

**Decision No. 5 of 28 March 2024 on the candidacy of Tatiana ROTARU to the Superior Council of Prosecutors Selection and Evaluation Board.**

**I. Introduction**

1. The Prosecutor Vetting Commission (“the Commission”) deliberated in private on 28 March 2024. The members participating were:

*Nadejda HRIPTIEVSCHI*

*Cornel LEBEDINSCHI*

*Christopher LEHMANN*

*Irmantas MIKELIONIS*

*Tatiana RĂDUCANU*

*Saskia de VRIES*

2. This decision concerns Tatiana ROTARU, a candidate for Superior Council of Prosecutors (hereinafter “SCP”) Selection and Evaluation Board.
3. Pursuant to art. 22 para. (13) of Law No. 252/2023 on the external evaluation of judges and prosecutors and amendments of some regulatory acts (hereinafter “Law No. 252/2023”), the Commission assessed the candidate according to the procedure and criteria regulated by Law No. 26/2022 on measures related to the selection of candidates for the position of members in the self-administration bodies of judges and prosecutors (hereinafter “Law No. 26/2022”). To this end, the Commission adopted its “Rules of Procedure for evaluations conducted according to the procedure and criteria regulated under Law No. 26/2022” (hereinafter “the Rules”) and its “Evaluation Rules for evaluations conducted according to the procedure and criteria regulated under Law No. 26/2022” (hereinafter “Evaluation Rules”).
4. The Commission unanimously concludes that Tatiana ROTARU is compliant with the ethical and financial integrity criteria identified in Law No. 26/2022 and thus passes the evaluation.

**II. Subject of the Evaluation**

5. Tatiana ROTARU (the candidate) served as a Prosecutor at the Soroca District Prosecutor’s Office between 2011 and 2016. She resigned from the prosecution service on 29 July 2016. In 2017, she moved to Germany, where she lived and worked until 2023. For the period from January 2021 to January 2023, she remained in Germany but was on child care leave from her German employer. She returned to the Republic of Moldova in 2023 and is not currently employed in a full-time position.

6. The candidate graduated from the National Institute of Justice in 2011.

### **III. Evaluation Criteria**

7. 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).

8. 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.

9. 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.

10. Art. 8 para. (5) of Law No. 26/2022 provides that the Commission, in assessing the candidate's integrity, shall verify:

a) compliance by the candidate with the tax regime in the part related to the payment of taxes on using funds and income derived from the owned property, as well as taxable income and the payment of import duty and export duty;

b) compliance by the candidate with the legal regime of declaring assets and personal interests;

c) the method of acquiring the assets owned or possessed by the candidate or persons referred to in art. 2 para. (2), as well as the expenses for the maintenance of such assets;

d) the sources of income of the candidate and, where appropriate, of the persons referred to in art. 2 para. (2);

- e) existence of loan, credit, leasing, insurance or other agreements that can generate financial benefits, where the candidate, the person referred to in art. 2 para. (2) thereof, or the legal entity that they are beneficial owners of, is a contracting party;
  - f) existence of donations, where the candidate or the person referred to in art. 2 para. (2) has the status of donee or donor;
  - g) other relevant aspects to clarify the origin and justification of the candidate's wealth.
11. 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 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.
  12. In assessing and deciding upon the criteria related to financial and ethical integrity, the Commission is not to 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).
  13. Pursuant to art. 13. para. (5) 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 above-listed requirements which have not been mitigated by the evaluated person.
  14. Regarding the standard of "serious doubts" under Law No. 26/2022, the Constitutional Court noted that the definition of standard of proof inevitably involves the use of flexible texts. In this case, the standard of proof established by the legislature is intended to guide the Commission in assessing the results of the evaluation. The Commission is required to issue a reasoned decision, which must include the relevant facts, reasons and the Commission's conclusion as to whether a candidate shall pass the evaluation or not. In addition, the law allows the candidate to challenge the existence of serious doubts about compliance with the criteria of ethical and financial integrity before the special panel of the Supreme Court of Justice (Decision No. 42 of 6 April 2023, para. 134, 135).
  15. In this context, the Venice Commission underlined that in 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 (Opinion No. 1064/2021 of 20 June 2022, CDL-AD (2022)011-e, para. 9,10).

16. Shifting the burden of proof to the candidate, once the evaluating body has identified integrity issues, has been found permissible by the European Court of Human Rights, 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*, no. 15227/19, §352, 31 May 2021 the Court stated that “it is not per se arbitrary, for the purposes of the “civil” limb of Article 6 § 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”.

