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EVALUATION REPORT

approved according to Article 40

of the Rules of Organization and Functioning

ALEXANDRU SPOIALĂ

judge of the Central Court of Appeal

subject of evaluation under Article 3 para. (1) Law No. 252/2023

11 March 2025

Contents

Evaluation Panel B of the Commission (hereinafter "the Commission"), established by Law No. 65/2023 on the External Evaluation of Judges and Candidates for Judges of the Supreme Court of Justice and discharging the powers under Law No. 252/2023 on the external evaluation of judges and prosecutors and amending some normative acts (hereinafter "Law No. 252/2023") deliberated on the matter on 5 February 2025 and approved the following report on 11 March 2025. The members participating in the approval of the report were:

1. Scott BALES
2. Willem BROUWER
3. Iurie GAȚCAN

Based on its work in collecting and reviewing the information, and the explanations provided in the public hearing and its subsequent deliberations, the Commission prepared the following evaluation report.

I. Introduction

1. This report concerns Mr. Alexandru Spoială (hereinafter the "subject"), a judge of the Central Court of Appeal.

2. The Commission conducted its evaluation pursuant to Law No. 252/2023 and the Commission's Rules of Organization and Functioning (hereinafter "Rules").

3. The Commission concluded that the subject meets the criteria identified in Law No. 252/2023.

II. Subject of the Evaluation

4. The subject has been a Central Court of Appeal judge since 2017 and the Interim Vice-president since January 2024. This court was known as the Chișinău Court of Appeal until it was renamed on 27 December 2024.

5. Between 2009 and 2017, the subject served as a judge at the Chișinău (Ciocana) District Court. Since 2005, he has also been a lecturer at Moldova State University.

6. The subject received a bachelor's degree in law in 2002 from the Moldova State University. In 2003 the subject received a master's degree in law from the same university. In 2008 he obtained a PhD in law from the Moldova State University.

III. Evaluation Criteria

7. Under Article 11 para. (1) of Law No. 252/2023, the Commission evaluates the subject's ethical and financial integrity.

8. Under Article 11 para. (2), a subject:

> "[…] does not meet ethical integrity requirements if the Evaluation Commission has determined that:
>
> a) in the last 5 years, he/she seriously violated the rules of ethics and professional conduct of judges, or, as the case may be, prosecutors, as well as if they acted arbitrarily or issued arbitrary acts, over the last 10 years, contrary to the imperative rules of the law, and the European Court of Human Rights had established, before the adoption of the act, that a similar decision was contrary to the European Convention on Human Rights;
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> b) in the last 10 years, has admitted in his/her work incompatibilities and conflicts of interest that affect the office held."

9. Under Article 11 para. (3), a subject:

> "[…] does not meet the criterion for financial integrity if the Evaluation Commission has serious doubts determined by the fact that:
>
> a) the difference between assets, expenses and income for the last 12 years exceeds 20 average salaries per economy, in the amount set by the Government for the year 2023;
>
> b) in the last 10 years, admitted tax irregularities as a result of which the amount of unpaid tax exceeded, in total, 5 average salaries per economy, in the amount set by the Government for the year 2023."

10. The average salary per economy for 2023 was 11,700 MDL. Thus, the threshold of 20 average salaries is 234,000 MDL and the threshold of five average salaries is 58,500 MDL.

11. Article 11 para. (4) of Law No. 252/2023 allows the Commission to verify various things in evaluating the subject's financial integrity, including payment of taxes, compliance with the legal regime for declaring assets and personal interests, and the origins of the subject's wealth.

12. In evaluating the subject's financial integrity, Article 11 para. (5) of Law No. 252/2023 directs the Commission to also consider the wealth, expenses, and income of close persons, as defined in Law No. 133/2016 on the declaration of wealth and personal interests, as well as of persons referred to in Article 33 paras. (4) and (5) of Law No. 132/2016 on the National Integrity Authority.

13. In assessing a subject's compliance with the ethical and financial integrity criteria, the Commission applies the rules and legal regime in effect when the relevant acts occurred.

