authorities based only on a preponderance of evidence suggesting that the respondents' lawful incomes could not have sufficed for them to acquire the property in question. Confiscation orders have been upheld not only with respect to persons directly accused of offenses, but also in connection with their family members and other close relatives who had been presumed to possess and manage the "ill-gotten" property informally on behalf of the suspected offenders or who otherwise lacked the necessary *bona fide* status⁴⁹. A failing decision in the context of the evaluation of candidates seeking to serve on self-administration bodies in the justice system is in no way comparable in magnitude to confiscation of property orders, which have been sustained by the ECtHR on the basis of similar standards of proof.

The SCJ special panel suggested that the Commission could pass some candidates with perhaps minor integrity issues and provide a detailed description of those issues in the Commission's decisions so that the issues could be considered by those voting on the candidates for positions as members in the self-administration bodies. Commission evaluation decisions are public only with

⁴⁸ *Sevdari v. Albania*, no. 40662/19, para. 87, 13 December 2022.

⁴⁹ *Telbis and Viziteu v. Romania*, no. 47911/15, para. 68, 26 June 2018; *Gogitidze and Others v. Georgia*, no. 36862/05, para. 107, 12 May 2015; *Webb v. the United Kingdom* (dec.), no. 56054/00, 10 February 2004; *Morabito and Others v. Italy* (dec.), 58572/00, 7 June 2005; and *Saccoccia v. Austria*, no. 69917/01, paras. 87-91, 18 December 2008.

the candidate's consent and thus, there could be no assurance that voters would have any information about the integrity issues identified by the Commission. During the initial evaluation of candidates, only 26 of the 45 candidates that failed the evaluation – slightly more than half – consented to their decisions being public.

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 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