Decision No. 11 of 11 April 2024 on the Resumed Evaluation of Aureliu POSTICĂ, 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 20 March 2024, 27 March 2024 and 11 April 2024. The members participating were:

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

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

I. The procedure

Aureliu POSTICĂ, judge at the Chisinau Court, Buiucani office, ("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.

Between 2000 and 2005, the candidate worked as assistant to prosecutors and as an investigator. In 2005 he became a prosecutor and served as a prosecutor until 1 August 2011 when he was appointed as a judge for five years to serve in Orhei Court. The candidate was appointed as a judge until the retirement age on 14 July 2016. The candidate was transferred to the Chisinau Court on 30 June 2017.

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 sources.[1]

[1] The sources from which information was obtained concerning evaluated candidates generally included the National

The candidate also responded to written questions and requests for information from the Commission.[2] Following the candidate's request, on 13 December 2022, the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022. On 16 December 2022, the candidate participated in a public hearing before the Commission. The Commission issued its decision failing the candidate on 27 January 2023.

On 12 February 2023, the candidate appealed the Commission's decision to the Supreme Court of Justice (hereinafter "SCJ") pursuant to art. 14 para. (1) and (2) of Law No. 26/2022. On 1 August 2023, the SCJ special panel for examining the appeals against the decisions of the Commission (hereinafter "SCJ special panel") issued its decision accepting the candidate's appeal, annulling the decision of the Commission and ordering the re-evaluation of the candidate.

The Commission commenced the resumed evaluation of the candidate on 8 September 2024. The candidate responded to two rounds of written questions from the Commission, including three questions, eleven sub-questions and five requests for further documentation. The candidate provided additional documentation on 4, 10, 17 and 31 January 2024. 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 March 2024. 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. The candidate responded to the statement of facts and serious doubts on 8 March 2024. The candidate's response did not comment upon the substance of the facts or doubts set forth in the statement, instead providing objections or commentary to the Commission's resumed evaluation, specifically that it violates the principle of *res judicata* and that the continued resumed evaluation of candidates for the SCM after members have been appointed to that body violates various principles of law.

The candidate requested a public hearing. On 20 March 2024, the candidate appeared at a hearing before the Commission.

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-

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

[2] The Commission sent 3 rounds of questions to the candidate, including 50 questions, 143 sub-questions and 44 requests for further documentation.

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

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

[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

specifically noted that the creation of ad hoc bodies to assess the integrity of judges and prosecutors is based on the assumption that the justice system has extremely serious deficiencies and that there are systemic doubts about the integrity of magistrates.[6]

Regarding the justification for vetting procedures, both in the Albanian and Ukrainian contexts, the Venice Commission repeatedly commented that the extraordinary measures to vet judges and prosecutors were "not only justified" but were "necessary for Albania to protect itself from the scourge of corruption which, if not addressed, could completely destroy its judicial system".[7] In those contexts, the Venice Commission also took into account existing major problems with corruption and incompetence in the judiciary, political influence on judges' appointments in the previous period, and the almost complete lack of public confidence in either the honesty or the competence of the judiciary.[8] In a 2019 opinion on a draft law in Moldova that included vetting 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 Parliament[9] 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

positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts, 13 December 2021 (hereinafter "Venice Commission Opinion No. 1069/2021 on draft Law No. 26/2022"), para. 15 and 11.

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

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

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

mixed national/international advisory boards to facilitate that procedure.[13]

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

a) he/she has not seriously violated the rules of ethics and professional conduct of judges, prosecutors, or, where applicable, other professions, and has not committed, in his/her activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer;
b) there are no reasonable suspicions that the candidate has committed corruption acts, acts related to corruption, or corruptible acts, within the meaning of the Law on Integrity No. 82/2017;
c) has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions, and/or limitations.

A number of versions of ethical codes applied to judges over the period of time covered by the evaluation. The codes were *Judge's Code of Professional Ethics*, adopted at the Conference of Judges on 4 February 2000, *Judge's Code of Ethics*, approved by the Superior Council of Magistracy decision No. 366/15 on 29 November 2007, *Judge's Code of Ethics and Professional Conduct,* approved by decision No. 8 of the General Assembly of Judges of 11 September 2015, amended by decision no. 12 of the General Assembly of Judges of 11 March 2016, as well as the *Commentary to the Code of Judges' Ethics and Professional Conduct*, approved by Superior Council of Magistracy's decision No. 230/12 of 8 May 2018. Since 2018, the *Guide for Judges' Integrity* approved by the Superior Council of Magistracy's decision No. 318/16 of 3 July 2018 is another relevant source to assess judicial integrity issues.

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

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

A number of versions of ethical codes applied to prosecutors over the period of time covered by the evaluation. The codes were *Prosecutor's Code of Ethics,* approved by the Prosecutor General order No. 303/35 of 27 December 2007, *Prosecutor's Code of Ethics,* approved by the Superior Council of Prosecutors' decision No. 12-3d-228/11 of 4 October 2011, *Prosecutor's Code of*

[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.

Ethics and Conduct, approved by Superior Council of Prosecutors' decision No. 12-173/15 of 30 July 2015 and *Prosecutor's Code of Ethics*, approved by the General Assembly of Prosecutors' decision No. 4 of 27 May 2016, amended by General Assembly of Prosecutors' decision No. 1 of 22 February 2019.

Opinion No. 13 (2018) of the Consultative Council of European Prosecutors (CCPE) on the "Independence, accountability and ethics of prosecutors", adopted on 23 November 2018 ("CCPE (2018) Op. No. 13") provide 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]

[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.
[16]Section 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.

According to well-established ECtHR case law, there is no right to a favorable outcome[17] and there is, in principle, no right under the Convention to hold a public post related to the administration of justice.[18] As a matter of principle, States have a legitimate interest in regulating public service positions.[19] In adopting Law No. 26/2022, the Moldovan Parliament required candidates for membership on the Superior Council of Magistracy and the Superior Council of Prosecutors to undergo the extraordinary assessment by the Commission as a part of the election/ appointment process.

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

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

[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.

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

current conditions of the Republic of Moldova, in order to achieve this objective, it is necessary to ensure an effective verification of judges and prosecutors in terms of integrity, interests, but also professionalism, which will be carried out through an extraordinary (external) evaluation mechanism, similar to the practices of other states in Europe that started this exercise following the approval of the mechanism by the international competent forums" (same Objective 1.2).

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

[22] GRECO's Fourth Evaluation Report, Republic of Moldova, 1 July 2016, para. 135.
[23] Transparency International, and others, State Capture: the Case of the Republic of Moldova, 2017, p. 21.
[24] GRECO's Fourth Evaluation Report, Second Interim Compliance Report, Republic of Moldova, 24 March 2023, para. 43, 49, 60.
[25] OECD, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, Moldova, 2022, p. 51
[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.

positions are not subject to verification from the point of view of integrity. […] The identified problems may be resolved by instituting an integrity filter". The core pillars of the integrity filter created by Law No. 26/2022 (exhaustive financial and ethical integrity criteria, the right of the candidate to bring evidence and dismiss the serious doubts of the Commission, the Commission's functional independence) were aimed to ensure that the presumption of integrity may be overturned based on evidence.

It has thus become a key element of the functional independence of the Commission that it "shall not depend on the findings of other bodies competent in the field concerned" (art. 8 para. (6) of Law No. 26/2022). This approach requires the Commission to make its own evaluation, based on the documents and information collected from the candidates and third parties (including public and private persons – art. 10 paras. (2) and (3) of Law No. 26/2022) and not merely rely on the previous facts, including disciplinary proceedings or the absence thereof. The Venice Commission did not raise a concern about this approach in connection with Law No. 26/2022.[28] For comparison, a similar provision is included in item 1.5.3 in the Methodology (2021) of the Ukrainian Ethics Council, referred to by the Venice Commission as an example regulating the evaluation of candidates.[29] The Constitutional Court has also referred to this approach, as follows: The Court notes that the provision containing the contested text established that upon evaluation of the ethical and financial integrity of candidates for membership of the Superior Council of Magistracy, the Evaluation Commission "shall not depend on the findings of other bodies with competences in the field concerned".[30] The legislator allowed the Commission to make its own 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

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

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

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

[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.

which the burden to prove that the alleged facts do not constitute discrimination shifts to the defendant, except for facts that are subject to criminal responsibility. In discrimination cases, the ECtHR has established that, once the applicant has shown a difference in treatment, it is for the Government to show that it was justified.[33] The ECtHR has clarified that the elements which characterize different situations, and determine their comparability, must be assessed in light of the subject-matter, objective of the impugned provision and the context in which the alleged discrimination is occurring. The assessment of the question of whether or not two persons or groups are in a comparable situation for the purposes of an analysis of differential treatment and discrimination is both specific and contextual; it can only be based on objective and verifiable elements, and the comparable situations must be considered in their totality, avoiding singling out marginal aspects which would lead to an artificial analysis.[34]

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

[33] *Timishev v. Russia,* nos. 55762/00 and 55974/00, para. 57, 13 December 2005.
[34] *Fábián v. Hungary* [GC], no. 78117/13, para. 121, 5 September 2017; *Advisory opinion on the difference in treatment between landowner associations "having a recognized existence on the date of the creation of an approved municipal hunters' association" and those set up after that date*, 13 July 2022, para. 69.
[35] OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing, p. 12.
[36] Eastern Partnership-Council of Europe Facility Project on "Good Governance and Fight against Corruption", Practitioner manual on processing and analyzing income and asset declarations of public officials, Tilman Hoppe with input from Valts Kalniņš, January 2014, section 7.5.1.3.
[37] OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing, p 14.

