

PROSECUTOR VETTING COMMISSION

Evaluation Rules for evaluations conducted according to the procedure and criteria regulated under Law No. 26/2022

The Prosecutor Vetting Commission, established under Law No. 252/2023 on the external evaluation of judges and prosecutor and amendments to some regulatory acts (*hereinafter* Law No. 252/2023) is required to evaluate candidates for the position of the self-administration bodies of judges and prosecutors (see Article 22 para. (12) and (13) of Law No. 252/2023). Such candidate evaluations are required to be conducted by the Prosecutor Vetting Commission according to the procedures and criteria regulated by Law No. 26/2022 on certain measures related to the selection of candidates for the position of member of the self-administration bodies of judges and prosecutors (*hereinafter* Law No. 26/2022).

Accordingly, these attached Evaluation Rules were approved by the Prosecutor Vetting Commission on 5 December 2023 for evaluations under Article 22 para. (12) and (13) of Law No. 252/2023 and as per Article 6 lit. a) of Law No. 26/2022. Acting in the interests of consistency and full transparency, the Prosecutor Vetting Commission approved the Evaluation Rules of the Independent Evaluation Commission in its totality.

**Evaluation Rules of
the Independent Evaluation Commission
for assessing the integrity of candidates
for the position of member in the self-administration bodies
of judges and prosecutors, pursuant to Law No. 26/2022**

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These Evaluation Rules regarding the evaluation of candidates (hereinafter Evaluation Rules) are adopted pursuant the provisions of Article 6 lit. a and b of Law No. 26/2022 “on certain measures relating to the selection of candidates for position of member in the self-administration bodies of judges and prosecutors” (hereinafter Law No. 26/2022).¹

Article 1. Scope of the rules²

These Evaluation Rules are meant to compliment the Rules of Procedure of the Commission and have to be interpreted in light of Law No. 26/2022 and the Rules of Procedure.

Article 2. Compliance [formerly Article 5]

1. Only if a candidate fully meets all indicators, as defined in Article 8 para. 2 - 5 of Law No. 26/2022 does he/she satisfy the criterion of “ethical and financial integrity”³.
2. In assessing compliance with the ethical integrity criterion, the Commission may take into consideration the gravity or severity, the surrounding context, and the wilfulness, of any ethical 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 to⁴
 - a. whether the incident was a singular event;
 - b. causing no or insignificant damage to private or public interests (including public trust) – such as the occasion of an ordinary traffic violation;
 - c. or not being perceived by an objective observer as an attitude of disrespect for the social order arising from disregard for rules and regulations.

Article 3. Financial integrity [formerly Article 6]

1. 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.
2. The Annex defines the method for calculating undeclared wealth.

¹ Adopted by the Independent Evaluation Commission at its meeting on 2 May 2022

Amended on 30 May 2022, with reference to Article 2 para. (1), letters e)-f) and para. (4), Article 5 para. (1)

Amended on 6 September 2022, with reference to the Annex (p. 3.5 and 3.8)

Amended on 22 December 2022, with reference to Article 2 para. (1) lit. a)-b), lit. d)-h), Article 2 para. (6), Article 3 para. (5)-(6), Article 4 para. (3), Article 5 para (1)-(2), Article 7.

Amended on 27 February 2023, with reference to Article 4, para. (2)

Amended on 6 September 2023, with reference to formerly Articles 1 – 4 (excluded)

² Formerly Section I containing Articles 1 – 4 and the heading Section II were excluded, a new Article 1 was added and formerly Articles 5 – 7 renumbered in Articles 2 – 4 by amendment of 6 September 2023.

³ Completed with “as defined in Article 8 para. 2, 3 and 4 of Law No. 26/2022” and on December 22 amended to “as defined in Article 8 para. 2-5 of aw No. 26/2022”.

⁴ Para. 2 of Article 5 completed with word “ethical”.

Article 4. Cooperation of the Candidate.⁵ [formerly Article 7]

1. A candidate's cooperation or lack of cooperation during the evaluation process may be considered by the Commission in determining whether the candidate has mitigated serious doubts about the candidate's compliance with the ethical and financial integrity criteria set forth in Article 8 of Law No. 26/2022.

⁵ Article 7 added.

Annex: Unjustified wealth

1. Background

In its judgement *Xhoxhaj v. Albania*, the European Court of Human Rights calculated unjustified wealth as follows:

“For the purpose of this judgment, ‘liquid assets’ means (A) the balance of cash savings at the end of a given calendar year, as determined by the vetting bodies, which should be equal to (B) the carryover cash balance of the applicant and her partner from the previous calendar year, plus (C) the annual income of the applicant and her partner generated during the reporting calendar year as substantiated by legal/official documents, less (D) any expenses (including, but not limited to, living expenses, travel expenses, mortgage repayments). Any discrepancies where (A) is higher than (B + C – D) would give rise to unjustifiable liquid assets that are not supported by the cash flow determined from the documents in the case file.”⁶

