

**Decision No. 17 of 11 October 2024 on the candidacy of Nicolae ZANEVICI
to the Superior Council of Prosecutors' Selection and Evaluation Board**

I. Introduction

1. The Prosecutor Vetting Commission ("the Commission") deliberated in private on 27 September 2024 and 11 October 2024. The participating members were:

Nadejda HRIPTIEVSCHI

Cornel LEBEDINSCHI

Christopher LEHMANN

Irmantas MIKELIONIS

Virginia MORARU

Saskia de VRIES

2. This decision concerns Nicolae ZANEVICI, 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 Nicolae ZANEVICI 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. Nicolae ZANEVICI was appointed prosecutor in 2005. Between 2010 and 2016, the candidate worked as a prosecutor and Deputy Head of Unit at the Prosecutor General's Office. Between 2016 and 2022, he worked as a prosecutor at the Chişinău Municipality Prosecutor's Office. Since June 2022, the candidate holds the position of Acting Chief Prosecutor of the Criminological Analysis and Legislative Initiatives Unit of the General Prosecutor's Office (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 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 wealth was declared as required 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 on the ethical and financial integrity criteria, the Commission shall not be bound by the findings of other bodies with competence 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 and 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 and 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, para. 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 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-year 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-year 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, the State Fiscal Service, the 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-year declaration, ethics questionnaire, and collected information, those issues were raised in written questions with the candidate.
20. On 18 June 2024, 11 July 2024, 13 August 2024, and 22 August 2024, the Commission asked the candidate for additional information to clarify certain issues. The candidate provided answers and documents within the set deadlines.
21. On 19 September 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. Following the candidate’s request, on 24 September 2024, the candidate was granted access to the evaluation materials according to art. 12 para. (4) lit. c) of Law No. 26/2022.
23. On 27 September 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 matters:

a) Donation of a plot of land in Strășeni town;

b) The disciplinary procedure of 2013.

27. The issues for which clarifications were sought pertain to the ethical integrity criteria, outlined in art. 8 of Law No. 26/2022. Resolving these issues is relevant in assessing the ethical integrity of the candidate from the perspective of compliance with the rules of ethics and professional conduct of prosecutors and whether the candidate has committed, in his activity, any wrongful actions or inactions, which would be inexplicable from the point of view of a legal professional and an impartial observer.

a) Donation of a plot of land in Strășeni town

28. On 15 August 2007, the ownership of a 0.0601 ha plot of land in Strășeni town, "B" street, was registered on the candidate's name. This plot of land was assigned to the candidate by Decision of the Strășeni town Council of 25 December 2006, on the basis of art. 11 of the Land Code and art. 13 of the Law No. 721/1996 on quality in construction.

29. According to the art. 11 of the Land Code (in force in 2006), local public administration authorities assign citizens land without payment, releasing property titles, and assign to newly formed families land sectors from the reserve of the intravilan until its exhaustion for the construction of residential houses, household annexes, and gardens.

30. In the ethics questionnaire submitted to the Commission and at the hearing, the candidate stated that he received this land based on art. 38 of Law No. 118/2003 on Public Prosecution Service.

31. In accordance with the Strășeni Council's Decision of 25 December 2006, the beneficiaries have been assigned the following obligations: (1) to obtain the urban planning certificate, the construction plan, and the construction permit within three months; (2) to build the house in strict compliance with the plans and permit; (3) once the construction of the house is completed, to prepare the acceptance documents.

32. In written communication with the Commission, the candidate told the Commission that he had not built any construction on that plot of land on the following reasons:

- Initially he did not have the funds to start the construction.
 - According to the Letter of 29 February 2008 of the National Institute for Research and Design "URBANCONSTRUCT" and the attached Geological-Engineering Survey Report, issued by the Institute for the Design of Water Management Systems "Acvaproiect", addressed to the Strășeni town Hall, the land in the North-West area of Strășeni is unsuitable for construction, as a large portion of the territory is characterized by unfavorable geological-engineering conditions. The plot of land allocated to the candidate was located in that North-West area of the town of Strășeni.
 - In a verbal communication with the representatives of the local public administration ("LPA") the candidate was told that the LPA had no other plot of land to replace the granted one.
33. In 2010, the candidate donated the 0.0601 ha plot of land in Strășeni town, on "B" Street, to his father.
34. Asked why he has not returned the land plot to the LPA since it was not fit for construction, both in the written communication with the Commission and at the hearing, the candidate stated that he had not returned the plot of land to the LPA because he had ownership rights over it.
35. In April 2010, the GPO and Company "B" entered into a cooperation agreement to construct housing in Chișinău municipality at preferential prices for prosecutors and employees of the prosecution service.
36. At the hearing, the candidate explained that he had donated the plot of land to his father because it wasn't possible to build anything on it and that he intended to participate in the GPO preferential price program. The candidate stated that, to qualify for the GPO preferential price program, he believed that applicants were required not to own house and real estate, and he admitted that he donated his plot of land to his father to meet the program's eligibility criteria.
37. According to item 3 of the Order of the General Prosecutor No. 130/36 of 22 December 2009, on the establishment and activity of the commission for the elaboration of the conditions regarding the construction of the housing complex for prosecutors, program beneficiaries had to meet the following conditions: to work as a prosecutor in one of the Prosecutor's Offices in Chișinău municipality, to demonstrate a need for improved living conditions and contribute their own funds to the construction, while adhering to transparency requirements. Implementing the mentioned order, on 7 April 2010, the GPO and the Company "B" concluded a cooperation agreement for constructing housing at preferential pricing. Based on that agreement, the candidate concluded an investment contract on 28 March 2011 for the construction of a 94 sq.m. apartment on "M" Street in Chișinău municipality.