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

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

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

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 paras. (1) and (8) and consequently, the time restrictions on the Commission's collection of information have been removed.

1. Overstatement of wife's income in declarations submitted to the National Integrity Authority; pending criminal proceedings regarding the same; underreporting of wife's income to the State Tax Service; underpayment of income taxes

a. The facts

The candidate's wife is the founder, administrator, accountant and beneficial owner of two companies. The first company is called "DB E.A. S.R.L." founded on 23 April 2018. It provides services relating to accounting, financial audit and consultancy in the field of taxation. The second company, called "DT S.R.L.", was founded on 5 March 2021. This company provides services relating to legal activities, accounting, financial audits, education and translation activities.

During the years 2018 - 2021, there were significant differences between the financial information relating to the candidate's wife included in the annual declarations of assets and personal interests (hereinafter "annual declarations") submitted by the candidate to the National Integrity Authority (hereinafter "NIA") , information reported to the State Tax Service (hereinafter "STS") about her personal income and information registered with the National Bureau of Statistics (hereinafter "NBS") about the net profit of the two companies owned by the candidate's wife. In response to written questions from the Commission during the initial evaluation, the candidate provided some corrected figures for DB E.A. S.R.L., submitted to the NBS over the years 2019 and 2021 which were, according to the candidate, the result of cancellations of some invoices.

The following table, prepared during the initial evaluation, compares the income of the candidate's wife declared in the candidate's annual declarations, the personal income of his wife according to the STS and the net income of his wife's companies reported to NBS:

Year	NIA	STS	NBS
2018	100,000	0	91,700
2019	534,045	0	380,900
2020	926,643	469,922	783,100
2021 DB E.A. S.R.L.	578,191	590,044	472,200
2021 DT S.R.L.	725,500	0	703,700
Total	**2,864,379**	**1,059,966**	**2,431,600**

Based on these figures, it appears that the candidate declared total income of his wife of 2,864,379 MDL in his annual declarations for the years 2018 – 2021, but only 1,059,966 MDL was reported to STS as the amount of his wife's personal income. In 2018 and 2019, no income obtained by his wife was reported to STS and in 2020, income was reported to STS as obtained by the candidate's wife from only one of her two companies. During the same period, the net profit of the two companies owned by his wife was 2,431,600 MDL. (For` each year during 2018 - 2021, the candidate declared his wife's income to NIA in an amount greater than the net profit of her companies.)

In response to written questions from the Commission during the initial evaluation, the candidate stated that "the data for the [annual] declarations have been presented by wife […], information that has already been declared to the State Tax Inspectorate, for both companies". He also informed the Commission that, as a result of cancellations of some invoices, the reports for 2019 and 2021 for his wife's company had been corrected. Further written questions from the Commission during the initial evaluation about the candidate's wife's salary, dividends or loans from her companies were not responded to by the candidate.

At the hearing during the initial evaluation, the candidate confirmed that the information about his wife's companies was provided by her orally and that he had submitted these figures in his annual declarations. The candidate also confirmed the figures from the STS and from the NBS as "official figures" that he did not challenge. In the words of the candidate, the official data were "not erroneous". The candidate also informed the Commission that he has limited knowledge of accounting and that he submitted the figures relating to his wife by mistake in the wrong section of his annual declarations as personal income of his wife, rather than as income and dividends from her companies. He also mentioned that his wife had provided him corrected figures relating to her taxable income prepared for the STS dated 16 September 2022 (that is: after a search of his home was carried out by the National Anticorruption Center in a criminal case opened against the candidate at that time).

After the hearing during the initial evaluation, the candidate submitted a copy of the document reflecting the corrected figures relating to his wife's taxable income. The document bears a stamp from the STS with the date of 16 September 2022, eleven days after the Commission sent the round of questions to the candidate which first inquired about the discrepancies in his wife's reported and declared income.

At the hearing before the SCJ special panel, the candidate produced a different table, which contains the Commission's initial findings and two additional columns (highlighted in grey):

Year	**NIA**	**STS (Commission's data)**	**STS (corrected data as of 16.09.2022)**	**NBS (profit)**	**NBS (revenue)**
2018	100,000	0	0	91,700	100,000

2019	534,045	0	394,522	380,900	483,000
2020	926,643	469,922	670,678	783,100	889,400
2021 DB E.A. S.R.L.	578,191	590,044	630,670	472,200	583,200
2021 DT S.R.L.	725,500	0	357,872	703,700	752,500
TOTAL	**2,864,379**	**1,059,966**	**2,053,742**	**2,431,600**	**2,808,100**

Before the SCJ special panel, the candidate explained the differences in the amounts he had declared to NIA based on the amounts presented to NBS, claiming that he thought he had to declare the companies' total revenue, not the dividends paid to his wife. The candidate argued to the SCJ special panel, and the panel noted that the difference between the amount of the candidate's wife's income that he declared to NIA and the total revenue presented to NBS for the companies was only 56,279 MDL, an insignificant amount.

The candidate gave no other explanation why the amount of income that the candidate declared to NIA for his wife for 2018 - 2021 was 1,800,000 MDL more than the amount initially reported by his wife to STS. The candidate also did not explain why the amounts declared by the candidate to NIA were still 800,000 MDL more than the corrected amounts reported to STS. The candidate also did not explain why the amount of his wife's income initially reported to STS between 2019 - 2021 was almost 1,000,000 MDL lower than the adjusted amounts submitted to STS on 16 September 2022, after the Commission's first round of questions to the candidate.

During the resumed evaluation, the Commission requested additional information from the STS concerning the candidate's wife's income tax on dividends calculation and payments, establishing that the candidate's wife paid taxes of 18,180 MDL in 2019 (4,051 less than owed), 14,200 MDL in 2020 (23,220 less than owed) and 34,870 MDL in 2021 (25,610 less than owed). In 2022, however, after the Commission asked the candidate about his wife's income, the candidate's wife paid 51,240 MDL, which was 35,537 MDL more than the 15,702 MDL owed for taxes in 2022, indicating awareness of late payment fees and tax payments due. Prior to those payments, the candidate's wife's unpaid taxes for 2019 - 2022 totalled 47,302 MDL. During the resumed evaluation, the Commission also requested further information about the determination of late payments and the assessment of late payment fees for the candidate's wife's tax liability. Even after paying more than was owed for 2022, the candidate's wife still owed taxes of 17,344 MDL and late payment fees for 2019 - 2022 of 7,520.79 MDL, a total of 24,864.79 MDL. The tax violations of the candidate's wife were significant under the law. Art. 231 paras. (4) and (5) of the Tax Code provide that a tax violation is considered insignificant only for tax/fees and similar fiscal obligations owed in amounts up to 5000 MDL for legal entities and 500 MDL for individuals; otherwise, the tax violation is significant.

On 3 April 2023 the candidate was indicted for allegedly committing acts related to false declarations of assets and personal interests during the period 2018 - 2021 in criminal case no.

2022970408, under art. 352[1] para. (2) Criminal Code. The criminal proceedings were mentioned in the Commission's initial evaluation decision. On 3 April 2023, the criminal case was submitted to the court with an indictment for examination on the merits. Currently, the criminal case is pending at the Hincesti Court, Central Office. According to the candidate as of January 2024, the last preliminary court hearing was held on 15 November 2023, during which the issues regarding the criminal case were discussed, submission of applications, petitions, list of evidence of the parties. At the time of the hearing during the resumed evaluation, the next court hearing was set for 19 April 2024. The pending criminal proceedings against the candidate were not addressed by the SCJ special panel.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission must verify that the candidate has complied with the legal regime of declaring assets and personal interests as per art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022.