Dividing the mentioned financial items as in- and outgoing cash-flows into two separate columns, this formula looks as follows:

Calendar year (or any other period)	
Incoming cash flows	Outgoing cash flows
“(B) the carryover cash balance of the applicant and his/her partner from the previous calendar year”	“(D) any expenses (including, but not limited to, living expenses, travel expenses, mortgage repayments)”
“(C) the annual income of the applicant and her partner generated during the reporting calendar year as substantiated by legal/official documents”	“(A) the balance of cash savings at the end of a given calendar year”

Thus, there is unjustified wealth if: $A > B + C - D$. When rearranging the equation by adding D on both sides: $A + D > B + C$ (or: $B + C < A + D$). Expressed verbally in short, this formula calculates whether the outgoing cash flows (“lifestyle” (A + D)) are larger than the legitimate income (B + C).

2. Terminology

- 2.1. “**Incoming** cash flows” are income plus other cash flows (loans received, cash leftover from previous periods, etc.) that increase the financial means (liquidity), which the declarant can dispose of during the current period.
- 2.2. “**Outgoing** cash flows” are expenditures plus other ways in which the declarant spends/invests his/her financial means (liquidity), such as loans to others, savings at the end of the current period, etc.

⁶ Application 15227/19, of 9 February 2021, para. 31, footnote 1.

3. Application

The formula is applied in accordance with the following rules:

- 3.1. A **period** is defined first for each calculation. The fiscal year is the default period. However, the period may be shortened in case of potential irregularities during the calendar year.
- 3.2. Only **actual cash flows** are relevant for the formula (For example, whereas the actual purchase price paid is a cash flow, representations on transactional documents or non-monetary gifts are not).
- 3.3. Only cash flows that occurred **during** the respective declaration **period** are inserted.
- 3.4. As stated by the ECtHR, **savings** (including cash) have a double nature: At the beginning of the period, they count as incoming cash-flow (“coming into the period”); at the end of the period, they count as outgoing cash-flow. The outgoing cash-flow of savings at the end of the period equals the incoming cash-flow of savings at the beginning of the next period.
- 3.5. The **Consumption Expenditures for Population (CEP)** are determined and published on annual basis by the National Bureau of Statistics (NBS).⁷ These expenditures include the following categories: 1) food and non-alcoholic beverages; 2) alcoholic beverages and tobacco; 3) clothing and footwear; 4) housing, water, electricity and gas; 5) furnishings, household equipment and their routine maintenance; 6) health; 7) transport; 8) communication; 9) recreation and culture; 10) education; 11) restaurants and hotels; 12) miscellaneous goods and services. The exact amount per each candidate is calculated by the Secretariat of the Commission using the NBS data, taking into account the number of family members, residence area (rural or urban). CEP is part of “**expenses**” (or **outgoing cash-flows**).⁸

Practical Note: “Consumption Expenditures for Population” refers to the fact that the declarant has to spend a certain amount on essential (non-declared) expenditures such as rent/property utilities, clothing, transportation, food, medication, household appliances, gadgets, etc.

- 3.6. If the subtotal outgoing is higher than the subtotal income, then there is a **financial imbalance** regarding the declarant.
- 3.7. The formula is applied for the entire household together, but if appropriate may be applied separately for the declarant, and each family member.

⁷ See for details NBS, social statistics, Consumption Expenditures for Population (http://statbank.statistica.md/PxWeb/pxweb/ro/30%20Statistica%20sociala/30%20Statistica%20sociala_04%20NIV_NIV020/?rxid=8ebd14c1-7adf-494b-9840-9cb85498f247 (Ro) or http://statbank.statistica.md/PxWeb/pxweb/en/30%20Statistica%20sociala/30%20Statistica%20sociala_04%20NIV_NIV020/?rxid=8ebd14c1-7adf-494b-9840-9cb85498f247 (En)).

⁸ P. 3.5. of Annex amended by Commission meeting as of 6 September 2022 (“minimum subsistence level” replaced with “consumption expenditures for population”).

3.8. Thus, in a more detailed layout, the formula looks as follows:

Cash flows during period [as defined]	
Incoming cash flows	Outgoing cash flows
Bank and cash savings at beginning of the period	
Income such as salary, fees, revenue, money gifts received, windfalls received, money inheritance, etc.	Expenses on assets such as real estate, vehicles, precious items, stocks, etc., or on immaterial items such as vacations, weddings, school fees, etc.
All other incoming cash flows such as loans received from creditors or loans repaid by debtors.	Other outgoing cash flows such as loans granted to a debtor or loans repaid to a creditor.
	Consumption Expenditures for Population (as defined) ⁹
	Bank and cash savings at end of the period
= Subtotal incoming	= Subtotal outgoing
If subtotal outgoing > subtotal income, then there is undeclared income.	

⁹ Point 3.8 of Annex amended Commission meeting 6 September 2022 (“minimum subsistence level” replaced with “consumption expenditures for population”).