14. According to Article 11 para. (2) of Law No. 252/2023 a subject shall be deemed not to meet the ethical integrity criterion if the Commission has determined the existence of the situations provided for by that paragraph. Under Article 11 para. (3) of Law No. 252/2023, the Commission determines that a subject does not meet the financial integrity criterion if it establishes serious doubts determined by the facts considered breaches of the evaluation criteria. The Commission cannot apply the term "serious doubts" without considering the accompanying phrase "determined by the fact that". This phrase suggests that the Commission must identify as a "fact" that the specified conduct has occurred.

15. Regarding the standard of "serious doubts" in the context of the vetting exercise, the Constitutional Court noted with reference to its previous decisions that the definition of standards of proof inevitably involves using flexible texts. The Court also said that the Superior Council of Magistracy can only decide not to promote a subject if the report examined contains "confirming evidence" regarding the non-compliance with the integrity criteria. The word "confirms" suggests a certainty that the subject does not meet the legal criteria. Thus, comparing the wording "serious doubts" with the text "confirming evidence", the Court considered that the former implies a high probability, without rising to the level of certainty (Constitutional Court Judgement No. 2 of 16 January 2025, §§ 99, 101).

16. Once the Commission establishes substantiated doubts regarding particular facts that could lead to failure of evaluation, the subject will be given the opportunity to oppose those findings and to submit arguments in defense, as provided by Article 16 para. (1) of Law No. 252/2023. After weighing all the evidence and information gathered during the proceedings, the Commission makes its determination.

IV. Evaluation Procedure

17. On 5 April 2024, the Commission received the information from the Superior Council of Magistracy pursuant to Article 12 para. (1) of Law No. 252/2023. The information included the subject as a judge of the Chișinău Court of Appeal.

18. On 11 April 2024, the Commission notified the subject and requested that he complete and return an ethics questionnaire and the declarations as

provided in Article 12 para. (3) of Law No. 252/2023 within 20 days from the date of notification (hereinafter, both declarations referred together as the "five-year declaration"). The subject returned the completed five-year declaration and questionnaire on 30 April 2024.

19. On 13 August 2024, the Commission notified the subject that his evaluation file has been randomly assigned to Panel B with members Scott Bales, Iurie Gațcan and Willem Brouwer. He was also informed that subjects may request, in writing and at the earliest possible time, the recusal of members from their evaluation.

20. Because the law sets different evaluation periods for the ethical and financial integrity criteria cited above, the Commission evaluated compliance with these criteria over the past five, ten and 12 years. Due to the end-of-the-year availability of the tax declarations and declarations on wealth and personal interests, the financial criteria evaluation period included 2012-2023 and 2014-2023. The evaluation period for the ethical criterion includes the past five or ten years calculated backward from the date of the notification.

21. In the last 12 years of the evaluation period, the subject had an obligation to submit declarations, both under Law No. 133/2016 on the Declaration of Wealth and Personal Interests, and under Law No. 1264/2002 on the Declaration and Income and Property Control for persons with positions of Public Dignity, Judges, Prosecutors, Civil Servants, positions of Management.

22. The Commission sought and obtained information from numerous sources. The sources that provided information on the subject included the National Integrity Authority (hereinafter "NIA"), the State Fiscal Service (hereinafter "SFS"), the National Office of Social Insurance (in Romanian: *Casa Națională de Asigurări Sociale*, hence hereinafter – "CNAS"), the General Inspectorate of Border Police, banks (Energbank JSC, EuroCreditBank JSC, Eximbank JSC, Moldinconbank JSC, MAIB JSC, BCR Chişinău JSC, Victoriabank JSC, Banca de Finanțe și Comerț (FincomBank) JSC, OTP Bank JSC, Banca Socială JSC, Banca de Economii JSC), Office for Prevention and Fight Against Money Laundering (in Romanian: *Serviciul Prevenirea și Combaterea Spălării Banilor*, hence hereinafter – "SPCSB"), and the Public Service Agency (hereinafter "PSA"). Information was also sought from other public institutions and private entities, open sources such as social media and investigative journalism reports. Several petitions were received on 29 July 2024, 19 August 2024 and 27 November 2024 from members of civil society. These

were included in the evaluation file. All information received was carefully screened for accuracy and relevance.