A candidate does not meet the criterion of financial integrity under art. 8 para. (4) lit. a) of Law No. 26/2022 when assets have not been declared in the manner required by law. A finding that the candidate has violated the legal regime of declaring personal assets and interests is a failure to meet the criterion of ethical integrity under art. 8 para. (2) lit. c).

Art. 8 para. (5) lit. d) of Law No. 26/2022 provides that in order to assess the candidate's financial integrity, the Commission is required to verify the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2).

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

"Close persons", as defined in Law No. 133/2016 on declaration of assets and personal interests, are: "husband/wife, child, cohabitant of the subject of the declaration, the person supported by the subject of the declaration, as well as 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).

According to art. 4 para. (1) lit. a) of Law No. 133/2016 on declaration of assets and personal interests (in force since 1 August 2016), the subject of the declaration is to declare income obtained by the subject of declaration together with the family members, the concubine/concubine in the previous fiscal year. Art. 2 of Law No. 133/2016 defines income as "any financial benefit, regardless of the source of origin, obtained by the subject of the declaration and by the family

members, its concubine / concubine both in the country and abroad".

Art. 5 para. (4) of Law No. 133/2016 on declaration of assets and personal interests provides that the responsibility for the timely submission of the declaration, as well as for the truthfulness and completeness of the information lies with the person submitting it.

Art. 6 para. (1) of Law No. 133/2016 on declaration of assets and personal interests provides that the declaration is to be submitted annually, until March 31, indicating the income obtained by the subject of the declaration together with the family members, his/her cohabitant in the previous fiscal year, also the assets held, and the personal interests provided in art. 4 para. (1) lit. b) – m) on the date of submission of the declaration.

According to art. 129 of Tax Code, a fiscal violation – action or inaction, expressed by non-fulfillment or inadequate fulfillment of the provisions of the fiscal legislation, by violation of the legitimate rights and interests of the participants in the fiscal reports.

Art. 232 lit. a) of the Tax Code provides that a legal entity whose responsible person has committed a tax violation is held liable for a tax violation. Art. 232 lit. b) of Tax Code provides that the individual taxpayer, who does not practice entrepreneurial activity, who has committed a tax violation, is held liable for a tax violation.

Art. 231 of the Tax Code (in force since 15 April 2022) provides two categories of tax violations: significant and insignificant tax violations. According to para. (4) of the same article, a tax violation shall be considered insignificant if the amount of due tax/fees and […] amounts to up to 5000 MDL [est. 250 EUR] for legal entities specified in art. 232 lit. a) and 500 MDL [est. 25 EUR] for individual taxpayers specified in art. 232 lit. b). Para. (5) of the same article provides that a significant tax violation is the tax violation that does not fall under the scope of para. (4).

Art. 352^1 para. (2) of the Criminal Code provides that intentional inclusion of incomplete or false data, intentional non-inclusion of data in the declaration of assets and personal interests are punished with a fine in the amount of 400 to 600 conventional units or with imprisonment of up to 1 year, in both cases with the deprivation of the right to hold certain positions or to exercise a certain activity for a period of 2 to 5 years .

According to art. 274 para. (1) of the Criminal Procedure Code, the criminal investigation body or the prosecutor notified in the manner provided for in art. 262 and 273 orders within 30 days, by ordinance, the initiation of the criminal investigation in the event that, from the content of the referral act or the findings, it results at least a reasonable suspicion that a crime has been committed and there are no circumstances that exclude criminal prosecution, informing about it the person who submitted the notification or the respective body.

Art. 281 para. (1) of the Criminal Procedure Code states that if, after examining the report of the criminal investigation body and the case materials, the prosecutor considers that the accumulated evidence is conclusive and sufficient, he issues an indictment order against the person.

Art. 291 of the Criminal Procedure Code provides that if the prosecutor finds that the provisions of this code regarding the criminal investigation have been respected, that the criminal investigation is complete, that there is sufficient and legally administered evidence, he orders one of the following solutions:

1) when it appears from the case materials that the act exists, that the perpetrator has been identified and that he is criminally liable:

a) indict the perpetrator according to the provisions of art. 281 and 282, if he was not indicted during the criminal investigation, then draw up the indictment ordering the referral of the case to court;

b) if the perpetrator was indicted during the criminal investigation, draw up the indictment ordering the referral of the case to court;

2) by a reasoned ordinance, orders the termination of the criminal investigation, the closure of the criminal case or the removal of the person from investigation.

c. Reasoning

The SCJ special panel noted in its decision of 1 August 2023 that by declaring the income of his wife's companies, which included both the salary and dividends effectively received by the candidate's wife, the candidate had acted in good faith, thus removing the serious doubts regarding the disparity between the information in the annual declarations and that provided by the tax authority. The difference of 56,279 MDL, between the amounts declared to NIA and the amounts of total revenue for the companies reported to NBS, could not be considered a substantial difference, as its value does not exceed 20 average monthly salaries per economy. The SCJ special panel determined that the Commission did not give proper consideration to the updated information from the tax authorities about the revenue of the candidate's wife's businesses during the evaluation process.

The SCJ special panel further noted that the candidate had not concealed, diminished, or disguised his wife's income from her management activities in the companies concerned to the extent that her income would be wrongful, inexplicable, or even carrying an implication of illegality, as suggested by the Venice Commission in *amicus curiae* opinion (CDL-AD(2022)011, § 9-10). With reference to the *amicus curiae* opinion (CDL-AD(2022)011, § 9-10), the decision to not pass the candidate could be justified in the case of a simple doubt based on a risk assessment. However, according to the SCJ special panel, this doubt must be linked to an indication of illegality, which was not observed in this case. The severity level of the omissions did not reach

the minimum threshold prescribed by law, and there are no justifications to hold serious doubts about this aspect.

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.

The Commission is required to verify that the candidate has complied with the legal regime of declaring assets and personal interests. In assessing the financial integrity of the candidate, the Commission is also required to verify the sources of income of the candidate and, where appropriate, of the close persons to the candidate.

During the years 2018 – 2021, the candidate's wife underreported her income to STS in most years while the candidate overdeclared her income in his NIA annual declarations. During those years, the candidate declared total income of his wife of 2,864,379 MDL in his annual declarations while only 1,059,966 MDL was reported to STS as his wife's personal income. Just after the candidate received the first round of questions from the Commission in September 2022 which asked about unpaid taxes and after a search of the candidate's home by the National Anti-Corruption Center in a criminal case opened against the candidate at that time, the candidate's wife submitted corrected taxable income amounts to STS (2,053,742 MDL) reflected in the document that bears a stamp from the STS with the date of 16 September 2022. The correction submitted to STS reflected 993,776 MDL of income not previously reported. Even with the candidate's wife's corrected reporting of her income to STS (2,053,742 MDL), the candidate's declared income for his wife (2,864,379 MDL) was still greater than her corrected reporting to STS by 810,637 MDL.

In response to written questions from the Commission during the initial evaluation, the candidate informed the Commission that, as a result of cancellations of some invoices, the reports for 2019 and 2021 for his wife's company had been corrected. This appears to be a misstatement by the candidate because the corrected figures submitted to STS related to his wife's income, not the companies' income. Further written questions from the Commission about his wife's salary, dividends or loans from her companies were not responded to by the candidate.

Before the SCJ special panel, the candidate explained the amounts he declared to NIA for his wife's income in terms of her companies' total revenue as reported to NBS which he claimed he thought was what he was required to declare, not the dividends paid to his wife. However, 2018 was the only year in which the amount that the candidate declared to NIA was same as the amount of the companies' total revenue as reported to NBS. The NIA amounts and the NBS amounts are not the same in any other year. Moreover, the amounts declared to NIA also did not track the companies' net profit reported to NBS in any of the years. The candidate argued to the SCJ special panel and the panel noted that the difference between the amount of the candidate's wife's income that he declared to NIA for 2018 - 2021 (2,864,379 MDL) and the total revenue for the companies

reported to NBS for 2018 - 2021 (2,808,100 MDL) was only 56,379 MDL, an amount the candidate characterized as insignificant. However, a business's total revenues cannot be equated to an owner's income from the business as they do not reflect any of the expenses incurred producing that amount of revenue. And the candidate's declared income for his wife (2,864,379 MDL) was still 432,779 MDL greater than the net profit for his wife's companies (2,431,600 MDL), arguably a more rational basis for comparison to his wife's income during those years than the gross revenue of the companies.

