PROSECUTOR VETTING COMMISSION

Decision No. 9 of 31 May 2024 on the candidacy of Corneliu LAVCIUC to the Superior Council of Prosecutors Selection and Evaluation Board

I. Introduction

1. The Prosecutor Vetting Commission ("the Commission") deliberated in private on 31 May 2024. The members participating were:

   Cornel LEBEDINSCHI
   Christopher LEHMANN
   Irmantas MIKELIONIS
   Saskia de VRIES

   Nadejda HRIPTIEVSCHI was recused from this matter and did not participate. *Virginia MORARU* did not participate in this matter, as she was appointed as member of Commission on 30 May 2024.

2. This decision concerns Corneliu LAVCIUC, a candidate for the 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 Corneliu LAVCIUC 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. Corneliu LAVCIUC ("the candidate") was appointed as acting assistant to the prosecutor on 28 May 2002 to serve in the Chisinau Military Prosecutor's Office. From 23 December 2005 until 17 December 2007, he held the position of military prosecutor in the same Prosecutor's Office. Thereafter, from 17 December 2007 until 1 August 2016, he served as a military prosecutor within the General Prosecutor's

Office (hereinafter GPO). Currently, the candidate is the Chief Prosecutor of the Section for Combating Cybercrimes within the GPO.

III. Evaluation Criteria

6. 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).

7. 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.

8. 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.

9. 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.

10. 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 paras. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

11. 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).

12. 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.

13. 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, paras. (134), (135)).

14. 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, paras. 9, 10).

15. 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

16. The candidate was on the list of candidates submitted by the SCP to the Commission on 15 December 2023 for evaluation for the position of member of the SCP's Prosecutors Selection and Evaluation Board, pursuant to art. 9 para. (1) of Law No. 26/2022.

17. On 22 December 2023, the Commission notified the candidate of its initiation of evaluation and requested that he 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 seven days as provided in art. 9 para. (2) of Law No. 26/2022. The candidate returned the completed five-years declaration and ethics questionnaire within the deadline, on 29 December 2023.

18. 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.

19. To the extent that issues were raised from the candidate's five-years declaration, ethics questionnaire and collected information, those issues were raised in written questions with the candidate.

20. On 6 April 2024, 24 April 2024 and 7 May 2024, the Commission asked the candidate to provide additional information to clarify certain matters. The candidate provided answers and documents within the set deadlines.

21. On 23 May 2024, the Commission notified the candidate that it had identified certain areas of doubt about his compliance with the ethical criteria and invited the candidate to attend a public hearing pursuant to art. 12 para. (1) of Law No. 26/2022. The candidate was informed that he could request access to the evaluation materials.

22. 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.

23. On 31 May 2024, the candidate took part in a public hearing of the Commission.

24. At the hearing, the candidate reaffirmed the accuracy of his answers in the ethics questionnaire that he had returned on 29 December 2023 and stated that he did not have any corrections or additions to the answers he had previously provided to the Commission's requests for information.

V. Analysis

25. This section discusses the relevant facts and reasons for the Commission's decision.

26. Based on the information it collected, the Commission sought further clarifications from the candidate on the following matter: a potential conflict of interest related to an examination of lawyer G.C.'s request on behalf of the convicted I.G. senior to initiate the criminal proceedings review procedure pursuant to art. 458 para. (3) point 2) of the Criminal Procedure Code in 2016.

27. The areas of doubt refer to the ethical criteria provided in art. 8 para. 2 of Law No. 26/2022. Resolving these particular issues is relevant to assessing the candidate's ethical integrity in the larger context of a potential violation of the rules of ethics and professional conduct of prosecutors.

28. The Commission evaluated whether the candidate adhered to the principles of impartiality and independence stipulated in the Code of Ethics and Conduct of the Prosecutors when examining lawyer G.S.'s request, as well as with the rules governing the prosecutor's self-recusal from criminal procedure as set forth in the Criminal Procedure Code.

29. On 5 April 1999, the Chisinau Military Prosecutor's Office initiated a criminal investigation against I.G. senior, the former head of the Technical-Material Assurance Department of the Department of Civil Protection and Exceptional Situations of the Republic of Moldova. He was accused of misconduct in performing his duties, resulting in damage to the state. He fully admitted his guilt, and the Military Court, on 1 March 2000, terminated the case against him based on the Amnesty Law of the Republic of Moldova. The sentence became irrevocable due to the absence of appeals involved in the trial.