23. The Commission twice sought information from the General Prosecutor's Office, the Anticorruption Prosecutor's Office, and the Prosecutor's Office for Combating Organized Crime and Special Causes. These requests were prompted by the Chișinău Court of Appeal press release[1] with reference to the public information regarding the alleged bribery of the judges of the Chișinău Court of Appeal. This relates to the replacement of the remand in prison with the house arrest for several Ukrainian citizens. Because none of the identified official sources confirmed their examination of the alleged activities, this was not further investigated, as per Article 14 para. (10) of Law No. 252/2023.

24. On 20 August 2024, the Commission asked the subject to provide additional information by 29 August 2024 to clarify certain matters (hereinafter the "first round of questions"). On 20 August 2024, the subject requested an extension of the time to respond. The Commission granted the extension until 2 September 2024. The subject provided answers and documents within the extended deadline.

25. On 11 October 2024, the Commission asked the subject to provide additional information by 20 October 2024 to clarify certain matters (hereinafter the "second round of questions"). The subject provided answers and documents within the deadline.

26. On 5 December 2024, the Commission asked the subject to provide additional information by 12 December 2024 to clarify certain matters (hereinafter the "third round of questions"). The subject provided answers and documents within the deadline.

27. On 24 January 2025 the Commission notified the subject that it had identified some doubts about his compliance with the ethical integrity criterion and invited him to attend a public hearing on 5 February 2025. The subject was also informed that the evaluation report may refer to other issues that were considered during the evaluation.

28. As provided in Article 39 para. (4) of the Rules, the subject sought and was provided access to all the materials in his evaluation file on 26 January 2025.

[1] Chișinău Court of Appeal press release

29. On 26 January 2025, the subject requested to be heard in partially closed session. On 27 January 2025, the Commission granted the request. The Commission decided to discuss one issue related to the notified doubts, i.e. the *Malai* case[2], in closed session because of an ongoing criminal investigation and to respect the presumption of innocence, the right to privacy and the secrecy of the investigation.

30. On 5 February 2025, the Commission held a public hearing. At the hearing, the subject reaffirmed the accuracy of his answers in the five-year declaration and the ethics questionnaire. He also stated that he did not have any corrections or additions to the answers previously provided to the Commission's requests for information.

V. Analysis

31. This section discusses the relevant facts and reasons for the Commission's conclusion.

32. Based on the information it collected, the Commission analyzed and, where necessary, sought further clarifications from the subject on the following matters:

    a. potential difference between assets, expenses and income (unjustified or inexplicable wealth) for 2012 and 2013,

    b. potential conflict of interest,

    c. involvement in cases leading to violations of the European Convention on Human Rights.

- **Potential difference between assets, expenses and income (unjustified or inexplicable wealth) in 2012 and 2013**

33. Following the detailed analysis of the subject's financial situation and the explanations of the subject during two rounds of questions, the Commission identified inexplicable wealth for 2012 and 2013. According to the Commission's calculations, the difference (negative balance) between the income (incoming cash flows) and expenses (outgoing cash flows) in these years was - 16,876 MDL and - 8,746 MDL, respectively, thus forming a total inexplicable wealth of -25,622 MDL.

34. Even if the negative financial flow for these years were treated as unjustified wealth, it would not exceed the threshold of 234,000 MDL under Article 11

[2] ECtHR, *Malai v. the Republic of Moldova*, no. 24179/18, 19 November 2024.

para. (3) lit. a) of Law No. 252/2023. Accordingly, the Commission did not request further explanations on this issue.

- **Potential conflict of interest**

35. According to a mass media article[3], the subject did not self-recuse from, and potentially favored, the assessment of his clerk at the 2023 admission contest organized by the National Institute of Justice (hereinafter "NIJ"). The Commission questioned the subject and NIJ on this issue.

36. The subject stated that as a member of the admission committee to NIJ, before signing the statement on no conflicts of interest, he informed other members of the admission committee that one of the candidates, A.R., was employed as a clerk in his team. Because the members of the admission committee did not consider this to be a reason for self-recusal, the subject did not withdraw from the committee. Instead, he signed the statement on the lack of conflict of interest, noting with a hand-written statement that candidate A.R. "is employed as a clerk in my team (Chișinău Court of Appeal) and I consider necessary to communicate this."