The candidate gave no other explanation why the amount of income that he declared to NIA for his wife (2,864,379 MDL) was 1,800,000 MDL more than the amount initially reported to STS (1,059,966 MDL). The candidate also did not explain why the amount of his wife's income he declared to NIA (2,864,379 MDL) was still 800,000 MDL more than the adjusted amount reported to STS (2,053,742). Even 800,000 MDL is a significant differential: it represents 131.8 average monthly salaries per economy in 2018, 116.2 average monthly salaries in 2019,101.9 average monthly salaries in 2020 and 93 average monthly salaries in 2021.[38] The SCJ special panel did not comment upon these differences and their significance.

The candidate also did not explain why the amount of his wife's income initially reported to STS (1,059,966 MDL) between 2019 - 2021 was almost 1,000,000 MDL lower than the corrected amounts submitted to STS on 16 September 2022 (2,053,742 MDL), after the Commission's first round of questions to the candidate. For 2019 - 2022, the candidate's wife owed taxes of 17,344 MDL and late payment fees of 7,520.79 MDL for a total of 24,864.79 MDL. The tax violations of the candidate's wife were significant under the law. Art. 231 paras. (4) and (5) of the Tax Code provide that a tax violation is considered insignificant only for tax/fees and similar fiscal obligations owed in amounts up to 5000 MDL for legal entities and 500 MDL for individuals; otherwise, the tax violation is significant.

On 3 April 2023 the candidate was indicted for allegedly committing acts related to false declarations of assets and personal interests during the period 2018 - 2021 in criminal case No. 2022970408, under art. 352[1] para. (2) of the Criminal Code. On 3 April 2023, the criminal case was submitted to the court with an indictment for examination on the merits. Currently, the criminal case is pending at the Hincesti Court, Central Office. According to the candidate as of January 2024, the last preliminary court hearing was held on 15 November 2023, during which the issues regarding the criminal case were discussed, submission of applications, petitions, list of the parties' evidence. As of the hearing during the resumed evaluation, the next court hearing was set for 19 April 2024. While criminal charges cannot be considered as evidence of wrongdoing and there is a presumption of innocence accorded to the candidate as a defendant, the prosecution was required by law to establish that there was at least reasonable suspicion that

[38] Average monthly salary per economy in 2018 – 6,150 MDL, 2019 – 6,975 MDL, 2020 – 7,953 MDL, 2021 – 8,716 MDL.

the offense was committed by the candidate in order to proceed with the currently pending charges. (See Criminal Procedure Code art. 274 para. (1), art. 281 para. (1) and art. 291.) To the extent that there was reasonable suspicion sufficient to charge the candidate with criminal conduct, such cause inevitably satisfies the serious doubt standard in the evaluation proceedings. If there is a reasonable suspicion that the candidate committed a crime related to financial integrity, there necessarily are serious doubts about the candidate's financial and ethical integrity.

Based on the foregoing, the Commission's serious doubts remain about the candidate's financial and ethical integrity arising out of the candidate's overstatement of his wife's income in his annual declarations for 2018 - 2021, which is the subject of pending criminal charges.

In its decision, the SCJ special panel concluded that the Commission failed to treat the candidate equally with other candidates because the panel identified instances in the Commission's practice both before and after the candidate's evaluation where the Commission noted violations of the legal regime for declaring assets in the cases of other candidates. According to the SCJ special panel, those violations were manifested through the failure to declare assets and in discrepancies in the prices of real estate or moveable property, but the Commission accepted the explanations provided by the candidates. The SCJ special panel concluded that the Commission had not provided factual elements indicating why the candidate was assessed as lacking integrity compared to other candidates in similar situations. As stated above, in assessing and deciding upon the criteria related to financial and ethical integrity in accordance with the provisions of the Law No. 26/2022, 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 and will treat differently persons whose situations are significantly different.

Although the SCJ special panel did not include a clear description of similar facts between the candidate's case and the other decision(s) it referred to, the Commission identified only two pass decisions involving failures to disclose earned income in annual declarations to NIA. As the Commission noted in both of those decisions, in assessing the seriousness of a failure to disclose income, the Commission must consider factors including the amount of income not declared, the type or source of the income, whether there is corroboration for the source and amount of the income and the reliability of that corroboration. In one pass decision, the candidate had not declared three sources of income in a single annual declaration submitted to the Commission during the evaluation process. In that matter, all taxes on the income had been duly and timely paid, the candidate acknowledged the omission and promptly corrected the declaration. The total amount of the income not declared was 94,849 MDL. In the other pass decision, the income in question was that of the candidate's former husband's nominal income as a day laborer in construction between 2012 and 2015. Neither candidate had been criminally charged with respect to their declarations. The facts in both decisions differ substantially from the facts regarding the candidate's overdeclaration of his wife's income, for which taxes had not been fully paid during 2018 and 2021.

In light of 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. a) and para. 5 lit. b) and d), and ethical integrity as per art. 8 para. (2) lit. c) of Law No. 26/2022 with respect to the declaration of assets and personal interests, and in particular the income of his wife from the two companies she owns, in the manner prescribed by law, which have not been mitigated by the candidate.

2. Imbalance of wealth in 2017

a. The facts

Based on information provided by the candidate and by relevant authorities during the initial evaluation, the Commission identified a number of years during 2007 - 2021, in which the candidate's expenditures each year exceeded his income for that year. During the initial evaluation, the Commission focused in particular on the years in which expenditures appeared to have exceeded the candidate's income by more than 100,000 MDL per year: 2017 and 2019.

The Commission calculated incoming and outgoing financial flows in accordance with the "Annex: Unjustified wealth" in the Commission's Evaluation Rules (hereinafter "Evaluation Rules"). The Commission calculated the consumption expenditures for population as per para. 3.5 of the said Annex. The candidate did not respond to written questions about issues related to inexplicable wealth prior to the hearing during the initial evaluation. At the hearing during the initial evaluation, the candidate commented upon certain aspects of the calculations presented, which led to additional post-hearing questions and answers.

In 2017, the candidate had five sources of income: (1) income related to his position as judge and income from his activities at the National Institute of Justice; (2) interest income of the candidate's wife from a bank account; (3) income from an allowance for the children; (4) savings from the previous year and (5) a deposit. In 2017, the candidate had seven categories of expenditures: (1) school fees for one of his children; (2) fees relating to an investment fund; (3) expenses for a holiday; (4) partial reimbursement of a loan; (5) a bank deposit of his wife's, and (6) cash savings. In this financial overview, the Commission included (7) the Consumption Expenditures for Population (CEP)[39] for 2017 for the candidate's family. While the amount of available savings and income for 2017 total 470,866 MDL, the amount of declared expenses totals 629,056 MDL. In 2017, the total amount of the candidate's expenses appears to have exceeded the total amount of income and savings by 158,190 MDL.

[39] The Consumption Expenditures for Population (CEP) are determined and published on annual basis by the National Bureau of Statistics (NBS).

Income MDL 2017		Expenses/Savings MDL 201	
Salary (net)	156,499 MDL	School fee	32,290 MDL
Moldovan bank interest	4,140 MDL	Investment fee	10,400 MDL
Child allowance	49,927 MDL	Holiday expense	40,000 MDL
2016 cash savings	120,300 MDL	Bank loan reimbursement	53,376 MDL
2016 Deposit	140,022 MDL	2017 savings	190,350 MDL
		Bank deposit	195,000 MDL
		CEP[40]	107,640 MDL
Total	**470,866 MDL**	**Total**	**629,056 MDL**
Difference - 158,190 MDL			
Candidate's objections:			
		2017 savings	0 MDL
		Bank deposit	48,927 MDL

At the hearing during the initial evaluation, the candidate confirmed all the amounts presented in the income and expenditures columns of the chart except for the savings of 190,350 MDL and the 195,000 MDL bank deposit. In relation to the savings, the candidate consulted his 2017 annual declaration and was not able to find the amount of 190,350 MDL. In relation to the 195,000 MDL bank deposit, he clarified that this reflected deposits to an account belonging to his wife in which child allowances had been deposited over the years. The amount reflected in the chart therefore included child allowances received in previous years.

The Commission sent post-hearing questions to the candidate about the two contested amounts. In his answer, the candidate explained that the bank deposit of 195,000 MDL is erroneous because it consisted of 140,000 MDL saved from 2016 and only 49,927 MDL from allowances in 2017, which is also reflected in the income column. He claimed, therefore, that only 49,927 MDL should be considered as additional savings. With respect to the 2017 savings, the candidate mentioned that he was still unable to understand where the amount of 190,350 MDL came from. However, in the post-hearing written communication, the Commission identified the sources for this amount as 50,000 MDL and 7,000 EUR (est. 140,350 MDL), which the candidate had declared in his 2017 annual declaration as cash savings.

