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EVALUATION REPORT

approved according to Article 40
of the Rules of Organization and Functioning

OXANA ROBU

judge of the Central Court of Appeal

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

25 March 2025

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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 6 February 2025 and approved the following report on 25 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, as well as the explanations provided in the public hearing and subsequent deliberations, the Commission prepared the following evaluation report.

I. Introduction

1. This report concerns Mrs. Oxana Robu (hereinafter the “subject”), a judge at 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 does not meet the criteria identified in Law No. 252/2023 for ethical integrity.

II. Subject of the Evaluation

4. The subject has been a judge at the Central Court of Appeal since 2014. This court was known as the Chișinău Court of Appeal until it was renamed on 27 December 2024.
5. Before being appointed to the Central Court of Appeal, the subject served as a judge at the Ciocana District Court.
6. The subject holds academic positions at the National Institute of Justice and the Moldova State University.
7. The subject received a bachelor’s degree in law in 1996 from the Moldova State University. In 2009 she obtained her Ph.D. from the same university.

III. Evaluation Criteria

8. Under Article 11 para. (1) of Law No. 252/2023, the Commission evaluates the subject's ethical and financial integrity.
9. 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."
10. 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."
11. 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.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. Regarding the standard of "serious doubts" in the context of the vetting exercise, the Constitutional Court noted 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).

18. 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

19. On 5 April 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 as a judge of the Central Court of Appeal.
20. On 11 April 2024, the Commission notified the subject and requested that she 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-years declaration”). The subject returned the completed five-year declaration and questionnaire on 30 April 2024.
21. On 13 August 2024, the Commission notified the subject that her evaluation file had been randomly assigned to Panel B with members Scott Bales, Iurie Gațcan and Willem Brouwer. She was also informed that subjects may request, in writing and at the earliest possible time, the recusals of members from their evaluation.
22. Because the law sets different evaluation periods for the ethical and financial integrity criteria cited above, the Commission evaluated compliance with these criteria respectively over the past five, ten, and 12 years, respectively. 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 backwards from the date of the notification.
23. 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.
24. 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 sought to provide information on the subject included the General Prosecutor's Office, the Anti-Corruption Prosecutor's Office, the Prosecutor's Office for Combating Organized Crime and Special Cases, the Ministry of Internal Affairs, the National Anticorruption Center, 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 (Banca Sociala JSC, BCR JSC, Banca de Economii JSC, EuroCreditBank JSC, Eximbank JSC, Moldinconbank JSC, MAIB JSC, Victoriabank JSC, OTP Bank JSC, Banca de Economii JSC), and the Public Service Agency (hereinafter "PSA"). Information was also sought from other public institutions, private entities and open sources, such as social media and investigative journalism reports. No complaints or information were received from civil society. All information received was carefully screened for accuracy and relevance.

25. On 25 September 2024, the Commission asked the subject to provide additional information by 6 October 2024 to clarify certain matters (hereinafter the "first round of questions"). On 3 and 11 October 2024, the subject requested extensions to respond, which the Commission granted. The subject provided answers and documents within the extended deadline.
26. On 22 November 2024, the Commission asked the subject to provide additional information by 24 November 2024 to clarify certain matters (hereinafter the "second round of questions"). On 22 November 2024, the subject requested an extension to respond, which the Commission granted. The subject provided answers and documents within the extended deadline.
27. On 18 December 2024, the Commission asked the subject to provide additional information by 29 December 2024 to clarify certain matters (hereinafter the "third round of questions"). On 20 December 2024, the subject requested an extension to respond, which the Commission granted. The subject provided answers and documents within the extended deadline.
28. On 24 January 2025, the Commission notified the subject that it had identified some areas of doubt about the subject's compliance with the financial and ethical criteria and invited her to attend a public hearing on 6 February 2025. The subject was also informed that the evaluation report may refer to other issues that were considered during the evaluation.
29. As provided in Article 39 para. (4) of the Rules, the subject sought and was provided access to all the materials in her evaluation file on 30 January 2025.

30. On 3 February 2025 the subject requested that part of the hearing concerning her involvement in cases leading to violations of the European Convention on Human Rights be held in closed session because these cases are pending. Pursuant to the subject's request under Article 16 para. (3) of Law No. 252/2023, the Commission determined to conduct the part of the hearing related to European Court cases in a closed session.
31. On 4 February 2025 the subject submitted additional information and documents. The Commission included them in the evaluation file and discusses their relevance in the Analysis section.
32. On 6 February 2025, the Commission held a hearing. At the hearing, the subject reaffirmed the accuracy of her answers in the five-year declaration and the ethics questionnaire. The subject also stated that she did not have any corrections or additions to the answers previously provided to the Commission's requests for information. The subject submitted additional documents, and Commission included them in the evaluation file and discusses their relevance in the Analysis section.

V. Analysis

33. This section discusses the relevant facts and reasons for the Commission's conclusion.
34. Based on the information it collected, the Commission analyzed and, where necessary, sought further clarifications from the subject on following matters:
 - a. potential difference between the assets, expenses and income (inexplicable wealth) for 2012-2017 and 2019; and,
 - b. involvement in cases leading to violations of the European Convention on Human Rights.

A. Doubts not leading to failure

Potential inexplicable wealth for 2012-2017 and 2019

35. The analysis of the subject's financial situation has preliminarily found the following difference between the income and the expenses (negative balance): -57,825 MDL in 2012; -179,303 MDL in 2013; -19,778 MDL in 2014; -36,991 in 2015; 14,830 MDL in 2016; -108,341 MDL in 2017 and -405,593 MDL in 2019.
36. The negative balance resulted from the attribution to the subject's financial outflows of the prices of vehicles that were registered to her ex-husband and

the identified expenses for the construction of a house on land owned by the subject's parents. Below are the circumstances and the Commission's conclusions regarding these two issues.