37. The NIJ presented the subject's signed statement on lack of conflict of interest. In its answer, NIJ explained that the declaration signed by the subject with hand-written text was communicated to the members of the admission committee. The admission committee found that "there are no grounds for establishing the existence of a conflict of interest on the part of Mr. Alexandru Spoială, Judge of the Chișinău Court of Appeal and member of the admission committee". For this reason, NIJ stated that there was no need to forward his statement to the Council of NIJ per Article 16 para. (3) and (4) of the NIJ Law.

38. These provisions read that:

> "(3) The members of the Admission Committee shall not include members of the Council of the National Institute of Justice, the Superior Council of Magistracy, the Superior Council of Prosecutors, the College for the Selection and Career of Judges, the College for the Selection and Career of Prosecutors and persons with a conflict of interest. The members of the Committee shall sign declarations on their own responsibility to this effect.
>
> (4) If the incompatibility is established after the appointment of the members of the Committee, the member concerned shall withdraw and immediately

[3] https://anticoruptie.md/ro/sesizari/examen-cu-favoruri

inform the Council of the National Institute of Justice of the situation with a view to being replaced in the order referred to in paragraph (1)."

39. The law does not expressly address whether the admission committee, or instead the NIJ or its Council, determines in the first instance if a conflict of interest exists. In this case, as noted, the admission committee determined there was no conflict of interest.

40. At the hearing, the subject noted the similarity of this situation with the judge's regular evaluation of a clerk, which determines the salary and the civil servants' qualification grades. In addition, he explained that A.R. did not pass the admission contest in 2023 and was enrolled in NIJ studies in the next year, when the subject was not in the admission committee.

41. Based on the rules in effect at the time of the relevant actions and the subject's explanations, the Commission concluded that the subject's actions did not amount to a non-compliance with the ethical integrity criterion under Article 11 para. (2) let. a) of Law No. 252/2023.

- **Involvement in cases leading to violations of the European Convention on Human Rights (hereinafter "Convention")**

42. According to the Government Agent and a complaint submitted by a petitioner on 27 November 2024, the subject has been involved in three cases that were the subject of applications before the European Court of Human Rights (hereinafter "ECtHR"). These cases are:

    - *Mătăsaru v. Republic of Moldova*, no. 53098/17, 30 November 2021;
    - *Madam v. Republic of Moldova*, no. 42715/19, 6 September 2022;
    - *Malai v. the Republic of Moldova*, no. 24179/18, 19 November 2024.

43. In *Mătăsaru*, the subject was a member of the Chișinău Court of Appeal, which terminated an appeal after the prosecutor withdrew his appeal against the sentence finding the applicant guilty. By this decision, the Court of Appeal did not decide on the merits of the case. In that connection, the ECtHR judgment does not appear to be directly related to the decision involving the subject. Therefore, the following analysis concerns only the *Madam* and *Malai* cases.

44. Under Article 11 para. (2) lit. a) of Law No. 252/2023, a subject does not meet the criterion of ethical integrity if the Commission determined that he or she issued arbitrary acts, over the last 10 years, contrary to the imperative rules

of the law, and the ECtHR had established, before the adoption of the act, that a similar decision was contrary to the Convention.

45. By judgment No. 2 of 16 January 2025, the Constitutional Court declared these provisions as being constitutional. It stated that according to this provision, to determine the arbitrariness of an act issued by a subject, the Evaluation Commission must establish that two cumulative conditions are met. The first condition is that the act in question is contrary to imperative rules of law. The second condition is that, prior to the adoption of the act, the ECtHR had found that a similar decision was contrary to the European Convention on Human Rights.