Before the SCJ special panel, the candidate conceded that the 190,350 MDL was cash savings that he had declared for 2017. As to the 195,000 MDL bank deposit attributed to 140,000 MDL of child allowances carried over from 2016 and 49,927 MDL additional allowance payments in 2017, the candidate claimed for the first time that he had spent 144,666 MDL during 2017 and that he should have declared 195,000 MDL minus 144,666 MDL, leaving a negative balance of only 16,524 MDL (notwithstanding that 195,000 MDL minus 144,666 MDL leaves 50,334

[40] CEP calculated for five family members in urban area.

MDL). According to the candidate, a negative balance of 16,524 MDL is "*a non-essential difference*". The SCJ special panel agreed.

During the resumed evaluation, the bank records for the candidate's wife's account in which the child allowances were deposited were reviewed. Consistent with the candidate's declaration to NIA, as of 31 December 2016, the candidate's wife had saved 140,022 MDL in child allowances in her account. As of 31 December 2017, there was 199,737 MDL on deposit in her account. (The candidate's wife received a monthly child allowance of 4,160 MDL). During 2017, no amounts were withdrawn from this account.

At the hearing during the resumed evaluation, the candidate claimed not to be aware of what bank records for the account showed and claimed that he only knew that he declared a lower balance in the account in 2018 and therefore it could be assumed his family had spent the 144,666 MDL in 2017. Bank records for the child allowances account show the balance in the account as of 31 March 2018, after the candidate's submission of his 2017 annual declaration, was 212,219 MDL.

The candidate's income and expense imbalance for 2017, as adjusted:

Income MDL 2017		**Expenses/Savings MDL 2017**	
Salary (net)	156,499 MDL	School fee	32,290 MDL
Moldovan bank interest	4,140 MDL	Investment fee	10,400 MDL
Child allowance	49,927 MDL	Holiday expense	40,000 MDL
2016 cash savings	120,300 MDL	Bank loan reimbursement	53,376 MDL
2016 Deposit	140,022 MDL	2017 savings	190,350 MDL
		Bank deposit	199,737 MDL
		CEP	107,640 MDL
Total	**470,888 MDL**	**Total**	**633,793 MDL**
FINAL IMBALANCE: – 162,905 MDL			

During the initial evaluation, the Commission also raised the issue of an income/expense imbalance for the candidate in 2019. For 2019, the candidate had declared 646,496 MDL in bank savings. The SCJ special panel accepted the candidate's explanation that those savings included 534,045 MDL in his wife's company's bank account. During the resumed evaluation, the Commission confirmed that the funds were maintained in his wife's company's account and thus, the serious doubts about an income/expense imbalance for 2019 were mitigated. Thus, the issue of wealth imbalance for 2019 was not raised in the resumed evaluation.

b. The law

In determining whether a candidate meets the criterion of financial integrity, the Commission

must verify that the candidate has complied with the legal regime of declaring assets and personal interests as per art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022, and 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.

Art. 5 para. (4) of Law No. 133/2016 on declaration of assets and personal interests provides that the responsibility for the timely submission of the declaration, as well as for the truthfulness and completeness of the information lies with the person submitting it.

The Commission's 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 they relate to prohibited secondary incomes, tax evasion, or violation of anti-money laundering provisions (art. 3 para. (1)). The rules also provide that the Annex to the Evaluation Rules defines the method for calculating undeclared wealth (art. 3 para. (2)).

According to art. 4 para. (1) lit. d) of Law No. 133/2016 on declaration of assets and personal interests, are to be declared the financial assets of the subject of the declaration, namely the monetary amount in the national currency or a foreign currency which exceeds the value of 15 average national salaries, and which does not represent the object of a deposit in a financial institution. Bank accounts, creation units in investment funds, equivalent forms of investments and savings, investments, bonds, checks, bills of exchange, loan certificates, other documents that include personal patrimonial rights of the subject of the declaration, of his/her family members or of his/her cohabitant, direct investments in the national currency or in a foreign currency, made by him/her or by his/her family members or his/her cohabitant, as well as other financial assets, if their combined value exceeds 15 average national salaries.

Instructions on how to complete the declaration of wealth and personal interests approved by the NIA Order No. 2 of 13 January 2017, under the Law No. 133/2016 on declaration of assets and personal interests, establishes in para. (14), that the subject of the declaration has the obligation to declare the financial assets held by subject, including the family members and his/her concubine, both in the country and abroad, on the date of submission of the declaration. The information on the financial declarations in the country and/or abroad shall be completed as follows: In section A "Bank accounts, investments in investment funds and/or in other equivalent forms of saving and investing in the country and/or abroad", the information about financial assets shall be declared only if, at the date of submission of the declaration, the subject together with the family members or the cohabitee registers balances/investments/savings, the total value of which exceeds the value of 15 average salaries in the economy. If this value threshold is exceeded, the subject of the declaration will indicate separately each account or form of saving / investment regardless of their individual value: "Category" – one of the options: (1) current account or equivalent forms; (2) bank deposit or equivalent forms; (3) investment funds or equivalent forms, including private pension funds or other accumulation schemes; "Amount" – the amount/balance

in national currency or in foreign currency on the date of submission of the declaration shall be indicated.

According to the Government Decision No. 1233/2016 on the approval of the amount of the average monthly salary in the economy, the average salary per economy in 2017 was 5,300 MDL. Pursuant to art. 8 para. (2) lit. c), para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 a candidate's failure to declare personal assets and interests in the manner established by law is a failure to meet both the financial integrity criterion and the ethical integrity criterion.

c. Reasoning

During the proceedings before the SCJ special panel, the candidate represented to the panel that the imbalance between his income and expenses should be reduced because he had spent funds that had been considered savings and the remaining differential was "non-essential". The SCJ special panel accepted this explanation without any documentation.

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.

In determining whether the candidate meets the criterion of financial integrity, the Commission must verify that the candidate complied with the legal regime of declaring assets and that the candidate's wealth acquired does not exceed declared revenues.

With respect to the candidate's wealth in 2017, during the initial evaluation, the Commission concluded that the candidate did not have sufficient lawful income to justify the excessive amount of expenses. The Commission made its preliminary tabulations based on data obtained from various institutions, calculated in accordance with the Annex ("Unjustified wealth") to the Evaluation Rules, which defines the method for calculating undeclared wealth (art. 3 para. (2) of Evaluation Rules). For 2017, in preliminary tabulations the Commission found a negative difference of 158,190 MDL.

With respect to year 2017, the candidate had objections about bank savings of 190,350 MDL and the 195,000 MDL bank deposit. In response to post-hearing questions, the candidate stated that he could not identify the origin of the 190,350 MDL savings identified by the Commission, which were in fact based on the candidate's 2017 annual declaration. In relation to the 195,000 MDL, the candidate explained that he declared a total of 140,000 MDL saved from 2016 and 49,927 MDL obtained as allowances in 2017, which, therefore, means that only 49,927 MDL can be considered as savings. In assessing the imbalance of wealth and expenses, the Commission included the 140,000 MDL in the income column as a carry-over from the previous year, which means that these were funds available to the candidate in year 2017. As the candidate explained, 49,927 MDL were added onto this account, which added up to savings of 195,000 MDL (actually

199,737 MDL) at the end of 2017. The Commission did not assume that the whole amount was generated in 2017 alone and accurately reflected the carryover savings as income and the total savings at the end of 2017 in the expense column. Therefore, the explanations of the candidate did not mitigate the serious doubts of wealth imbalance for year 2017.

During the proceedings before the SCJ special panel, the candidate conceded that the 190,350 MDL was cash savings that he had declared for 2017. As to the 199,737 MDL bank deposit attributed to 140,000 MDL of child allowances carried over from 2016 and 49,927 MDL additional allowance payments in 2017, the candidate claimed for the first time that he had spent 144,666 MDL during 2017 and that he should have declared 195,000 MDL minus 144,666 MDL, leaving a negative balance of only 16,524 MDL (notwithstanding that 195,000 MDL minus 144,666 MDL leaves 50,334 MDL and the correct total of 199,737 MDL minus 144,666 leaves 55,071 MDL). The candidate claimed, and the SCJ special panel agreed, that a negative balance of 16,524 MDL was "*a non-essential difference in the appellant's opinion*".

During the resumed evaluation, the bank records relating to the candidate's wife's child allowances account revealed that there were no withdrawals from the account during 2017 and that the amount on deposit on 31 December 2017 was 199,737 MDL.