Potential beneficial ownership over vehicles

37. 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 the persons indicated in Article 33 paras (4) and (5) of Law No. 132/2016 regarding the National Integrity Agency. Under Article 33 para. (5) of Law No. 132/2016, if it appears that the assets of the subject have been registered in the name of other persons, the control will also extend to these assets and persons. If the subject indicated income and goods obtained from donations or possesses assets based on a free-of-charge lease, the control will also extend to the donor and the lessor who provided the goods free of charge.
38. During the evaluation period, the subject may have used four vehicles registered by her ex-husband. He had, however, not declared any official income that could justify the acquisitions. Therefore, the Commission analyzed whether the subject was the beneficiary and whether the expenses for their purchase were attributable to her.
39. The four vehicles are listed below, followed by a table analyzing the key beneficial ownership elements identified in relation to each vehicle. Notably, the last three were imported by the subject's ex-husband.
 - a. *Mercedes G-Class, m/y 2003*. Between 2012 and 2022, the ex-husband had property rights. During the same period, the subject had usufruct rights over the vehicle and constantly declared this to NIA. Some open sources¹ identify her as the driver of the vehicle.
 - b. *Opel Mokka, m/y 2013*. Between 2013 and 2017, the ex-husband had property rights. During the same period the subject had usufruct rights over the vehicle and constantly declared this to NIA.
 - c. *Mercedes GLK-Class, m/y 2013*. Between 2017 and 2021, the former husband had property rights over the vehicle Mercedes GLK-Class, m/y 2013. During the same period the subject had usufruct rights over the vehicle and constantly declared them to NIA.

¹ [Magistrată de la Apel se plimbă cu mertanul prin oraș - Curaj.TV](#)

- d. *Volvo XC40, m/y 2019*. Since 2020 and till present, the ex-husband has property rights. In the annual declarations submitted by the subject to the NIA for the years 2020, 2021, 2022, and 2023, the subject reflected use rights, although she does not have any registered at the PSA.

Price / value	<i>Mercedes G-Class, m/y 2003</i>	<i>Opel Mokka, m/y 2013</i>	<i>Mercedes GLK-Class, m/y 2013</i>	<i>Volvo XC40, m/y 2019</i>
Signs indicating use of the cars	- 30,000 MDL, SPA price ² ; but - open sources suggest higher ³	- 140,000 MDL, import value - 38,775 MDL, import duty	- 326,000 MDL, import value - 68,979 MDL, import duty	- 23,530 EUR, import value - 63,234 MDL, import duty
Internal motor liability insurance	- main: ex-husband - 2 nd insured: subject (2013-17)	- main: ex-husband - 2 nd insured: subject (2014-17)	- main: ex-husband - 2 nd insured: subject (2013-16)	- main: ex-husband (unlimited number of users)
Border crossings	- ex-husband: 6 times as driver - subject: 2 times as passenger	none for the subject	none for the subject	- ex-husband: 4 times as driver - subject: 2 times as passenger
External motor liability insurance	none for the subject	none for the subject	none for the subject	none for the subject
Technical inspections	ex-husband	ex-husband	ex-husband	ex-husband
Maintenance costs	subject: 1 payment	none for the subject	subject: 1 payment	none for the subject

² Under the sale-purchase agreement (SPA) provided by the subject in the third round of questions, the buyer of the vehicle was the ex-husband.

³ The information available on the online marketplaces ([Mercedes G-Class](#)) suggests that today a similar vehicle worth approximately 28,999 EUR. Thus, back in 2012 such a vehicle should have been more expensive. The Commission had concerns regarding the way this vehicle was purchased and the price paid. The open-source information and the customs data suggest a significant difference in value, this vehicle being acquired for allegedly only 1,500 EUR. Absent any other evidence on the actual price paid (considering the time elapsed and the absence of relevant documents in the state registries), the Commission applied in its financial analysis the subject's explanations and the amounts she declared were spent on the vehicles' acquisition.

Road traffic offences	none for the subject	none for the subject	none for the subject	none for the subject
Public road photos	not available	not available	not available	Yes

Subject's explanations

40. In response to the third round of questions the subject stated that after their divorce in 2003 the former husband continued to provide support for their son and the vehicles were used for such needs. The subject also stated that all these vehicles were purchased, imported, and sold by the former husband. She did not purchase or sell these vehicles. The former husband paid the import duty, the road tax, and the compulsory motor third party liability insurance policies, and carried out the periodic technical inspections. As stated by the subject, she and her son used these vehicles only when necessary and returned them upon the former husband's request
41. According to the subject, the fact that the Commission does not possess information about her former husband's income does not mean that his expenses belong to her. The subject added that she does not possess information regarding the former husband's income and expenses. Moreover, the subject stated that the former husband worked abroad, and she believes this is why the Commission cannot identify his income.
42. In the additional explanations submitted on 4 February 2025 and during the hearing, the subject claimed that the ex-husband was the founder and manager of a commercial company ("VAOX" LLC) and that he could have income from this activity.

Commission's assessment

43. According to the SFS database, during the period 2012 - 2023, the subject's former husband did not record any official income. Also, during the same period, he did not receive any social payments. No verifiable income was found to have been obtained from the above company.
44. Although the facts show that the ex-husband lacked the legitimate financial capacity to justify such purchases, these circumstances are not sufficient to consider the subject as the beneficial owner and to attribute the purchase expenses to her (see, e.g., the case of *Anatolie Țurcan*, Report of 14 May 2024, § 50). In order to reach such a conclusion, the Commission would need to identify additional elements, such as: (1) substantial and unrestricted use of the car; (2) financial link between the subject and the purchase (e.g. bank transfers, cash withdrawals shortly before the purchase); or (3) indicators of

concealment of assets, such as failure to declare the use of the vehicles to the NIA. The Commission emphasizes that these elements are not to be assessed cumulatively but may constitute elements that point to an actual beneficiary status.