46. The Constitutional Court also noted that, in order to clarify the meaning of the concept of arbitrary acts, the addressees of the law may take into account, among others, the meaning attributed to this concept by the ECtHR. Thus, for example, in *Bochan v. Ukraine (No. 2)*, 5 February 2015, § 62, the ECtHR stated that a judicial decision is arbitrary if, in essence, it has no legal basis in domestic law and does not establish any connection between the facts of the dispute, the applicable law and the outcome of the proceedings. The ECtHR considers such a decision to be a "denial of justice". Furthermore, in *Balliktaș Bingöllü v. Turkey*, 22 June 2021, § 75, the ECtHR stated that a "manifest error" may be considered to have been committed by a judicial decision if the court has committed an error of law or of fact that no reasonable court could ever have made and which may disturb the fairness of the proceedings.

- *Madam v. Republic of Moldova*, no. 42715/19, 6 September 2022

47. In this case, after the applicant was acquitted by the court of first instance, the Court of Appeal reversed the lower court and entered a judgment of conviction without hearing all the witnesses anew. The ECtHR found this a violation of Article 6 § 1 of the Convention.

48. In the national proceedings, N.M. (hereinafter "the defendant") was charged under art. 264 para. (1) of the Criminal Code, because while driving his vehicle, in which there were two passengers, he did not respect the road traffic rules. He did not leave enough space between his vehicle and another vehicle ahead of him. When the other vehicle began to turn left, he started to overtake it from the left side, driving on the side of the road reserved for oncoming traffic and thus causing a traffic accident.

49. The Chișinău District Court heard the defendant, two injured parties and a witness. The court also examined the on-site investigation protocol, the

report on the absence of alcohol consumption and two expert reports on injuries. In deciding to acquit the defendant, the court relied on the following considerations: (i) until the impact the defendant was not driving on the oncoming lane, which is confirmed by the braking marks by his vehicle, (ii) no other evidence was presented that the defendant intentionally entered the oncoming lane, (iii) the pictures, attached to the on-site investigation protocol, do not show a panoramic view of the accident site in relation to the road, (iv) no technical expertise had been carried out to determine the exact location of the site of the accident and the position of the vehicles.

50. At the prosecutor's appeal, the Court of Appeal found the defendant guilty as charged. The decision of 24 September 2018 concluded that the first instance court had erred in its assessment of the defendant's statements, which differed from those of the injured parties and witnesses. The Court based its decision on the testimony of two injured parties - passengers in the defendant's vehicle (who were re-heard on appeal) and of an absent witness (not heard in appeal). The injured party who saw the impact testified that there was another vehicle in front of them which at one point turned left, both injured parties testified to the high speed of the vehicle they were in. These testimonies were corroborated by the site investigation protocol. The latter found skid marks 11.1 meters long left by the defendant's vehicle after the collision and brake marks 20.6 meters long left by the front wheels of the same vehicle. The absent witness is a friend of the driver of the other vehicle involved in the accident. He was driving another vehicle while talking on the phone with the driver of the other vehicle. This witness did not see the impact. He only saw the brake marks up to and above the double line of the defendant's vehicle. On 6 March 2019, the Supreme Court of Justice dismissed the defendant's appeal on points of law and upheld the Chișinău Court of Appeal decision.

51. In the *Madam* case, the ECtHR found a violation of the guarantees provided by article 6 § 1 of the Convention. It concluded that the Court of Appeal could not, consistent with the requirement of a fair trial, have reversed the trial court and entered a conviction without a direct assessment of the evidence given by the witnesses and the experts (see § 10 of the ECtHR judgment).

52. Article 415 of the Code of Criminal Procedure at that time (hereinafter "CCP") read that "(2/1) When hearing an appeal against a judgment of acquittal, the appellate court shall not be entitled to pronounce a judgment of conviction without hearing the defendant present and the prosecution witnesses requested by the parties. The prosecution witnesses shall be re-

examined if their testimony constitutes incriminating evidence likely to support the conviction of the accused in a substantial manner."

53. The Commission notes that there was a consistent case-law of the ECtHR, including against the Republic of Moldova, on the above matter (see, for instance, *Sigurþórsson Arnarsson v. Iceland*, no. 44671/98, 15 July 2003, § 38; *Popovici v. the Republic of Moldova*, nos. 289/04 and 41194/04, 27 November 2007, § 68; *Dan v. the Republic of Moldova*, no. 8999/07, 5 July 2011, § 30; *Lazu v. the Republic of Moldova*, no. 46182/08, 5 July 2016, § 40).