At the hearing during the resumed evaluation, the candidate claimed not to be aware of what bank records for the account showed and claimed that he only knew that he declared a lower balance in the account in his 2018 annual declaration and therefore it could be assumed his family had spent the 144,666 MDL in 2017.

Bank records for the child allowances account show the balance in the account as of 31 March 2018, after the candidate's submission of his 2017 annual declaration, was 212,219 MDL. Thus, whatever withdrawals the candidate might have made from the account later in 2018, they had no impact on the balance for 2017, namely 199,737 MDL.

In light of 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. d) of Law No. 26/2022 with respect to wealth imbalance for 2017 due to the candidate's expenses exceeding his income by 162,905 MDL in 2017, which have not been mitigated. The Commission's doubts concerning the candidate's integrity were heightened by the candidate's assertion to the SCJ special panel that his expenses should be reduced by 144,666 MDL because he claimed to have spent that amount from a savings deposit in 2017. Bank records, however, reveal no withdrawals from the account during that year.

3. Privatization of service housing, expansion of the apartment and allocation of land plot

Privatization of a service apartment

On 6 March 2006, the candidate, who was then working as a prosecutor, submitted a request to the General Prosecutor to be included in the list of persons to be provided with housing in Chisinau municipality and on 4 May 2006, the candidate concluded an investment contract for an 80.5 sq.m. apartment in Chisinau municipality at a preferential price. The candidate registered the apartment on 19 April 2013 as his property.

On 17 April 2006, the candidate, still working as a prosecutor, also applied for a service apartment in Chisinau municipality, based on art. 38 of Law No. 118/2003 on the Prosecutor's Office. That law, as in force in 2006, provides, in relevant part, that "if the prosecutor does not have a home or needs to improve housing conditions, the local public administration authority is obliged within a maximum of one year from his appointment, to provide him with housing (apartment or house) of service during the period of activity in the respective locality".

In response to questions from the Commission during the initial evaluation, the candidate stated that the service housing he ultimately received in Chisinau municipality, "was obtained by the Postică family, through privatization, in 2009, during the activity of the undersigned in the prosecutor's office bodies, under art. 38 of the Law on the Prosecutor's Office, by enforcing a judicial judgement".

During the resumed evaluation, the candidate was asked in written questions to explain the steps he undertook in order to be allocated the Chisinau service housing. The following includes the candidate's responses (in italics) followed by the information obtained by the Commission during the initial evaluation and the resumed evaluation:

<u>Request based on art. 38 of Law No. 118/2003 on Prosecutor's Office and art. 11 of the Land Code No. 828/1991 (newly formed families).</u>

"Being employed in the prosecution bodies since 2000, on 17.04.2006 I addressed a request to the Council of mun. Chisinau, requesting the granting of dwelling space, in accordance with the provisions of art. 38 of the Law on Prosecutor's Office, in the wording of the date of filing the petition; or of a sector of land for the construction of the dwelling house, in accordance with the provisions of art. 11 Land Code, taking into account the fact that I, together with my wife [name omitted] at that time, did not have our own home, and in the house privatized by my parents, [names and location of house omitted], my parents lived with my younger sister, [name omitted], and the space of just over 40 sq.m. was insufficient for our family's cohabitation. By the Chisinau Municipal I was informed about the lack of state housing space, which is why the request for housing supply was impossible to be satisfied."

The candidate produced for the Commission his request to the Chisinau Municipal Council (hereinafter "CMC") dated 17 April 2006 requesting the allocation of service housing or a land plot and the CMC's response dated 10 May 2006 regarding the inability to satisfy the request for housing.

Sued the Local Public Authority.

"On 15.06.2006 I filed a request to sue the Chisinau Municipal Council, requesting the obligation of the Local Public Administration to grant me housing space, in accordance with the provisions of art. 38 of the Law on Prosecutor's Office, as well as art. 42-44 of the Housing Code or land for the construction of a dwelling house, in accordance with the provisions of art. 11 of the Land Code. My wife [name omitted] was also involved in the lawsuit as co-applicant."

The candidate produced his request for summons dated 15 June 2006.

Decision of first instance court.

"By decision of the Centru Court, mun. Chisinau on October 31, 2006 was admitted the application submitted with the obligation of the Chisinau Municipal Council to provide my family with housing space, in accordance with the provisions of art. 42-44 of the Housing Code."

The candidate did not produce the decision of the Centru Court, Chisinau municipality, only the enforcement title issued by that court that obligated CMC to ensure Postica spouses housing. The decision was not available on the Integrated Case Management System or from the Chisinau Court of Appeal`s archives.

Court of Appeal decision and SCJ decision.

"By the decision of the Chisinau Court of Appeal of 13 March 2007 the decision [of the Chisinau Court, Centru Office] was upheld, and by the decision of the Supreme Court of Justice of 14.07.2007 the decision of the first instance was partially modified, obliging the Council of mun. Chisinau to provide my family with service housing."

The candidate did not provide decisions of the Court of Appeal or to the SCJ. These decisions were also not available from the Integrated Case Management System or from the Chisinau Court of Appeal's archives.

Enforcement of the decision and cancellation of enforcement due to distribution order.

"On 07.05.2007 the bailiff [name omitted] initiated the procedure for enforcement of the decision on granting dwelling space. By the order of the bailiff of 15 July 2008, the enforcement procedure was terminated, in connection with the release by the Council of mun. Chisinau distribution order

No. 012692 from 22.022008 for apartment [address omitted]."

The number of the distribution order referred to by the candidate relates in fact to a different apartment, one located on a different street. During the resumed evaluation, after information had been obtained from CMC and the bailiff, the candidate conceded that this distribution order did not relate to his apartment at [address omitted].

By order of the CMC distribution order no. 012692 dated 22 February 2008, apartment [address omitted] was allocated to the candidate "as service housing".

Change of legal status: service housing to state apartment.

"Subsequently, my wife and I approached with a request to change the legal status of the assigned apartment from "service apartment" to "state apartment", in connection with the fact of birth of the first child in 2008 and the need to invest financial sources to bring to satisfactory condition the apartment, which was in deplorable conditions at the time of award. Already after changing the legal status of the apartment, we applied for privatization of the apartment."

Notwithstanding requests by the Commission, the candidate did not produce his application to change the legal status of the apartment or any documents related to that request during either the initial evaluation or the resumed evaluation. During the resumed evaluation, the Commission obtained the documents related to the change of the legal status of the apartment from the Chisinau Municipal Archive.

The candidate's request, dated 5 August 2008, sought to change the legal status of the Chisinau service apartment, "which has service status" by the issuance of a distribution voucher with state status. The candidate also requested the inclusion of his wife in the voucher. The candidate did not disclose in his request that since May 2006, he had been in contract to purchase an apartment through the preferential price housing program for prosecutors.

By order of the Mayor's Hall dated 25 September 2008, the legal status of the Chisinau service apartment was changed from service housing and allocated to the candidate and his wife. The candidate produced the distribution voucher dated 26 September 2008 to the Commission during the resumed evaluation. The order of the Mayor's Hall states that the change of status of the apartment was based on the request of the Buiucani Prosecutor's Office and documents submitted by the candidate.

During the resumed evaluation, the Commission requested a copy of the request of the Buiucani Prosecution Office No. 14/08-7823 of 05.08.2008, referred to in the CMC order changing the status of the apartment and all other materials relevant to the allocation of service housing to the candidate. According to the Buiucani Prosecutor's Office, after checking their 2008 register for communications with higher and legal authorities, with central and local public administration

bodies, “the material act constituting the subject of the request has not been identified.”

The Commission did obtain the request submitted by the Buiucani Prosecutor’s Office from the Chisinau Municipal Archive. That request, submitted the same day as the candidate’s, makes clear that the change in the legal status of the apartment is being sought to allow the candidate to privatize the property. “In connection with the lack of housing space for the family of the prosecutor Aurel Postică in the Buiucani Prosecutor's Office, Chisinau municipality, taking into account the uninterrupted activity of the latter in the prosecutor's offices from the year 2000 until now, the period in which neither he nor his family members were provided with housing, I respectfully request modification of the legal status of the service apartment at the address [omitted] issued to the family of prosecutor Aurel Postică by distribution order No. 012691 of 22.02.2008 pursuant to art. 38 of the Law on the Prosecutor's Office of 14.03.2003, into the state apartment status, in order to have the possibility to privatize the residential space and to carry out repairs in the building, with the aim of settling the family in it.”