45. As to a potential substantial and unrestricted use of the cars:
 - the ex-husband was the primary insured for all the cars. The subject was only a secondary insured. This may be reflect that occasional use by the subject and that the ex-husband was concluding and signing the insurance contracts;
 - three out of four vehicles were imported by the ex-husband;
 - the ex-husband presented the cars in question for technical inspections every year, and for the Volvo XC 40 the subject presented evidence that the ex-husband paid for maintenance services at the official dealership;
 - the subject did not cross the state border with these vehicles as a driver. However, the ex-husband was identified in that capacity;
 - there is no record of the subject committing any administrative offenses while driving these vehicles;
46. All these elements suggest that the ex-husband was most likely the main user of the vehicles and there is no indication that the subject had unrestricted access to these vehicles.
47. Nor could the Commission identify any financial link between the subject and the purchase of these vehicles. The two transfers identified for payments to a car service and for the purchase of tires do not relate to the purchase of the vehicles, but to their use. The ex-husband later stated that he returned in cash these costs paid by the subject.
48. In addition, the subject has declared the rights of use of vehicles in all her declarations of assets submitted to NIA. There has been no concealment from the authorities that would give rise to additional doubts.
49. In view of the above, the Commission has decided not to include the purchase and sale prices of these vehicles in the calculation of the inexplicable wealth.

Potential beneficial ownership over a real estate

50. In 2010, the subject's parents purchased from the Chisinau Municipality the plot of land on which their house was already situated. Shortly after

acquisition, they began constructing a new building on the plot of land. The construction was completed in 2015, and the local cadastral authorities registered the newly built house based on a final acceptance report of 7 April 2015 issued by a special commission.

51. Within four months after the house's registration, the subject's parents donated it to the subject's son D.R. (their grandson), together with one half of the property rights over the land plot on which both their own house and their grandson's house are located. At the time of the donation of the house, their grandson was a minor and his assets were managed by the subject.
52. In the first round of questions and during the hearing the subject stated that she and her son reside in this house.
53. In her answers to the second round of questions, the subject reflected expenses of 35,000 MDL in 2011, 57,500 MDL and 450 EUR in 2012, 1,300 EUR, 200 USD and 5,000 MDL in 2013, 35,000 MDL in 2014 and 30,000 in 2015 MDL to have been incurred during the period 2012 - 2015 by her parents in relation to the construction of the house. These amounts reflect the money paid to the workers (according to the receipts attached by her). According to the subject, the parents also had expenses for construction materials, but because it was a long time ago, they have no proof of this. The subject also testified that the parents received some of the construction materials free of charge from the father's brother, who had a construction materials business. On the day of the hearing, the subject provided a statement signed by her father's brother, claiming that he had provided building materials free of charge. According to the subject, from discussions with her parents, they had spent approximately 200,000 MDL on the construction of the building. The same amount is mentioned in the final acceptance report dated 7 April 2015.
54. The estimated cadastral value of the house established by the cadastral authorities, probably when it was registered in 2015, is 481,341 MDL. Additionally, in every year between 2017 and 2023, this house was assessed at a value of 120,000 EUR or 129,000 EUR by the insurance companies in the optional property insurance agreements with the subject's son.
55. For each year from 1998 to 2015, the subject's parents had official income less than Consumption Expenditure per Population. In the second round of questions the subject claimed that her parents had 35,000 MDL as savings from the sale of an apartment in 2003. In line with its previous practice, the Commission finds it difficult to accept that the entire amount remained available until the construction of the house was started. Given that almost 10 years had passed since the apartment sale and the parents' subsequent

income was less than their consumption expenditure, the Commission considers it unlikely, on a balance of probabilities, that this amount was available when construction began. Thus, the subject's parents would not have been able to build the property themselves from official sources of income.

56. Moreover, in her answers to the second round of questions, the subject reflected expenses of 120,638 MDL incurred by her in 2014 for the interior construction and furnishing of the house. These amounts are already part of the calculation of unexplained wealth, independent of who was the actual beneficiary.
57. In the third round of questions the subject stated that she did not incur expenses for building the house, except those for interior construction and furnishing identified by the Commission. The building expenses were in fact incurred by her parents. She also stated that her parents built the house and were legally entitled to donate it to their grandson. In the same round of questions, the subject acknowledged that she does not have any other real estate but said that it does not mean that she is the beneficial owner of the house. She also stated that in that period 2012 - 2015 she had savings and could have built a house if she wanted.
58. During the hearing, the subject stated that her parents decided to build this house because they did not have enough space in their house to accommodate guests, relatives, and grandchildren.
59. In comparison to the cars used by the subject, in relation to the house, the Commission finds several circumstances which indicate that the subject would be the beneficiary of this real estate. Apart from the parents' lack of financial ability to cover these expenses from official sources of income:
 - a) the subject has lived in the house since its construction was completed to the present, while the subject's parents never used the house and therefore did not benefit from it. Since 2018, when her son went abroad to study, she has been the only one living in the house. Also, when asked during the hearing, she stated that she lives rent-free.
 - b) before the construction of the house was completed and donated to her son, the subject purchased goods for its internal repairs and furnishing. This fact indicates the subject's involvement in the construction process, although she claimed she did not know about her parents' intention to donate it to her son. The Commission doubted the argument that the subject was only helping her parents for the following reasons: (1) her parents already had a

house on the same lot where they lived; (2) the implausible need to build another house of approximately 135 square meters (according to the handover documents) on the same plot of land; (3) the subject did not own any real estate at that time and may have been motivated to acquire her own real estate.

60. Therefore, the Commission found that the subject continually used the house and was financially involved in its construction, and that the parents could not afford such expenses. Accordingly, the Commission attributed the expenses for the construction of the house to the subject's outgoing cash flow.
61. Because inexplicable wealth calculations focus on expenses incurred rather than speculative values and the house was built on a plot of land belonging to the subject's parents, the Commission did not attribute the cadastral value of the house or another market value to the outflows. Instead, the Commission decided to focus on identifiable construction expenses
62. The amounts reflected in the result of an appraisal, whether for establishing cadastral⁴ or market value, are influenced by various circumstances, *e.g.* market fluctuations, neighborhood value, public infrastructure developments, land desirability. However, construction costs are based on materials and labor - not external valuation factors. Therefore, an increase in property value may not be an expense, but rather a market shift.
63. In addition to the 120,638 MDL declared by the subject as payments made by her in 2014 for the purchase of construction materials and equipment, the Commission also included in the inexplicable wealth calculations the amounts representing construction expenses allegedly paid by the subject's parents during the evaluation period: 57,500 MDL and 450 EUR in 2012 (total 64,503 MDL), 1,300 EUR, 200 USD and 5,000 MDL in 2013 (total 29,259 MDL), 35,000 MDL in 2014 and 30,000 in 2015 MDL.