#### **IV. Evaluation Procedure**

17. The candidate was on the list of candidates submitted by the SCP to the Commission on 15 December 2023 for evaluation for the positions on the SCP’s Selection and Evaluation Board and its Discipline and Ethics Board, pursuant to art. 9 para. (1) of Law No. 26/2022.

18. On 22 December 2023, the Commission notified the candidate of its initiation of evaluation and requested that she complete and return the declaration of assets and personal interests for the last five years (hereinafter “five-years declaration”), which includes the list of close persons in the judiciary, prosecution and public service, and an ethics questionnaire within 7 days as provided in art. 9 para. (2) of Law No. 26/2022. Tatiana ROTARU returned the completed five-years declaration and ethics questionnaire within the seven days time period, on 29 December 2023.

19. As part of the evaluation of the ethical and financial integrity of the candidates, the Commission obtained information from numerous sources. The sources generally included the National Integrity Authority, State Fiscal Service, General Inspectorate of Border Police, banks, 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 the information produced by sources about a candidate was pertinent to the Commission’s evaluation. All information received was carefully screened for accuracy and relevance.

20. To the extent that issues were raised from the candidate’s five-years declaration and ethics questionnaire and collected information, those issues were raised in written questions with the candidate. On 16 February 2024, 29 February 2024 and 19 March 2024, the Commission asked Tatiana ROTARU to provide additional information to clarify certain matters. Candidate ROTARU provided answers and documents within the set deadlines.

21. On 18 March 2024, the Commission invited candidate Tatiana ROTARU to attend a hearing pursuant to art. 12 para. (1) of Law No. 26/2022 on 26 March 2024. The candidate was informed that she could request access to her evaluation file. She did not do so.

22. On 26 March 2024, the Commission held a public hearing. At the hearing, candidate Tatiana ROTARU reaffirmed the accuracy of her answers in the ethics questionnaire that she had returned on 29 December 2023 and stated that she did not have any corrections

or additions to the answers she had previously provided to the Commission's requests for information.

## V. Analysis

23. This section discusses the relevant facts and reasons for our decision. Based on the information it collected, the Commission sought further clarifications from Tatiana ROTARU on the following matter: Failure to submit her declaration on income and property upon release from office (hereinafter "declaration upon release") for the year 2016, as required under the same Law No. 1264/2002 concerning the declaration and control of incomes and assets of state dignitaries, judges, prosecutors, civil servants and some persons in leading positions (hereinafter " Law No. 1264/2002"), within 20 days of termination of service.
24. The candidate had resigned mid-way through 2016 (on 29 July 2016), and was therefore required to file a declaration upon release from office, within 20 days of termination of service. See art. 8 para. (3) of Law No. 1264/2002 (as in force on 29 July 2016).
25. In written communication with the Commission, the candidate acknowledged her failure to file a declaration upon release from office in 2016, following her resignation, and stated that the failure "was unintentional, as I had nothing to hide. I neither acquired movable or immovable property, nor did I sell any. Nothing changed in the six months following the filing of the 2015 annual declaration." The candidate also noted that following her resignation, when her documents were returned to her by the Human Resources Department of the Prosecutor General's Office, she was never asked about whether she had filed the declaration upon release for 2016. Nor was there ever any communication from, inspection by, or initiation of control by the National Integrity Center (NIC) or the National Integrity Authority (NIA) concerning the declaration.
26. A new Law No. 133/2016 on declaration of assets and personal interests (hereinafter "Law No. 133/2016") came into force on 1 August 2016, only three days *after* the candidate resigned from the prosecution service. As a result, 2016 was a period in which the regime for submitting annual declarations was in flux. As the candidate noted in her responses to the Commission, there was little formal guidance on how and when to complete declarations at the time of her resignation. She noted that "there was no regulation on how to fill in electronic declarations of assets and personal interests and no handbook on how to file declarations electronically. There was no public communication back then about this procedure either, nothing about the obligation to file declarations and about potential risks should one fail to do so."
27. At the hearing, the candidate noted that she had left the Republic of Moldova for Germany (where she eventually relocated) shortly after her resignation. When she returned to the Republic of Moldova later in 2016, she looked further into the issue of filing the declaration and found that under the new Law No. 133/2016, she would need to sign the declaration using an electronic signature; however, she no longer had such a signature due to her separation from the prosecution service.