On 11 February 2009, the candidate’s wife and daughter obtained the Chisinau service apartment through privatization for 227.87 MDL (est. 17 EUR). The candidate and his wife had the option to privatize the apartment in their name at a commercial price or to privatize the apartment in the name of his wife and daughter at a nominal price. Asked during the initial evaluation whether he considered this course of action illegal or unethical, the candidate replied that he had merely benefitted from a legal provision.

The Chisinau service apartment originally allocated to the candidate was 32.60 sq.m. On 3 November 2010, an extra 28.9 sq.m. were added to the apartment, thereby becoming an apartment of 61.5 sq.m., almost twice its original size, by decision of the CMC following a request by the candidate’s wife. The price of the contract was not modified. At that time, the candidate’s family was comprised of the candidate, his wife and one child. Documents obtained by the Commission during the resumed evaluation include requests for the addition of an apartment adjoining the Chisinau service apartment submitted by both the candidate and his wife, although only the candidate’s wife was the legal owner of the apartment. A request was also submitted by the Buiucani Prefect, after he received a request from the Interim Chief Prosecutor of the Buiucani Prosecutor’s Office, where the candidate was then employed. These requests urged the addition of an adjoining apartment stating that the living space of the candidate’s apartment was only 26.5 sq.m. and that the apartment did not have a separate entrance.

In 2017, the apartment was divided into two units. A portion was sold in 2018 for 435,000 MDL. According to the candidate at the hearing during the resumed evaluation, pursuant to an agreement with the developer who purchased a portion of the apartment in 2018, the candidate was permitted to purchase an apartment at the same price in a neighboring building. That apartment was sold in 2020 for 932,827 MDL. The candidate still owns the remaining unit in the Chisinau service apartment that was privatized, which the candidate stated at the hearing during the resumed evaluation was presently unoccupied and unused. Thus, the property allocated to the candidate

only as service housing which the candidate privatized at nominal cost using his wife and his daughter has so far yielded 932,827 MDL profit for the candidate and he still owns a portion of the property.

In response to written questions during the resumed evaluation, the candidate stated: "In conclusion, I would like to mention that in the process of privatization of the apartment whose "service" status was changed to "state" status, I did not use my position to obtain personal benefits, I did not have any inappropriate influence on decision-makers within the local public administration, I did not manifest dubious behavior, because it was a routine procedure that hundreds of civil servants went through in the 2000s (judges, prosecutors, policemen, etc.). Also, as a result of this procedure, I did not prejudice in any way the state or municipal housing fund, I did not violate any deontological norms, because in the end I was going to get the house anyway under art. 5 of the Law on privatization of housing fund No. 1324/1993 (in force at the time of privatization of the apartment), as I had been working in the prosecution bodies for more than 10 years, resigning in 2011 in connection with my appointment as judge."

At the hearing during the resumed evaluation, the candidate conceded that Law No. 1324/1993 on privatization of the housing fund provided that service housing, whose tenants have worked for less than ten years at the respective public unit, could not be sold or transferred free of charge in private ownership. The candidate denied, however, that his request to change the legal status of the apartment in order to privatize it was contrary to law. Because he ultimately worked in the prosecution's office for 11 years, he claimed he was entitled to privatize the property and since he did not sell or exchange it after the privatization in 2009, the privatization was not contrary to law.

When the candidate changed the legal status of the Chisinau service apartment from service housing to state housing in 2008 in order to privatize it, he had been employed with the prosecutor's office since 2000.

Allocation of land plot

According to the candidate's statements during the initial evaluation, between 1985 and 2007, he lived with his parents at their house in Durlesti town. At the hearing during the initial evaluation, the candidate stated that in 2006, the year he applied for the preferential apartment, he lived for part of the time in a rented apartment with his wife and part of the time with his parents. The candidate informed the Commission during the initial evaluation that he had submitted a request for a land plot in 2005 or 2006, when there was no certainty about the outcome of his application for a preferential price apartment. The Commission has no document filed with the authorities in Durlesti town requesting a land plot. At the hearing, the candidate admitted that he did not inform the Durlesti local Council about the other application.

On 8 February 2010, the candidate became the owner of a land plot in Durlesti town of 0.0282

ha., pursuant to the request filed in April 2006. This land plot was allocated to the candidate free of charge by a Decision of the Durlesti local Council dated 29 September 2009 pursuant to art. 11 of the Land Code in force at the time. According to this provision, the land plot was granted to the candidate as a newly formed family and for the construction of a house. The candidate and his family, however, continued to live in the privatized apartment in Chisinau municipality and the candidate was working as a prosecutor in Buiucani sector, Chisinau municipality. The candidate mentioned that initially they intended to construct a house on this plot but then decided to sell the plot and use the money to renovate the privatized apartment and the candidate sold the plot of land on 6 May 2010, less than three months after becoming the owner, for 132,512 MDL (est. 8,000 EUR).

At the hearing during the resumed evaluation, the candidate indicated that he started his family in 2005 and that they lived in an apartment in Chisinau municipality although he claims he maintained his address with his parents in Durlesti town until he obtained the privatized apartment in Chisinau municipality. The candidate confirmed that when he applied for the land plot he did not inform the Durlesti local Council that he was living in an apartment in Chisinau municipality and working in Chisinau municipality. He also confirmed that when he obtained the land plot, he did not inform the Durlești local Council that he had obtained a privatized apartment in Chisinau municipality, where he was living and working. He contended that he was not obligated to provide such information to the local Council. At the hearing during the resumed evaluation, the candidate confirmed that he accepted the land plot to sell in order to finance improvements to the privatized apartment in Chisinau municipality.

b. The law

In determining whether a candidate meets the criterion of ethical integrity, the Commission must verify that the candidate 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 as per art. 8 para. (2) lit. a) of Law No. 26/2022.

Art. 8 para. (4) lit. b) of Law No. 26/2022 requires the Commission to determine that the candidate's wealth acquired in the past 15 years corresponds to declared revenues.

Art. 8 para. (5) lit. c) of Law No. 26/2022, requires the Commission to verify the method of acquiring assets owned or possessed by the candidate or close persons, as well as the expenses for the maintenance of such assets.

Art. 38 of Law No. 118/2003 on the Prosecutor's Office (in force in 2008) provides that if the prosecutor does not have a home or needs to improve housing conditions, the local public administration authority is obliged, within a maximum of one year from his appointment, to provide him with housing (apartment or house) of service during the period of activity in the

respective locality.

Art. 5 para. (2) of Law No. 1324/1993 on privatization of housing fund (in force in 2009), provides that property in closed military towns, dormitories, service housing (whose tenants have worked for less than 10 years at the respective unit), damaged housing and irreparable, the houses to be demolished, the cantons and other constructions that are on the balance sheet or in the property of the state forest fund – cannot be sold or transferred free of charge in private ownership.

Art. 11 of the Land Code No. 828/1991 (in force in 2009) provides that the local public administration authorities assign land to citizens free of charge, issuing them property titles: assign to newly formed families sectors of land from the inner-village reserve until it is exhausted for the construction of houses, outbuildings and gardens: in cities - from 0.04 up to 0.07 hectares, in rural areas - up to 0.12 hectares. The concrete dimensions of the land sectors are established by the local public administration authorities.

Prosecutor's Code of Ethics (2007), para. (6) lit. a) provides that outside working hours the prosecutor must have an impeccable behavior that would preserve and strengthen the trust of the population in the impartiality and prestige of the work of public authorities. Impeccable behavior of the prosecutor is defined as dignified and appropriate behavior in social life, based on the principles of morality, professional ethics and general culture, designed to ensure the good reputation of the prosecutor and efficient operation of the Prosecutor's Office (para. (2) lit. a)).

According to the 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 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 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.

c. Reasoning

i. Three housing benefit programs

In its decision annulling the Commission's initial evaluation decision, the SCJ special panel found that the candidate was pursuing the legitimate goal of improving his living conditions when he submitted three applications in the period 2005 - 2007 for housing benefit programs and that the approval of the applications was not solely dependent on the appellant. The SCJ special panel determined that the appellant's explanation appeared justified, namely that he could not reside

with his family of three in the privately privatized property of his father, nor in the property privatized by his wife and first daughter, as the family later expanded to five people. Additionally, the candidate's explanation for the sale of the land allocated by the local public administration was accepted by the SCJ special panel, as the funds obtained from the sale were used for the investment and renovation of the apartment acquired through the preferential price housing program for Prosecutor's Office staff, in which the appellant's family has been residing since 2013 until now.

Based upon the SCJ special panel's decision and the results of the information obtained during the resumed evaluation, the Commission determined not to include the issue of the propriety of the candidate taking advantage of three housing benefit programs in its determination on the candidate's passing or failing the evaluation in the resumed evaluation. At the same time, the Commission cannot agree that the candidate did not violate the principle of integrity under the criteria established by Law No. 26/2022, for the reasons mentioned below.