Conclusion regarding inexplicable wealth

64. Excluding from the calculations of inexplicable wealth the expenses for the acquisition of vehicles, as described above, and adding the identified

⁴ The cadastral value is an official appraisal used for tax purposes and is based on technical and economic parameters that are characteristic for each category of real estate and is determined in the framework of the procedure of mass valuation of all real estate in a given category (see [here](#)).

expenses for construction, the Commission determined that the subject's household would have recorded negative balances as follows: -27,825 MDL in 2012, -528 MDL in 2013, -19,778 MDL in 2014, -36,991 MDL in 2015, -14,830 MDL in 2016, and -36,199 MDL in 2017.

65. The total negative balance would have amounted to approximately 136,151 MDL. Thus, even if the negative cash-flow for these years was treated as inexplicable wealth, it would not exceed the threshold of 234,000 MDL under Article 11 para. (3) lit. a) of Law No. 252/2023.

B. Doubts leading to failure

Involvement in cases leading to violations of the European Convention on Human Rights

66. According to the Government Agent, as a judge, the subject was involved in six cases against the Republic of Moldova which led to a finding of a violation by the European Court of Human Rights (hereinafter "ECtHR"), namely:

- *Grafescolo S.R.L. v. the Republic of Moldova*, 22 July 2014;
- *Baraboi and Gabura v. the Republic of Moldova*, 27 April 2021;
- *Petrenco and others v. the Republic of Moldova*, 14 September 2021;
- *Cosovan v. the Republic of Moldova*, 22 March 2022;
- *Naddur v. the Republic of Moldova*, 13 December 2022;
- *V.P. v. the Republic of Moldova*, 6 September 2022.

67. 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.

68. By judgment No. 2 of 16 January 2025, the Constitutional Court declared the provision as being constitutional. It stated that according to this provision, to determine the arbitrariness of an act issued by a subject, the 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 Convention.

69. 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 *Ballıktaş 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.
70. The Commission notes, in line with the first condition listed by the Constitutional Court, that along with the provisions of the national laws, the Convention and the ECtHR case-law may establish imperative rules for purposes of Article 11 para. (2) lit. a) of Law No. 252/2023. Article 4 of the Constitution provides that wherever disagreements appear between the international conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations. In addition, in this analysis, the Commission considers the ECtHR's interpretation of arbitrary acts, as is detailed in the above paragraph.
71. In *Grafescolo*, the application was filed with the ECtHR in 2008 and the national events took place in 2003-2008. Therefore, the subject's decision is outside the 10-year time-limit provided for in Article 11 para. (2) lit. (a) of Law No. 252. In *Baraboi and Gabura*, at the time of the relevant subject's decision, there was no local consensus on whether sex video chats constituted prostitution or the dissemination of pornographic material. Since the legal uncertainty was only resolved later by the Constitutional Court by decision of 14 February 2018, the Commission could not conclude that the judge's decision was contrary to any mandatory norm or arbitrary. In *Petrenco*, the ECtHR ruled on the violation of Article 5 § 1 concerning the applicants' pre-trial detention, whereas the subject was involved in a later decision on the merits of the case. Still, the subject was asked about this case and after reviewing her reasoning and the evidence considered, the Commission found no indication of arbitrary actions. The Commission has therefore analyzed only the involvement of the subject in the three other cases: *Cosovan*, *Naddur* and *V.P.*

Cosovan v. the Republic of Moldova, 22 March 2022

72. The case concerned the positive obligations of the authorities under Article 3 regarding the medical treatment of a person with a serious illness in its terminal phase, as well as the compatibility of such a condition with continued detention. It also concerned under Article 5 § 3 the allegedly insufficient reasons given for the applicant's detention pending trial. The subject was a member of the Court of Appeal panel that upheld the applicant's conviction and denied his release on medical grounds on 28 November 2018.
73. **Facts concerning criminal proceedings against the applicant and the pre-trial detention.** The applicant was a Moldovan businessman. In September 2017, he was arrested on suspicion of fraud and influence peddling and placed in pre-trial detention for 30 days. The pre-trial detention was extended several times, essentially on the same grounds, with no new evidence or facts.
74. On 11 July 2018, the Chisinau District Court found the applicant guilty and sentenced him to seven years' imprisonment. On 28 November 2018, a panel of the Chisinau Court of Appeal with the participation of the subject upheld the first court sentence and rejected a request for release (the circumstances of the request will be described below).
75. On 9 July 2019 the Supreme Court of Justice quashed the lower court's judgment and sent the case for a retrial by the Chişinău Court of Appeal.
76. On 1 October 2019 the Chişinău Court of Appeal again sentenced him to seven years' imprisonment. On 24 March 2020 the Supreme Court of Justice again quashed the lower court's judgment and sent the case for a retrial by the Chişinău Court of Appeal.
77. **The applicant's medical condition.** While in detention, he was diagnosed with hepatitis C decompensated cirrhosis B-stage in terminal phase, and his state of health worsened considerably. In March 2018, a public hospital confirmed the severity of his condition and recommended inpatient care by a hepatologist. In April 2018, the Ombudsman highlighted insufficient care at prison hospital and called for urgent action to protect the applicant's health. Despite recommendations for a liver transplant, he faced challenges accessing specialized treatment due to the prison's lack of accredited facilities. Efforts to place him on the liver transplant waiting list were delayed due to additional required testing.

