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# EVALUATION REPORT

approved according to Article 40

of the Rules of Organization and Functioning

**SERGHEI DIMITRIU**

candidate for the Central Court of Appeal

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

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**12 June 2025**

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Evaluation Panel A 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 10 June 2025 and approved the following report on 12 June 2025. The members participating in the approval of the report were:

1. Andrei BIVOL
2. Lavly PERLING
3. Lilian ENCIU

The Commission prepared the following evaluation report based on its work in collecting and reviewing the information, the subject’s explanations, and subsequent deliberations.

#### **I. Introduction**

1. This report concerns Mr. Serghei Dimitriu, a candidate for the Central Court of Appeal (hereinafter the “subject”).
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 for ethical and financial integrity.

#### **II. Subject of the Evaluation**

4. The subject has served as a judge at the Botanica District Court and, subsequently, at the Chișinău District Court since 2008.
5. The subject received a bachelor’s degree in law in 2000 from the Oradea University, Romania.

#### **III. Evaluation Criteria**

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

b) in the last 10 years, has admitted in his/her work incompatibilities and conflicts of interest that affect the office held.”

8. 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.”

9. The applicable rules of ethics and professional conduct for judges in the relevant period were regulated by the:

- a. Law No. 544 of 20 July 1995 on Status of Judge;
- b. Law No. 178 of 25 July 2014 on Disciplinary Liability of Judges;
- c. Judge’s Code of Ethics and Professional Conduct No. 8 of 11 September 2015 approved by the Decision of the General Assembly of Judge;
- d. Judge's Code of Ethics approved by the decision of the Superior Council of Magistracy no. 366/15 of 29 November 2007;
- e. Guide on the integrity of judges No. 318/16 of 3 July 2018 approved by the Superior Council of Magistracy.

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 also to 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 that were 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 concerning 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 26 December 2024, the Commission received the information from the Superior Council of Magistracy under Article 12 para. (1) of Law No. 252/2023. The information included the subject's candidacy for the Central Court of Appeal.

18. On 13 January 2025, 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 10 days from the date of notification (hereinafter, the declarations are referred as the “five-year declaration”). The subject returned the completed five-year declaration and questionnaire on 22 January 2025.
19. On 6 February 2025, the Commission notified the subject that his evaluation file had been randomly assigned to Panel A, which includes members Andrei Bivol, Lilian Enciu and Lavly Perling. 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 2013-2024 and 2015-2024. 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, and positions of Management.
22. The Commission sought and obtained information from numerous sources. No source advised the Commission of later developments or any corrections regarding the information provided. The sources asked to provide information on the subject included the General Prosecutor's Office, the Anti-Corruption Prosecutor's Office (hereinafter “APO”), the Prosecutor's Office for Combating Organized Crime and Special Cases (hereinafter “PCCOCS”), the Ministry of Internal Affairs, the National Anticorruption Center (hereinafter “NAC”), the National Integrity Authority (hereinafter “NIA”), the State Fiscal Service, the National Office of Social Insurance, the General Inspectorate of Border Police, Office for Prevention and Fight Against Money Laundering, the Public Service Agency and banks (EuroCreditBank JSC, Eximbank JSC, Moldinconbank JSC, MAIB JSC, Procredit Bank JSC, BCR Chișinău JSC, Victoriabank JSC, Banca de Finanțe și Comerț (FincomBank) JSC, OTP Bank JSC, Banca Socială JSC, Banca de Economii JSC, Unibank JSC). Information was also obtained from other

public institutions and private entities, open sources such as social media and investigative journalism reports. No complaints or information was received from civil society. All information received was carefully screened for accuracy and relevance.

23. Before completing its report, the Commission asked the General Prosecutor's Office, APO, PCCOCS and NAC to confirm that there were no changes in their previous responses. PCCOCS, NAC and APO responded, but the Prosecutor's General Office has not responded within the deadline provided by Law No. 252/2023.
24. On 21 March 2025, the Commission asked the subject to provide additional information by 31 March 2025 to clarify certain matters (hereinafter the "first round of questions"). The subject provided answers and submitted documents within the deadline.
25. On 30 May 2025, the Commission notified the subject that, based on the information collected and reviewed, it had not identified in its evaluation any areas of doubt about his compliance with the financial criterion and had not established a non-compliance with the ethical integrity criterion. The subject was sent a written hearing notice and an invitation to attend a public hearing on 10 June 2025. The notice stated that if the subject declined to participate but confirmed the accuracy of the information previously provided, the Commission would, absent any new information or developments, adopt a decision to pass the evaluation.
26. On 2 June 2025, the subject confirmed his attendance at the hearing and provided additional explanations and documents. The Commission included them in the evaluation file.
27. As provided in Article 39 para. (4) of the Rules, the subject could have requested access to all the materials in his evaluation file at least seven days before the hearing. However, the subject decided not to exercise this right.
28. On 10 June 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**

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

30. Based on the information it collected, the Commission analyzed and, where necessary, requested further clarifications from the subject on the matters which, upon initial review, raised doubts as to compliance with the criteria established by law:

- a. involvement in cases examined by the ECtHR;
- b. compliance with the wealth and personal interest declaration regime.