38. During the hearing, the candidate confirmed that he did not inform the GPO's Commission (which would make the decision to select the prosecutors who were going to obtain a preferential price for buying an apartment on "M" Street in Chişinău municipality) about the fact that he had previously received a land plot from the LPA, according to him under art. 38 of Law No. 118/2003 on Public Prosecution Service and later donated to his father.
39. Art. 38 of Law No. 118/2003 on Public Prosecution Service (in force in 2006-2007) provided the following: (1) When the prosecutor does not have housing or is in need of improving housing conditions, the local public administration is obliged, in maximum one year from his/her appointment in the position of prosecutor, to ensure him/her with service accommodation (apartment or house) during the activity in the respective locality. (2) If the prosecutor was not ensured with housing in line with para. (1), s/he has the right to compensation of rent costs until s/he is ensured with apartment or house bought by Prosecution office from state budget.
40. The Commission notes that, according to item 3 of the Order of the General Prosecutor No. 130/36 of 22 December 2009, owning a land plot was not a reason to become ineligible for participation in the GPO program of preferential housing and obtaining a preferential price for the purchase of the apartment on "M" Street, Chişinău municipality.
41. At the hearing, the candidate confirmed that he had benefited twice from a program aimed at improvement of living conditions:
- First, in 2006, when he received a land plot allocated by the LPA, under art. 38 of Law No. 118/2003 on Public Prosecution Service;
 - Second, in 2010, when he benefited from a GPO Program whereby employees of the prosecution service were granted housing at preferential prices.
42. In assessing the candidate's compliance with the ethical integrity of the candidate under art. 8 para. (2) lit. a) of Law No. 26/2022, the Commission is required to verify if the candidate complied with the rules of ethics and professional conduct of prosecutors 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.
43. The Commission highlights that the candidate stated that he received in 2006 a plot of land according to art. 38 of Law No. 118/2003 on Public Prosecution Service. The provisions of that article did not provide a right to receive land plots. At the same time, in the decision of the Străşeni town Council of 25 December 2006 it is indicated that the assignment was made based on art. 11 of the Land Code. According to art. 11 of the Land Code there is only one category of land beneficiaries, the newly formed families, that would be applicable to the candidate. At the same time, the candidate was not married in 2006. Therefore, it is not clear if the candidate could be a beneficiary of land under the art. 11 of the Land Code in 2006. However, since Law No. 26/2022 provides for a 15-years period as evaluation period, the Commission was not able to examine this aspect in greater detail and assess the eligibility for the candidate's receiving of this land plot.

44. Further, the Commission highlights that the candidate, being a prosecutor at that time, had deliberately donated the land plot to his father in 2010 and did not inform the GPO's Commission selecting prosecutors for the preferential price program about the fact that he had previously received a land plot from the LPA, according to him under art. 38 of Law No. 118/2003 on Public Prosecution Service. It appears to the Commission that the candidate did this in order to increase his likelihood to be eligible for the preferential price program, which can be viewed as an attempt by the candidate to disguise elements of his background situation which he thought might have disqualified him from participation in the "M" Street preferential housing program. At the same time, the Commission notes that those conditions of eligibility for participation in the "M" Street preferential housing program would not have required the candidate to have first alienated the land plot, because the condition was to demonstrate a need for improved living conditions and contribute their own funds to the construction, while adhering to transparency requirements. Therefore, even if the candidate had not alienated that land, he could have been eligible for the preferential housing program anyway.
45. The manner in which the candidate received the land plot and donated to the father in order to become eligible for the preferential housing program raises issues of concern regarding the ethical conduct of the candidate in view of provisions of the 2007 Prosecutor's Code of Ethics, Chapter IV item 6 lit. a), according to which "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" and lit. k), according to which the prosecutor must "comply with other rules of conduct and legitimate restrictions provided for all members of society". However, considering the fact that the analyzed circumstances took place a long time ago (2006-2010), the fact that the candidate was open and transparent with the Commission on the circumstances regarding the donation of the land plot and obtaining the preferential price apartment, and the fact that the candidate and his family lived in the apartment that he bought under the preferential housing program until 2019, showing that he was not in it for profit, the Commission concludes that the candidate's conduct does not raise to a severity level that would determine the candidate's failure to comply with the ethical integrity criteria laid down in art. 8 para. (2) of Law No. 26/2022.
46. In light of the above, the Commission did not find serious doubts (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. a) of Law No. 26/2022 with respect to the donation of a land plot in Strășeni town because the candidate mitigated the Commission's concerns regarding this issue.