78. **The request on release for health condition.** During the appeal proceedings before a panel with the participation of the subject, the applicant asked for his release based on Article 95 para. (2) of the Criminal Code. This article allows persons suffering from serious illnesses to be released from detention. The applicant's request was supported by Moldova's Ombudsman, the Council for the Prevention and Elimination of Discrimination and for Ensuring Equality (the CPEDAE), and by a medical expert invited by the Chisinau Court of Appeal.
79. On 28 November 2018, a panel of the Chisinau Court of Appeal with the participation of the subject rejected the applicant's request for release stating that "the issue in question is to be solved at the stage of the enforcement of the sentence and after the judgment becomes final and irrevocable."
80. On 18 November 2019, the Chişinău District Court granted the request lodged by the applicant's attorney and by the administration of prison hospital to release the applicant on health grounds.
81. The applicant died in a civil hospital in Chişinău on 25 March 2021.
82. **The ECtHR findings.** Under Article 3 of the Convention (*prohibition of torture*), the ECtHR examined the applicant's case in the light of three key factors: his health, the adequacy of his medical treatment in detention and the appropriateness of his continued detention. The subject's decision is not directly related to the applicant's health and the adequacy of his medical treatment. However, it relates to the compatibility of the applicant's health with the detention.
83. The ECtHR noted that the applicant's illness was serious enough to justify release under Moldovan law (§ 87 of the judgment).
84. As stated by the ECtHR, for the purpose of Article 3 and in the circumstances of a case like the present one, there is no reason to distinguish between a person convicted by a final judgment and one detained pending trial, when it comes to the suffering caused by detention incompatible with that person's medical condition. Neither the domestic courts nor the Government offered a satisfactory explanation for such a difference in treatment. In fact, such a difference may well be discriminatory (§ 89 of the judgment).
85. **The subject's explanations.** The Commission asked the subject the reasons for construing Article 95 of the Criminal Code as applying only to the enforcement phase of the sentence. This law expressly provides that a person who, before sentencing or during the execution of the sentence, has fallen ill with a serious illness that prevents the execution of the sentence, may be

released from the execution of the sentence by the Court. The Commission also asked the subject whether she had considered the possibility of applying other remedies provided by law to replace imprisonment with a more lenient punishment, such as Article 79 of the Criminal Code.

86. The subject cited Article 469 para. (1) pt. 3) Code of Criminal Procedure, according to which, during the enforcement of the sentence, the court shall decide on the questions of changes in the execution of certain decisions, namely release from the execution of the sentence of seriously ill persons (Article 95 of the Criminal Code). The subject also cited the Regulation on the manner of presentation of seriously ill convicted persons for release from sentence.
87. According to the subject “in the context of the above-mentioned norms, the panel considered as premature the lawyer’s request to examine the issue of the defendant’s release from the execution of the sentence in accordance with Article 95 of the Criminal Code, as the issue should be resolved at the stage of execution of the sentence and after the sentence becomes final and irrevocable”.
88. The subject also claimed that she did not apply the provisions of Article 79 of the Criminal Code, because para. (3) of this Article did not allow for a change of sentencing categories in case of conviction for particularly aggravated offenses.
89. **The Commission’s findings.** The decision of the Chisinau Court of Appeal falls within the 10-year period and the ECtHR found a violation of Article 3 because, among other things, the applicant’s medical condition was not compatible with the detention.
90. The Commission observed that, at the request of the Chisinau Court of Appeal with the participation of the subject, on 24 October 2018, a forensic evaluation of the applicant’s health was conducted. The report confirmed that the applicant’s illness was listed among the diseases qualifying seriously ill prisoners for release. The forensic expert also indicated that, according to the medical records, each time the applicant received inpatient treatment, his health improved.
91. However, on 28 November 2018, the Court of Appeal rejected the request for release based on Article 95 para. (2) of the Criminal Code, citing the Regulation on the presentation of seriously ill convicted persons for release, which stipulates that only those with a final conviction are eligible for release.

92. The Commission notes that the wording of Article 95 para. (2) of the Criminal Code is plain. This provision establishes two scenarios when a person may become ill with a disease that justifies his or her release from punishment: (1) before the sentence is pronounced, or (2) during the execution of the sentence.
93. With regard to the subject's statement that Article 469 para. (1) pt. 3) of the Code of Criminal Procedure only allows release from punishment during the execution of the sentence, the Commission notes that this procedural rule may apply when release is sought under the second scenario provided by Article 95 para. (2), *i.e* when a person becomes ill during the execution of the sentence.
94. When a person becomes ill before the sentence is entered, the judge who will impose the sentence has the prerogative to order release. The procedural framework for the application of Article 95 of the Criminal Code when a person becomes ill during the trial was Article 385 of the Code of Criminal Procedure para. (1) pt 8. According to these provisions, when imposing the sentence, the court shall decide whether the measure of punishment imposed on the defendant shall be executed or not.
95. There was no reason why a seriously ill person should not be released from execution at the time of sentencing but should be sent to prison and required to undergo other procedures. Such unsound reading and application of the law has only served to unduly prolong the suffering of a seriously ill person. The Commission reiterates the ECtHR's findings that there was no justification for distinguishing between a person convicted by a final judgment and a person detained pending trial as regards the suffering caused by detention which is incompatible with that person's medical condition.
96. The reasoning concerning the non-application of a lighter sentence than that prescribed by law under Article 79 of the Criminal Code is also unclear. Notwithstanding the citation of para. (3) of this Article, which would prohibit a change in the category of punishment for "particularly serious crimes", Mr. Cosovan was sentenced based on Article 190 para. (4) of the same Code, an offence which does not fall within this category. In the abstract, the application of a non-custodial sentence was not excluded under Article 79 of the Criminal Code based on exceptional circumstances of the case.
97. In addition to the provisions of the Convention and the case law of the ECtHR establishing positive obligations resulting from Article 3 of the

Convention, Article 4 para. (2) of the Criminal Code provided that criminal law does not aim to cause physical suffering or injury to human dignity. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 4 para. (2) of the Criminal Code established a clear imperative rule, a direct prohibition of inhuman and degrading punishment that imposed a binding obligation on the state and judges.