54. In reply to the first round of questions, the subject stated that in this case two injured parties were heard by the court of appeal. The injured parties were in the defendant's vehicle and one of them was in the front seat and saw the impact. The subject considered therefore that "the hearing of the injured parties and the examination of the written evidence were sufficient to establish the guilt of a person". He also stated that "the non-hearing of a single witness relates to the individual particularities of this case, it is not a systemic or repetitive violation".

55. In reply to the second round of questions, the subject explained that he was following the principles enshrined in the case-law of the ECtHR. Two out of three witnesses were heard. The statements of the witness not heard in appeal related to post-impact issues, which were corroborated by the statements of those heard in court and the site investigation protocol. In the subject's view, "the testimony of the witness not heard in appeal was neither unique nor decisive for the conviction". His decision therefore "complies with article 415 para. (2/1) of the Code of Criminal Procedure".

56. The Commission notes that its task is not to assess whether a piece of evidence was decisive but on whether the decision to convict the defendant, after his acquittal by the court of first instance, was arbitrary.

57. Notably, the Commission has opined in its previous reports on a similar issue. However, that issue, *i.e. case of Melega*[4] differs from the *case of Madam* not only in the factual circumstances. In *Madam*, one witness was not heard, while in the *case of Melega* only one witness was heard. In the *case of Madam*, the subject provided the Commission with a detailed explanation of the reasons for the decision.

58. Therefore, based on the subject's explanations and the relevant legal principles, the Commission determined that the subject's participation in the

[4] ECtHR, *Melega v. the Republic of Moldova*, no. 40427/18, 18 January 2022.

Court of Appeal decision of 24 September 2018 is not an "arbitrary" act constituting non-compliance with the ethical integrity criterion under Article 11 para. (2) let. a) of Law No. 252/2023.

- *Malai v. the Republic of Moldova, no. 24179/18, 19 November 2024*

[This issue was discussed in a closed session]

59. This case concerns the applicant's unjustified deprivation of liberty for almost six months and her video surveillance in police custody. The ECtHR found a violation of Articles 5 § 3 and 8 of the Convention.

60. The subject was involved in this case as member of the Chișinău Court of Appeal that examined appeals by the applicant and the prosecutor from a ruling of 27 February 2018, which ordered the house arrest of the applicant. In a decision of 12 March 2018, the Court of Appeal replaced the house arrest with a remand in prison. The subject's decision is linked with the violation of Article 5 § 3 ("Right to trial within a reasonable time or to be released pending trial").

61. The applicant N.M. was the mayor of a village. In March 2017 the Prosecutor's Office initiated a criminal investigation into allegations of corruption and abuse of office during a public tender concerning the construction of an aqueduct in her village. It was alleged that one of the participants, who eventually did not win the tender, promised the applicant 10% of the amount payable under the awarded contract and that she had selected as the winner the company with the highest bid, contrary to legal requirements. That participant testified to the effect that the applicant and he had agreed upon the 10% amount. The applicant confirmed that she had received such an offer but denied having accepted it.

62. On 20 November 2017 the applicant was arrested and detained in police custody until 22 November 2017, when she was placed under house arrest. The measure was prolonged on six occasions, including remand in prison for eleven days in March 2018. The applicant was released on 14 May 2018. Each time the courts prolonged her remand in prison or house arrest, they relied on similar grounds, namely on the risk of the applicant's interfering with the investigation or influencing the witnesses. The applicant appealed unsuccessfully against each decision prolonging her deprivation of liberty, arguing that there was no reasonable suspicion that she had committed the alleged offence and that the deprivation of her liberty was unjustified. She argued that the criminal case was politically motivated because she had refused to join the governing party at the time.

63. According to the available information, the criminal case against the applicant was not remitted for trial.

64. In the *Malai* case, the ECtHR found a violation of Article 5 § 3 of the Convention after concluding the domestic courts had relied on stereotyped and abstract reasoning to extend the applicant's detention. The domestic courts justified the applicant's nearly six-month detention on the grounds of potential witness influence and investigation interference but failed to consider her lack of such conduct during the first eight months of the investigation after March 2017. The domestic courts also ignored her claim that no unquestioned witnesses remained after her arrest in November 2017.