b) The disciplinary procedure of 2013

47. On 28 March 2013, a disciplinary proceeding was initiated against the candidate, who was at that time a prosecutor, Deputy Head of the Criminal Investigation Unit of Chișinău Prosecutor's Office, aimed at checking whether there were reasons for disciplinary liability of the candidate due to inappropriate performance of his job duties while conducting the criminal investigation of a criminal case.

48. The Discipline Board within SCP examined the following:

- Failure to check the alleged illegal actions in the work of two economic agents and their business relationships with other economic agents involved in the collection, storage, and export of scrap and waste metal, including business relationships with delinquent (ghost) companies. According to the decision of the Discipline Board of 10 June 2013, the candidate failed to perform the necessary actions to investigate the case; for example, he carried out only one inspection action (a witness interview) between 23 August 2011 and 11 May 2012, and even that was done superficially.
- Failure to fulfil all measures needed to establish the circumstances of the case. According to the decision of the Discipline Board of 10 June 2013, on 11 May 2012, lacking any legal and factual grounds, as would be required under art. 255 para. (2) of the Criminal Procedure Code, the candidate issued an unjustified order not to initiate the criminal investigation.

49. The candidate's decision not to start the criminal investigation was cancelled on 18 March 2013 by the First Deputy General Prosecutor as unfounded and illegal.

50. On 10 June 2013, the Discipline Board within SCP issued a decision terminating the disciplinary proceeding against the candidate because it was not suitable to impose a disciplinary sanction and to limit itself to examining the procedural materials in session.

51. As per SCP's Decision No. 12-187/13 of 23 July 2013, the SCP validated the decision of the Discipline Board of 10 June 2013.

52. The Commission noted that despite the fact that the Discipline Board within the SCP in relation to the candidate found violations of his job duties and of the Criminal Procedure Code, the Board concluded that the disciplinary procedure regarding the candidate should be terminated on the grounds of the inopportunity of applying the disciplinary sanction.

53. In the candidate's explanations about the violations imputed to him (provided during the 2013 disciplinary proceeding and in his written communication with the Commission, as well as at the Commission's hearing), he consistently disagreed with the disciplinary accusations brought against him and explained his actions in a detailed and reasonable way that countered the imputed violations.

54. During the hearing the candidate explained that he was included in a criminal investigation group of five prosecutors, on a very complex case concerning tax evasion. Each member of the group had distinct tasks in the criminal investigation. Within this case, an enormous number of criminal prosecution actions were carried out, special investigative measures were taken, turnovers were seized, documents were seized. At the same time, within this criminal investigation, a criminal process was registered regarding some companies, separately. This criminal process was sent to the candidate and, within a separate investigation, he requested from the National Anticorruption Center, the State Tax Service and other institutions, information regarding these taxpayers, who at that stage had the

status of suspects. According to the candidate's explanations, following the analysis of the accumulated documents and during the hearing of several witnesses, he found the lack of elements of the crime on the grounds that these companies were verified over time by the state institutions that found no violations. For these reasons, he issued an order of refusal to initiate the criminal investigation in that case. Subsequently, after ten months, this ordinance was cancelled by the interim Prosecutor General. Later, that criminal investigation case was withdrawn from the management of the Chişinău Prosecutor's Office and sent to the Anticorruption Prosecutor's Office.

55. The Commission found the candidate's explanations regarding his decision not to initiate the criminal investigation referred to in the 2013 disciplinary procedure regarding him convincing and reasonable. The Commission also considered the fact that although there was a disciplinary procedure carried out regarding the fact that the candidate decided not to initiate a criminal investigation, which was later on cancelled by the hierarchically superior prosecutor, however no criminal sanction was imposed on him, that serves as an indicator regarding the candidate's lack of disciplinary liability. Consequently, the candidate mitigated the Commission's doubts related to the decision not to initiate the criminal investigation in light of the disciplinary procedure conducted regarding him in 2013.
56. In light of the above, the Commission did not find serious doubts (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. a) of Law No. 26/2022 with respect to the disciplinary procedure conducted regarding the candidate in 2013 because the candidate mitigated the Commission's concerns regarding this issue.

VI. Decision

57. 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

58. Pursuant to art. 14 para. (1) of Law No. 26/2022, the candidate may appeal this decision within 5 days from receiving the reasoned decision. The appeal shall be lodged at the Supreme Court of Justice with the address on 18 Petru Rareş Street, Chişinău municipality.
59. 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.

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

61. Done in English and Romanian.

Signature:

Christopher LEHMANN
Chairperson
Prosecutor Vetting Commission