98. Moreover, Article 7 para. (1) of the Criminal Code established that, in the application of criminal law, account shall be taken, among others, of the personality of the offender and the circumstances of the case which mitigate criminal responsibility.
99. The Commission must further determine whether there existed a previous ECtHR decision in similar cases.
100. Article 3 does not specify the obligation to release a detainee on health grounds or to transfer a detainee to a hospital outside the prison facilities. However, there might be situations where the proper administration of criminal justice requires remedies to be taken in the form of humanitarian measures (*Enea v. Italy*, 17 September 2009, § 58).
101. In order to assess whether continued detention is compatible with the prisoner's state of health, three factors must be considered: 1) the prisoner's condition; 2) the quality of care provided; and 3) whether or not the applicant should continue to be detained in view of his state of health (*Dorneanu v. Romania*, 28 November 2017, §§ 77 - 80).
102. The ECtHR examined the obligation of authorities to consider release or alternative measures for detainees whose medical conditions are incompatible with continued detention in the following cases: *Gulay Cetin v. Turkey*, 5 March 2013, *Farbtuhs v. Latvia*, 2 December 2004, *Dorneanu v. Romania*, 28 November 2017).
103. In the light of the legal provisions and the ECtHR case law in force at the time, and the forensic report carried out at the request of the Chisinau Court of Appeal, the Commission finds that the refusal to release from execution of sentence a seriously ill person charged with a non-violent offense and the imposition of a seven-year prison sentence constitutes a decision that is contrary to Article 11 para. (2) lit. a) of Law No. 252/2023. The decision was based not only on a misinterpretation of law but also on a manifest error and disregard for clear legal provisions that no reasonable court should have made.

Naddur v. the Republic of Moldova, 13 December 2022

104. The case mainly concerns the reversal of a judgment of a first instance court by which the applicant was acquitted and his conviction on appeal without hearing any witnesses. The ECtHR found a violation of Article 6 § 1. The subject was involved as a judge of the Court of Appeal which by the decision of 26 January 2018 convicted the applicant.
105. **Facts concerning national proceedings.** The applicant, together with other individuals, was accused of fraud. He was alleged to have been part of a group of persons who had defrauded a foreign businessman of a large sum of money (the conclusion of a fictitious contract for the sale of sheep for 320,000 USD). The main evidence against the applicant was the testimony of the victim, who claimed that he had met the applicant in Istanbul who had told him about the company that had defrauded him. At the same time, according to the applicant's passport, he did not cross the border during that period. After hearing the victim, the applicant and numerous witnesses, and after examining all the available evidence, the court of first instance acquitted the applicant. The Chisinau Court of Appeal upheld the acquittal on 24 November 2016. However, on 30 May 2017, the Supreme Court of Justice sent the case back to the Chisinau Court of Appeal for a retrial.
106. A panel of the Chisinau Court of Appeal with the participation of the subject retried the case and overturned the acquittal and convicted the applicant by a decision of 26 January 2018. In doing so, it did not re-hear the victim or any other witnesses but merely read their statements from the case file. By a decision of 30 October 2018, the Supreme Court of Justice declared inadmissible the applicant's appeal on point of law.
107. **The ECtHR findings.** The ECtHR found a violation of Article 6 § 1, stating that the Court of Appeal after the reversal of the acquittal of the first instance, could not, as a matter of fair trial, examine properly the case without a direct assessment of the evidence given by the witnesses, the victim and any other relevant material in the case file. In particular, whether the applicant had committed fraud depended essentially on the credibility of the witnesses, including the victim, which cannot be fully assessed by a mere reading of their statements made before the first instance court.
108. **The subject's explanations.** In the second round of questions, the subject stated that her panel applied the ECtHR case law. However, due to the lapse of time and the fact that she has examined thousands of cases since then, it is difficult for her to confirm whether she specifically relied on the ECtHR case law in question and how it was reflected in the decision.

109. She further noted that the Supreme Court of Justice had sent the case for retrial before the Court of Appeal, thereby obliging the panel to follow the indications provided by the Supreme Court of Justice.
110. She noted also that, at the prosecutor's request, the witnesses' statements were read during the hearing, and that the applicant's representative did not request their rehearing. The subject cited some ECtHR case law, emphasizing that there must be a good reason for the non-attendance of a witness. When a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defense may be restricted to an extent that is incompatible with the guarantees provided by Article 6 (*Al-Khawaja and Tahery v. the United Kingdom*, § 119).
111. She also mentioned that it is the prosecutor's duty to request the hearing, the appeal court cannot do it *ex officio*. The subject reasoned that she heard the victim, who was originally from Jordan, who was very distressed because her family could not recover money that they lost due to the defendant's alleged fraud.
112. Additionally, she stated that the accused failed to appear at the hearing. Consequently, considering all the circumstances of the case, the subject maintained that the Chisinau Court of Appeal issued a legitimate decision to convict the accused.
113. **The Commission's findings.** The decision of 26 January 2018 issued by the subject falls within the 10-year period. The Commission also notes that the ECtHR found a violation of the Convention because the Chisinau Court of Appeal overturned the acquittal and convicted the applicant without rehearing the witnesses.
114. Article 415 para. (2¹) of the Code of Criminal Procedure stipulated that, when judging the appeal against the acquittal sentence, the appellate court is not entitled to pronounce a conviction without hearing the defendant, as well as the accusation witnesses requested by the parties. It establishes a mandatory legal requirement that the appellate court must hear the defendant and the accusation witnesses before overturning an acquittal and issuing a conviction. This ensures the defendant's right to a fair trial and the adversarial principle in criminal proceedings. This amendment has been in force as of 27 October 2012, following the ECtHR case *Dan v. Republic of Moldova* and constituted a measure on the enforcement of this judgement.