**A. Involvement in cases examined by the ECtHR**

- 31. 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.
- 32. According to the information provided by the Government Agent, the subject was involved in one case that was the subject of an application before the ECtHR, *i.e., Iurie Morozan v. Republic of Moldova* (dec.), 20 February 2018.
- 33. The ECtHR did not find any violations of the Convention but took note of the friendly settlement declarations and struck the application out of its list of cases. Furthermore, the judgment issued by the subject dates from September 2013, which falls outside the 10-year time limit provided under Article 11 para. (2) lit. (a) of Law No. 252.

**B. Compliance with the wealth and personal interest declaration regime**

- 34. On 25 October 2017, the subject purchased an apartment in Chișinău. In the 2017–2020 annual declarations submitted to the NIA, the subject indicated the value of the apartment as 31,200 EUR.
- 35. According to the subject, his wife negotiated and agreed to purchase the apartment, including repair work and furnishings, for a total price of 60,000 EUR. However, during the notarization process, the seller refused to include the full amount in the contract, insisting that only 31,200 EUR be recorded. Despite the subject's objections, his wife proceeded to sign the contract, citing the urgency caused by an approved loan of 550,000 MDL to procure the apartment. The subject did not sign the contract and expressed disagreement with the undervaluation. The subject provided a receipt confirming the payment of 60,000 EUR, signed by the seller.
- 36. The subject explained that, under the legislation in force during the years in which he declared the price of 32,000 EUR, the annual declarations were required to indicate either the value stated in the document certifying the



origin of the property or the cadastral value. The subject also explained that the apartment was sold at the beginning of 2022, before the submission of the declaration for the year 2021. Subsequently, in the 2022 declaration, the subject reported the full income from the sale, *i.e.*, 80,000 EUR.

37. The Commission notes that, indeed, the Instruction on the Manner of Completing the Declaration of Assets and Personal Interests, approved by Order No. 2 of 13 January 2017 of the President of the NIA, provided that, under the section *Value of the immovable property*, the value to be indicated was either that stated in the document certifying the origin of the property, or the cadastral value, if the cadastral authorities assessed the property.
38. It was only with the entry into force of Law No. 130 of 7 October 2021 that it was expressly established that declarants must indicate the real value of immovable property they own. Subsequently, Law No. 96 of 14 April 2022 introduced a more specific rule: declarants must declare the real value of immovable property only if the property was acquired in or after 2018. For immovable property acquired by 2017, declarants are required to indicate either the cadastral value or the value specified in the document certifying the ownership. Notably, even Law No. 96/2022 preserved the rule that, for immovable assets acquired in or before 2017, the value to be declared remains the one recorded in the ownership document.
39. The subject's explanations are reasonable, as the applicable legislation required only the declaration of the price stated in the contract. The following mitigating circumstances apply:
  - a. he declared to the NIA the full income obtained from the subsequent sale of the apartment, and was not required to pay tax, as the apartment constituted his primary residence, which—under Article 40 para. (6) of the Fiscal Code—is exempt from capital gains tax;
  - b. he disclosed to the Commission the actual price paid and submitted a receipt confirming the full payment. His explanations are consistent with the seller's refusal to reflect the actual price in the contract and his own decision to proceed with the arrangement, given that the loan for the apartment had already been approved.
40. Therefore, the Commission does not identify any issue of non-compliance with the ethical and financial integrity criteria set out in Law No. 252/2023.

## **VI. Conclusion**

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

## **VII. Further action and publication**

42. As provided in Article 40 point (4) of the Rules, this evaluation report will be sent by e-mail to the subject and the Superior Council of Magistracy. The Commission will publish the evaluation's result on its official website on the same day.
43. 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.
44. 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 rejecting the appeal or ordering the promotion or non-promotion of the evaluation.
45. This evaluation report was approved by a unanimous vote of the Panel members on 12 June 2025 and signed pursuant to Articles 33 point (2) and 40 point (5) of the Rules.
46. Done in English and Romanian.

Andrei BIVOL,

Vice-chairperson of the Commission

Chair of Panel A