30. On 20 April 2016, the GPO received a request from lawyer G.C. on behalf of the convicted I.G. senior to initiate the criminal proceedings review procedure pursuant to art. 458 para. (3) point 2) of the Criminal Procedure Code. This request was forwarded to the Chisinau Military Prosecutor's Office for examination on 3 May 2016. Upon receipt of the request for review, I.G. junior, the son of the convicted I.G. senior, was serving as a prosecutor at the Military Prosecutor's Office in Chisinau. Consequently, on 12 May 2016, military prosecutor N.D. contacted the GPO, requesting consideration for reallocating the case materials to another prosecutor's office or division within the GPO to avoid suspicions regarding the impartiality of the

review process. By the resolution of Deputy General Prosecutor I.G., the examination of the materials was assigned to the interim Chief Prosecutor of the Investigation and Crimes Section of the Armed Forces within the GPO, S.C., who, on 16 May 2016, redirected them for examination, to the candidate, who held a prosecutor's position in the Investigation and Criminal Offences Section in the Armed Forces at the GPO, in accordance with the provisions of art. 458-460 of the Criminal Procedure Code.

31. By the candidate's order dated 23 May 2016, the opening of the review procedure of the criminal trial was ordered. Later, the candidate drew up the conclusions regarding the admission of the request for review, which, along with the materials provided, were sent to the Military Court for examination according to art. 461 of the Criminal Procedure Code, by the letter of the prosecutor, head of the Investigation and Crimes Section of the Armed Forces, I.D. (Chief Prosecutor of the Investigations and Crime Offences Section in the Armed Forces), dated July 15, 2016, No. 26-9/16-15.

32. On 29 September 2016, a criminal case against I.G senior, who was accused of committing a criminal offence under art. 261^1 para. (3) of the Criminal Code (1961 version), was terminated as the court decided that a criminal offence had not been committed by I.G. senior.

33. According to the information available to the Commission, in 2006 - 2007, the candidate and I.G. junior (the son of the convicted I.G. senior) were colleagues, both serving as military prosecutors in the Chisinau Military Prosecutor's Office.

34. Art. 6 of the Code of Ethics and Conduct of the Prosecutors, approved by the Decision of the SCP No.12-173/15 of 30 July 2015, stipulates that the prosecutor must maintain an impeccable reputation and adhere to the highest standards of ethics and conduct according to the principles of legality, independence, integrity, impartiality, professionalism, collegiality, confidentiality, and correctness.

35. Art. 54 of the Criminal Procedure Code (in force in May 2016) states that the prosecutor may not participate in the criminal case if there is at least one of the circumstances indicated in art. 33 (para. (1) point 1)). For the reasons provided in para. (1), the prosecutor is obliged to make a declaration of abstention from participation in the case (art. 54 para. (3)). The prosecutor's abstention or objection shall be resolved during criminal prosecution by the hierarchically superior prosecutor (art. 54 para. (5) point 1)).

36. Art. 33 of the Criminal Procedure Code specifies grounds for abstention/recusal of a judge, which are also applicable to a prosecutor: if a judge (prosecutor) is directly or indirectly interested in the process (para. (2) point 1)); [or] if other circumstances reasonably cast doubt on the judge's (prosecutor's) impartiality (para. (2) point 6)).

37. In written communication, the Commission asked the candidate to explain his relationship with military prosecutor I.G. junior, and was informed about the potential conflict of interest. The candidate informed the Commission that he had worked with the military prosecutor I.G. junior in the same subdivision of the Chisinau Military Prosecutor's Office for about a year and that he did not have any friendly relations with him; they just worked in the same Prosecutor's Office, the relations being strictly

related to work. Upon receiving, for examination, lawyer G.C.'s request on behalf of the convicted I.G. senior, and realizing that convicted I.G. senior is the father of military prosecutor I.G. junior, he informed his superior prosecutors.

38. In written communication, prosecutor S.C. confirmed that as an Interim Chief Prosecutor of the Investigation and Crimes Section of the Armed Forces within the GPO, he was verbally informed by the candidate about the candidate's and prosecutor I.G. junior's work relationship. The management of the GPO was also aware of this fact.

39. At the hearing, the candidate explained that he had a strictly working relationship with military prosecutor I.G. junior; during the examination of the request, he didn't contact him. The candidate stated that he was not influenced, and the decision was made based on gathered materials.

40. In light of the above, the Commission did not find serious doubts (art. 13 para. (5) of Law No. 26/2022) regarding the candidate's compliance with the criterion of ethical integrity as per art. 8 para. (2) of Law No. 26/2022 concerning the potential conflict of interest related to the examination of lawyer G.C.'s request on behalf of the convicted I.G. senior for initiating the criminal proceedings review procedure. The candidate acted in accordance with the rules of the Criminal Procedure Code and the requirements of the Code of Ethics and Conduct of the Prosecutors.

41. Based on the information provided by the candidate and the other information available to the Commission, the Commission has no serious doubts about the compliance of the candidate with the criterion of financial integrity as per art. 8 para. (1) and (4) of Law No. 26/2022.

VI. Decision

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

VII. Appeal and Publication

43. 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 Rares Street, Chisinau municipality.

44. 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 SCP. 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 SCP 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.

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

46. Done in English and Romanian.

Signature:

Digitally signed by Lehmann Christopher Geoffrey
Date: 2024.07.05 08:26:56 EDT
Reason: MoldSign Signature
Location: Moldova

Christopher LEHMANN
Chairperson
Prosecutor Vetting Commission