115. Article 419 of the Code of Criminal Procedure provided that the procedure for rehearing a case on appeal must follow the general rules for the examination of criminal cases at first instance.
116. The explanatory judgment of the Plenary Supreme Court of Justice No. 22 of 12 December 2005, established:

“Bearing in mind the provisions of Article 6 of the European Convention on Human Rights, after an acquittal judgment pronounced by a first-instance court, the appeal court cannot order the conviction for the first time without hearing the accused and without the direct administration of the evidence.”
117. The ECtHR found in its judgement in the case under discussion that the manner in which the Chişinău Court of Appeal conducted the proceedings appears to be at odds with the Article 419 of the Code of Criminal Procedure and with the guidelines set out in the Plenary Supreme Court of Justice’s explanatory judgment No. 22 of 12 December 2005, under which, after an acquittal judgment pronounced by a first-instance court, the appeal court cannot order the conviction for the first time without hearing the accused and without the direct administration of the evidence (see § 11).
118. Moreover, as interpreted in the explanatory decision of the Plenum of the Supreme Court of Justice No. 12 of 24 December 2012, failure to comply with Articles 24 and 26 of the Code of Criminal Procedure—requiring the prosecutor, after an acquittal in the first-instance court, to request the rehearing of the defendant and to present evidence supporting the charges—should be seen as a lack of support for the criminal charges.
119. Despite the mandatory rules in force at that time, which stipulated that the appellate court could not convict a person without hearing witnesses, the decision pronounced by the panel with the participation of the subject did not contain any mention that any witness had been heard. The subject argued that she had heard the victim. However, the Commission found that the minutes of the hearing only confirmed that the victim's statements had been read and signed without referring to the victim appearing as a witness before the court of appeals.
120. The subject also mentioned that her panel considered the case as a retrial court, after the Supreme Court sent the case back to the Chisinau Court of Appeal. However, the Supreme Court's decision of 30 May 2017 does not mention that the Court of Appeal should render a conviction without hearing witnesses.
121. According to the subject, her panel could not examine evidence on its own motion. The Commission does not dispute this but refers to Articles 24 and

26 of the Code of Criminal Procedure cited above, as interpreted by the Supreme Court of Justice. It is the prosecution's responsibility to present evidence, including witnesses, and if the prosecution fails to exercise these powers, a court cannot convict.

122. The Commission notes that there has been a consistent case-law of the ECtHR, even against the Republic of Moldova, on this issue. The following list of cases is not exhaustive: *Sigurþór Arnarsson v. Iceland*, 15 July 2003, *Dan v. Republic of Moldova*, 5 July 2011, *Manoli v. Republic of Moldova*, 28 February 2017, *Lazu v. Republic of Moldova*, 5 July 2016.
123. The principle of immediacy is an important guarantee of fair criminal proceedings. In particular, where an appellate court is called upon to examine a case as to the facts and the law and to make a full assessment of the question of the applicant's guilt or innocence, it cannot, as a matter of fair trial, properly determine those issues without a direct assessment of the evidence (*Popovici v. Republic of Moldova*, 27 November 2007, § 68).
124. The Commission notes that in a similar case, *Lazu v. Republic of Moldova*, the ECtHR found that the proceedings before the Chişinău Court of Appeal had been unfair because it had convicted the applicant without hearing the prosecution witnesses. The Court noted that the requirements of a fair trial necessitated the rehearing of witnesses and that the Court of Appeal was under an obligation to take positive measures to such an end, even if the applicant did not request it (§ 42 of the judgment).
125. In the light of the legal provisions and the ECtHR case law in force at the time (at least four cases against Republic of Moldova), the Commission finds that the subject was part of a panel that disregarded mandatory clear procedural rules, Supreme Court guidelines and mandatory case-law of the ECtHR resulting in a denial of justice. In this particular case, the failure to ensure an adversarial process and proper evidence assessment represented a manifest error—an error of law that no reasonable court should have made.
126. Therefore, the decision under discussion meets the criteria for establishing the arbitrary nature of the act and its issuance does not satisfy the ethical integrity requirement under Article 11 para. (2) lit. a) of Law No. 252/2023.

V.P. v. the Republic of Moldova, 6 September 2022

127. The case concerned an applicant who was convicted in criminal proceedings without having an opportunity to call two important witnesses for the defense.

128. **Facts concerning national proceedings.** The applicant was accused of trafficking in children, namely that in 2011 he had contacted A.G. and had asked him to set up a meeting between him and two minor boys, N.C. and D.G. (the victims), aged 15 and 16 to have sex with them in exchange for money. According to the accusation, A.G. used to act as a pimp for the victims and to set them up with multiple clients. The applicant denied the accusation and explained that A.G. used to be his landlord for several months when he rented from him a part of his house. During that time, he saw the victims on several occasions in the company of A.G. He also submitted that at one point he was questioned by the police regarding a criminal investigation against A.G. and since he refused to make statements incriminating the latter, the police threatened him that he would end up as A.G. He said he was a victim of a police setup.
129. During the first questioning, which took place in September 2011, N.C. mentioned the names of numerous clients with whom he and his friend D.G. had been set up by A.G. He did not mention the applicant as being one of them and said that “he did not remember other pedophiles”. However, two months later, in November 2011, he changed his statements and submitted that the applicant had come once to A.G.’s house accompanied by a friend of his and had performed oral sex on him and on G.D. and paid them money afterwards. He also stated that the applicant had been informed about his and G.D.’s age and that he did not know the applicant’s friend’s name. Two years later, during his last questioning, N.C. repeated the same statements, but this time recollected the applicant’s friend’s name.
130. Another piece of evidence of the accusation was the minutes of N.C.’s and D.G.’s recognizing the applicant by a photo as being the person with whom they had sex in exchange for money.
131. During the proceedings the applicant requested that a psychological and psychiatric examination of N.C. be carried out in order to determine whether he was lying. He also requested that N.C. be subjected to a lie detector examination. The applicant also requested the questioning of A.G. The latter, who was tried in a separate set of proceedings for a similar offence, also requested to be heard in the proceedings against the applicant. However, all the above requests were dismissed.
132. On 22 December 2014 the Central District Court of the Chisinau Municipality found the applicant guilty as charged and sentenced him to 16 years of imprisonment. In so doing, the court did not hear either of the victims but merely relied on the statements given by N.C. during the investigation phase

of the proceedings. Nor did the court hear A.G., despite the applicant's request to that effect.