28. As part of the evaluation, the Commission examined all of the candidate's income and expenses for the years 2008 - 2022. The Commission did not find any issue which raised concerns of inexplicable wealth.
29. There is no question that the candidate violated the legal regime for declaring personal assets and interests by not filing a declaration for 2016 following her resignation from the prosecution service, as required by art. 8 para. (3) of Law No. 1264/2002. To determine a candidate's integrity, Law No. 26/2022 requires the Commission verify compliance by the candidate with the legal regime of declaring assets and personal interests. Art. 8 para. (2) lit. c) of Law No. 26/2022 provides that a candidate meets the ethical integrity criteria if she has not violated the legal regime of declaring personal assets and interests, conflicts of interest, incompatibilities, restrictions and/or limitations. The legal obligation of public officials to file asset declarations in a timely and complete manner is one the Commission takes very seriously, and one which we view to be a crucial standard of an effective anti-corruption policy. By facilitating the monitoring of wealth of individual civil servants, the legal asset declaration regime dissuades them from misconduct, protects them from false accusations, and helps to clarify the full scope of any illicit enrichment or other illegal activity.<sup>1</sup>
30. The question, however, is whether the candidate's failure to meet these requirements laid down in art. 8 of Law No. 26/2022 rises to the level of a "serious" violation of that article such that it would bring her ethical and financial integrity into question, thereby disqualifying her from participating in the contest for appointment as a member of the Prosecutor's Selection and Evaluation Board.
31. In considering this matter the Commission notes a number of relevant factors. First, the candidate was quick to acknowledge, both in writing and again at the hearing, her error in not filing a declaration in 2016, as required due to her resignation from the prosecution service. Second, the Commission notes her prior record of timely filing the required declarations in the years 2012 to 2015. Third, the Commission notes that its own efforts, undertaken through careful analysis of the candidate's financial background, based both on her own submissions and by receipt of corroborating documents and information from a variety of external sources, verified that there was no indication of the existence of unexplained wealth on the part of the candidate. Fourth, the Commission notes that the candidate reported having delays and difficulty in obtaining the accounting information she needed from the prosecutor's office in order to complete the declaration prior to her departure for Germany.
32. While these factors do not excuse the candidate's failure to file her required declarations, they do serve to show that the violation of art. 8 paras. (2) lit. c) and (4) lit. a) of Law No. 26/2022 does not rise to the level of "serious." In so finding, the Commission is mindful of the guidance of art. 2 para. 2 of this Commission's Evaluation Rules for evaluations conducted according to the procedure and criteria regulated under Law No. 26/2022:

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<sup>1</sup> OECD (2011), Asset Declarations for Public Officials: A Tool to Prevent Corruption, OECD Publishing, p. 12.

“In assessing compliance with the ethical integrity criterion, the Commission may take into consideration the gravity or severity, the surrounding context, and the willfulness, 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 to

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

33. Accordingly, applying art. 2 para. 2 of the Evaluation Rules in light of the specific circumstances of this case, we confirm that the candidate’s failure to file the 2016 declaration upon release, while a clear violation of the law, does not rise to the level of a “serious” ethical violation of the law under art. 8 paras. (2) lit. c) and (4) lit. a) of Law No. 26/2022.

34. In sum, in light of the above circumstances, the Commission did not have serious doubts under art. 13 para. (5) of Law No. 26/2022 as to the candidate’s compliance with the criterion of ethical integrity as per art. 8 para. (2) lit. c) and financial integrity as per art. 8 para. (4) lit. a) and para. (5) lit. b) of Law No. 26/2022 with respect to the failure to submit a declaration upon release from office in 2016, which has mitigated the Commission’s concerns regarding this issue.

## **VI. Decision**

35. Based on art. 8 paras. (1), (2) and (4) and art. 13 para. (5) of Law No. 26/2022, the Commission decides that the candidate is compliant with the ethical and financial integrity criteria and thus passes the evaluation.

## **VII. Appeal and Publication**

36. Pursuant to art. 14 para. (1) of Law No. 26/2022, the candidate is entitled to appeal this decision within 5 days from receiving the decision. The appeal shall be lodged at the Supreme Court of Justice with the address on 18 Petru Rareş Street, Chişinău municipality.

37. 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 Prosecutors. If within 48 hours of sending the decision, the candidate does not notify the Commission of her refusal to publish the decision, the decision shall be published on the website of the Superior Council of Prosecutors 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.

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

39. Done in English and Romanian.

Signature:

Christopher LEHMANN  
Chairperson  
Prosecutor Vetting Commission