65. The Commission notes that there was a body of ECtHR case-law, including against the Republic of Moldova, regarding pretrial detention in criminal cases. Relevant decisions include: *Sarban v. Moldova*, no. 3456/05, 4 October 2005, §§ 97-104; *Castravet v. Moldova*, no. 23393/05, 13 March 2007, § 33; *Idalov v. Russia [GC],* no. 5826/03, 22 May 2012, § 140; *Lauruc v. Roumania*, no. 34236/03, 23 April 2013, § 82; *Šoš v. Croatia*, no. 26211/13, 1 December 2015, §§ 95-97; *Buzadji v. Moldova* [GC], no. 23755/07, 5 July 2016, §§ 115-123; *Făgăraş c. Roumanie,* no. 75431/10, 14 February 2017, §§ 22-29; *Merabishvili v. Georgia,* no. 72508/13, 28 November 2017, §§ 222-224.

66. Being asked in the third round of questions about the decision of the Court of Appeal of 12 March 2018, in which he participated, the subject answered that "the rapporteur on this case was another judge, much more experienced, who was a kind of mentor for him". The subject added that, he "had only been a judge at the Chișinău Court of Appeal for 9-10 months". The subject emphasized that he had considered the case-law of the ECtHR and believed that there were grounds to order the remand in prison, although he "could not know the whole matter".

67. In the subject's opinion, applying a more severe measure is justified when a person under house arrest fails to appear when summoned by the prosecuting authority. He stated that "the panel unanimously concluded that this circumstance [failure to appear when summoned by the prosecuting authority] justifies the modification of the preventive measure" [from house arrest to remand in prison]. The subject considers that "in such a situation, the purpose of the remand in prison is to prevent failure of the accused to appear before the prosecutor." In his answer justifying his decision of 12 March 2018, the subject did not refer to any legal rule or published judicial practice.

68. According to the information from NIJ and Superior Council of Magistracy, the subject has participated in various training activities organized by NIJ and other institutions. The topics of the courses cover the application of preventive and coercive measures (courses in 2013, 2018), the ECtHR case-law (courses in 2013, 2016), and courses for trainers on ECHR standards (in 2013, 2014, 2015).

69. A remand in prison ("*arestul preventiv*") or house arrest (both constitute deprivation of liberty according to the case-law of the ECtHR) may be ordered only if several conditions are cumulatively met.[5]

70. Article 176 para. (1) of CCP provides that:

> "[…] the court shall order preventive measures only if there are sufficient reasonable grounds, supported by evidence, to believe that the suspect, accused or defendant may [i] evade the prosecution or the court, [ii] pressure witnesses, [iii] destroy or tamper with evidence or otherwise obstruct the establishment of the truth in criminal proceedings, [iv] commit other offences, or [v] cause public disorder if released."

71. These grounds have been incorporated into national law from the well-established case-law[6] of the ECtHR. Each of these grounds or risks cannot be asserted *in abstracto* but must be supported by factual evidence[7]. The ECtHR reiterated in its case-law[8] that a person charged with an offence must always be released pending trial unless the state can show that there are "relevant and sufficient" reasons to justify the continued detention.

72. The Constitutional Court stated that remand in prison may be used only in strictly necessary cases, if there is no alternative and as a measure of last resort and not as a punitive measure (Constitutional Court Judgment no. 3 of 23 February 2016, § 92).

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[5] (A) the law of criminal procedure permits the use of these preventive measures; (B) there is a reasonable suspicion that the person has committed the offense with which he or she is charged; (C) there are the risks provided for in the CCP that justify the use of deprivation of liberty (see Article 176 para. (1) and (3)), and (D) other preventive measures cannot eliminate the risks referred to in subparagraph (c) (see Article 185 para. (1) and (3) of the CCP). These conditions are explained in the judgment of the Plenary of the Supreme Court of Justice on the application by the courts of certain provisions of procedural law on pre-trial detention and house arrest (no.1, 15 April 2013), available on the site of the Supreme Court of Justice at the link: search_hot_expl.php

[6] The Convention case-law has developed four basic acceptable reasons for detaining a person before judgment when that person is suspected of having committed an offence: the risk that the accused would fail to appear for trial (see *Stögmüller v. Austria*, § 15, 10 November 1969); the risk that the accused, if released, would take action to prejudice the administration of justice (see *Wemhoff v. Germany*, § 14, 27 June 1968) or commit further offences (see *Matznetter v. Austria*, § 9, 10 November 1969) or cause public disorder (see *Letellier v. France*, § 51, 26 June 1991).