In the view of the Commission, while it may have been lawful for the candidate to apply for multiple housing benefits, once he secured housing, while he might have withdrawn his other requests, at a minimum, he should have at least disclosed the benefits he had already received to avoid the appearance that he was taking advantage of public benefits. This is particularly true with respect to the land plot. Within a few months of receiving the land plot, the candidate sold the plot and used the proceeds to improve his preferential priced apartment, which is contrary to the purpose of the program which gives free land plots to encourage the construction of housing to build up the community. The candidate has profited significantly from the three housing benefit programs. He still has the 80.5 sq.m. apartment purchased at a preferential price in Chisinau and one of the two units that resulted from the privatization of service housing provided to him as a prosecutor. In addition, he received 1,065,339 MDL profit from the sale of a portion of the privatized service apartment and the sale of the land plot. In the view of the Commission, the candidate taking advantage of three public housing benefit programs, without full disclosure to each of the benefits he was reaping from the others and the extent of the profit he has made would not be perceived as consistent with point 6 lit. a) of the Prosecutor's Code of Ethics of 2007, "prosecutors should demonstrate impeccable behavior that preserves and strengthens the trust of the population in the impartiality and prestige of the work of public authorities". Prosecutors who are seen as making use of the law in order to create opportunities for personal benefits demonstrate dubious behavior and undermine the trust of the population in their work and position.

As noted above, in light of the SCJ special panel's decision, the Commission is not including the issue of the propriety of the candidate taking advantage of three housing benefit programs in its determination on the candidate's passing or failing the evaluation in the resumed evaluation.

ii. Privatization of a service apartment

In its decision admitting the candidate's appeal and ordering the resumed evaluation of the candidate, the SCJ special panel noted the right of a prosecutor to service housing under the law if a prosecutor does not possess living space. The SCJ special panel also cited Law No. 1324/1993 regarding the privatization of public housing when citizens already owned another privately acquired property that did not result from privatization. The special panel did not address the legal prohibition on the privatization of service housing.

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.

The Commission is required to verify the method of acquiring property owned or possessed by the candidate or close persons and to verify the sources of income of the candidate and, where appropriate, of close persons.

The Commission has serious doubts about the candidate's ethical and financial integrity because of the method by which the candidate obtained an apartment as private property that had been allocated to him as service housing. The only judicial judgment relating to the candidate's request for housing obligated the CMC to provide the candidate service housing. Art. 38 of Law No. 118/2003 on the Prosecutor's Office (in force till March 2009) provides that if a prosecutor did not have a home or needs to improve housing conditions, the local public administration authority is obliged, within a maximum of one year from his appointment, to provide him with housing (apartment or house) of service during the period of activity in the respective locality. Art. 5 para. (2) of the Law on Privatization No. 1324/1993 (applicable at the time of privatization) prohibited the transfer of service housing into private ownership. Neither art. 38 of Law No. 118/2003 on the Prosecutor's Office or art. 5(2) of Law no. 1324/1993 on Privatization, permits a person who is furnished service housing to have the property declared the housing as state property in order to privatize that housing.

The candidate's request, dated 5 August 2008, sought the change of the legal status of the Chisinau service apartment, "which has service status", by the issuance of a distribution voucher with "state" status. The candidate also requested the inclusion of his wife in the voucher, evidencing his plan to have the property privatized in the candidate's wife's name, since he had earlier participated in a privatization of property. The candidate conceded at the hearing during the resumed evaluation that he sought to have the status of the apartment changed and to add his wife in the voucher in order to privatize the property. The Buiucani Prosecutor's letter in support of the candidate's request to change the legal status of the "service apartment" to "state apartment" status expressly notes that the change is requested in order for the candidate to have the possibility to privatize the residential space and to carry out repairs in the building, with the aim of settling his family in it. The candidate did not disclose in his request that, since May 2006,

he had been in contract to purchase an apartment through the preferential price housing program for prosecutors.

In this context, the Commission continues to have serious doubts whether the candidate meets the financial and ethical integrity criteria laid down in art. 8 of Law No. 26/2022. The candidate applied for service housing in April 2006 because of his position as a prosecutor. This process ended in March 2016 with the privatization of a 49.1 sq.m apartment in the name of his wife and child at a cost of only 1,098 MDL (est. 17 EUR). The very nature of service housing is inherently inconsistent with the permanence of private ownership.

The serious doubts have not been mitigated by the candidate during the resumed evaluation. To the contrary. The standard of impeccable behavior expected of prosecutors in their non-work related activities, as well as in their work-related duties, requires more than happened in this matter. The Prosecutor's Code of Ethics (2007), para. (6) lit. a) provides that outside working hours the prosecutor must have an impeccable behavior that would preserve and strengthen the trust of the population in the impartiality and prestige of the work of public authorities. Impeccable behavior of the prosecutor is defined as dignified and appropriate behavior in social life, based on the principles of morality, professional ethics and general culture, designed to ensure the good reputation of the prosecutor and efficient operation of the Prosecutor's Office (para. (2) lit. a)).

At the hearing during the resumed evaluation, the candidate conceded that Law No. 1324/1993 on privatization of the housing fund provided that service housing, whose tenants have worked for less than ten years at the respective public unit, could not be sold or transferred free of charge in private ownership. The candidate denied, however, that his request to change the legal status of the apartment in order to privatize it was contrary to law. Although he had worked in the prosecutor's office for only eight years when he sought to change the legal status of the property in order to privatize it, not 10 years as required by law, because he ultimately worked in the prosecution's office for 11 years, he claimed he was entitled to privatize the property and since he did not sell or exchange it after the privatization in 2009, the privatization was not contrary to law. This view relies on a distorted interpretation of the law on privatization and a rather cynical view of the eligibility requirements for privatization of service housing. In essence, because in the future he might be eligible to privatize service property, the fact that he did so when it was not permitted by law is of no consequence. The Commission cannot agree. Such manipulation of the law by a prosecutor to benefit himself at public expense leads to the inevitable conclusion that he compromised his integrity, probity and impartiality. Prosecutors who are seen as making use of the law to create opportunities for personal benefits demonstrate dubious behavior that undermines the trust of society in their work and position.

iii. Receipt of land plot

Likewise, the Commission's serious doubts about the candidate's acquisition of the land plot in

Durlesti remain. The land plot was granted to the candidate as a newly formed family and for the construction of a house. While the candidate had not received any housing benefits when he initially applied for three housing benefit programs between 2005 and 2007, when the candidate received the land plot in 2010, his family was not newly formed, the candidate had received and privatized a service apartment in Chisinau municipality and he had been in contract for four years to purchase another apartment in Chisinau municipality at a preferential price. The candidate and his family lived in the privatized apartment in Chisinau municipality and the candidate was working as a prosecutor in Buiucani Prosecutor's Office, Chisinau municipality. The candidate mentioned that initially they intended to construct a house on this plot but then decided to sell the plot and use the money to renovate the privatized apartment and the candidate sold the plot of land on 6 May 2010, less than three months after becoming the owner, for 132,512 MDL (est. 8,000 EUR). The candidate received the plot of land contrary to the criteria established by law with no intention of using the plot for the purpose intended and intending only to profit financially from it. Again, prosecutors who are seen as making use of the law to create opportunities for personal benefits demonstrate dubious behavior that undermines the trust of society in their work and position.

In light of 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 ethical integrity as per art. 8 para. (2) lit. a) of Law No. 26/2022 with respect to the candidate's method of acquiring and privatization of the 49.1 sq.m. service apartment in Chisinau municipality and by the candidate's receipt of a land plot to which he not legally entitled as he did not intend to use it for its intended purpose, which have not been mitigated by the candidate.

IV. Decision

Upon the resumed evaluation of the candidate pursuant to art. 14 para. (8) lit. b) and para. (10) of Law No. 26/2022, based on art. 8 para. (1), (2) lit. a) and c), (4) lit. a) and b) and (5) lit. b), c) and d) and art. 13 para. (5) of Law No. 26/2022, the Commission decided that the candidate does not meet the financial and ethical integrity criteria as serious doubts have been found as to the candidate's compliance with the ethical and financial integrity criteria and thus fails the evaluation.

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 positions as members 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.)[41] 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* status.[42] 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 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.

[41] *Sevdari v. Albania*, no. 40662/19, para. 87, 13 December 2022.
[42] *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.

V. Appeal and publication of the decision

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

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

Done in English and Romanian.

Signature: 

Herman von HEBEL
Chairman, Commission