[7] ECtHR, *mutatis mutandis Becciev v. Moldova,* no. 9190/03, § 59, 4 October 2005.

[8] ECtHR, *Becciev v. Moldova*, cited above, § 52.

73. The only factual element to support the remand in prison was the applicant's failure to appear before the prosecutor to receive the materials for the extension of the house arrest (§§ 12-16 of the Chișinău's court ruling of 27 February 2018). Although this fact had not been accepted by the court of first instance because, as the prosecutor knew, the applicant had appeared the same day at a court hearing, it was admitted by the Chișinău Court of Appeal (including the subject) as a reason for the accused to be remanded in prison (custody). The Court of Appeal did not identify relevant evidence proving the risks referenced in Article 176 para. (1) of CCP.

74. Even presuming, as the prosecutor argued, that the applicant could have come to the prosecutor's office before attending the court session, the panel of the Court of Appeal, before ordering a remand to prison, should have analyzed the possibility of applying other measures to prevent the risk of absconding (art.185 para. (3) CCP) or other procedural coercive measure provided for by criminal procedural law (art.197 para. (1), 198 CCP), such as the order to appear before the investigation body.

75. The Commission thus agrees with the ECtHR that the Court of Appeal did not identify relevant and sufficient reasons to order and prolong the applicant's deprivation of liberty pending trial (see §§ 16, 17 of judgement). In light of the ECtHR case law cited above (i.e. *Bochan (No.2)* and *Balliktaș Bingöllü*), the decision of the Court of Appeal of 12 March 2018 could also be viewed as reflecting a "manifest error" and therefore as arbitrary for purposes of Article 11 para. (2) let. a) of Law No. 252/2023.

76. The Commission has determined, however, that the subject's participation in the decision in question by the Court of Appeal is not sufficient, in itself, to constitute grounds for concluding he does not meet the criteria for ethical integrity. In this regard, the Commission notes the subject participated in this case as a relatively junior member of the appellate panel, which issued a unanimous decision granting the appeal by the prosecutor. With regard to the subject's participation, the decision appears to be an isolated act that is better characterized as an issue of professional performance rather than one of ethical integrity. Finding a failure to meet the ethical criteria based on this act alone would be disproportionate[9].

[9] In its case-law on vetting process the ECtHR referred to the principle of proportionality (see for instance *Sevdari v. Albania,* no. 40662/19, 13 December 2022, § 83, https://hudoc.echr.coe.int/?i=001-221482)

VI. Conclusion

77. Based on the information it obtained and the subject's explanations at the hearing, the Commission proposes that the subject promotes the external evaluation made according to the criteria set in Article 11 of Law No. 252/2023.

VII. Further action and publication

78. As provided in Article 40 para. (4) of the Rules, this evaluation report will be sent by e-mail to the subject and the Superior Council of Magistracy, and on the same day, the Commission will publish on its official website the information on the result of the evaluation.

79. No later than three days after the approval, a printed paper copy of the electronically signed report will be submitted to the Superior Council of Magistracy, along with the original electronic copy of the evaluation file containing all the evaluation materials gathered by the Commission.

80. This report will be published on the Commission's official website, with appropriate precautions to protect the privacy of the subject and other persons, within three days after the expiry of the appeal period against the decision of the Superior Council of Magistracy or after the Supreme Court of Justice issues its decision whereby it rejects the appeal or orders the promotion or non-promotion of the evaluation.

81. This evaluation report was approved by unanimous vote on 11 March 2025 and signed pursuant to Articles 33 point (2) and 40 point (5) of the Rules.

82. Done in English and Romanian.

Scott Bales

Chairperson of the Commission

Chair of the Panel B