133. The applicant appealed and argued, inter alia, that the first instance court had based its judgments on one of the victims' submissions without giving him the opportunity to examine either of the victims. He also submitted that the first instance court had refused to hear A.G., who was a key witness in the case.
134. On 1 June 2015, a panel of the Chisinau Court of Appeal with the participation of the subject dismissed the applicant's appeal and confirmed the judgment of the first instance court. Before doing so, the Court of Appeal heard N.C., who confirmed the statements given during the investigation. Both the Court and the applicant posed questions to N.C. D.G. did not appear at the hearing despite being summoned and the court decided to dispense with his presence. The court rejected the applicant's objection about the first instance court's failure to hear A.G. and argued that the latter could not be heard because he would have self-incriminated himself.
135. The applicant lodged an appeal on points of law and argued that the Chisinau Court of Appeal had failed to resolve the issues he had complained about in his appeal. He also insisted on A.G. being heard and informed the Supreme Court that A.G. had already been convicted by a final decision and had written a letter in which he had expressed the wish to be heard in court in the proceedings against the applicant.
136. **The ECtHR findings.** Any statements that D.G. and A.G. might have made would have been decisive in establishing the facts and might have had an impact on the legal characterization of the case. Therefore, the request to examine these two witnesses was sufficiently reasoned and relevant to the subject matter of the accusation (§ 15 of the judgment).
137. The domestic courts did not consider the relevance of D.G. and A.G.'s testimony and did not provide sufficient reasons for their decision to dispense with them at the trial (§ 16 of the judgment).
138. Hearing the two witnesses in the proceedings was crucial not only because of the relevance and of possibly decisive nature of their submissions but also because the main piece of evidence relied upon by the courts to find the applicant guilty, i.e. N.C.'s submissions, appeared to have been flawed with inconsistencies. In September 2011 he did not mention having had sex with the applicant, then two months later he said the contrary, and two years later he appeared to recollect things which he did not know in 2011. The ECtHR

therefore concluded that the domestic courts' failure to examine D.G. and A.G. undermined the overall fairness of the proceedings (§ 17 of the judgment).

139. The ECtHR found that by not allowing the defense to hear D.G. and A.G. and by accepting all the prosecution arguments and evidence, the trial courts created an unfair advantage in favor of the prosecution and consequently deprived the applicant of any practical opportunity to effectively challenge the charges against him (§ 18 of the judgment).
140. **The subject's explanations.** The subject noted that the evidence demonstrated the commission of the offense.
141. The subject also mentioned that she decided to reject the request for D.G.'s hearing because he was a minor at the time of the offense. In this respect, she respected the rights guaranteed by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, also known as "the Lanzarote Convention".
142. **The Commission's findings.** The decision of 1 June 2015 issued by the subject falls within the 10-year period. The Commission also notes that the ECtHR found a violation of the Convention because the national courts created an unfair advantage in favor of the prosecution and consequently deprived the applicant of any practical opportunity to effectively challenge the charges against him.
143. Under Article 8 para. (3) of the Criminal Procedure Code, the conclusions about a person's guilt of committing a criminal offense may not be based on presumptions. All doubts in proving the accusation that cannot be removed, under the conditions of this Code, shall be interpreted in favor of the suspect, accused, or defendant.
144. According to Article 100 the Criminal Procedure Code, the administration of evidence consists in the use of evidence in criminal proceedings, which entails the collection and verification of evidence in favor and against the accused, by the prosecution, *ex officio* or at the request of other participants in the proceedings, as well as by the court, at the request of the parties, through the evidentiary procedures provided for in the Code.
145. Article 389 para. (1) of the Criminal Procedure Code provided that the sentence of conviction shall be passed only if, after the judicial investigation, the guilt of the accused in the commission of the crime is confirmed by all the evidence examined by the court. Para. (2) established that the conviction shall not be based on assumptions or exclusively or mainly on the testimony

of witnesses given during the prosecution and read out in court in their absence.

146. All cited provisions outline imperative rules because they impose strict legal requirements that must be followed in criminal proceedings. Under these provisions:
 - A person expressly cannot be convicted based on presumptions.
 - All doubts in proving the accusation must be resolved in favor of the accused. This enforces the *in dubio pro reo* principle⁵, a fundamental rule in criminal law.
 - Evidence both for and against the accused must be considered. This ensures fairness and compliance with procedural guarantees.
 - A conviction can only occur after a judicial investigation where the evidence examined by the court confirms the accused's guilt. All evidence must be fully reviewed and substantiated.
147. These rules collectively ensure that criminal convictions are based on solid, verifiable evidence and that the defendant is given every fair opportunity to challenge the prosecution's case.
148. As can be inferred from the reasoning of the decision of the subject's panel and as found by the ECtHR, the main piece of evidence relied upon by the courts to find the applicant guilty and to sentence him to 16 years of imprisonment was one of the victim's submissions, which appeared to have been flawed with inconsistencies.
149. The panel with the participation of the subject did not justify the decision to deny the applicant's request to hear two important witnesses.
150. The subject's reasoning provided during the round of questions that she decided to reject the request for D.G.'s hearing because he was a minor at the time of the offense is irrelevant. It appears from the case materials that D.G. was already 20 years old at the time of the 1 June 2015 decision, and that he was in fact summoned to the Court of Appeal but did not attend. It does not appear from the decision of the Court of Appeal that efforts were made to bring him to be heard.
151. The Commission accepts the ECtHR's finding that, by failing to afford the defense the right to hear key witnesses and by accepting all of the

⁵ Latin for "[when] in doubt, rule for the accused"

prosecution's arguments and evidence, the panel created an unfair advantage in favor of the prosecution and thus deprived the applicant of any practical opportunity to effectively challenge the charges against him.

152. The Commission observes that there was a consistent case-law of the ECtHR on the matter (*e.g. Popov v. Russia*, 13 July 2006, § 188; *Kasparov and Others v. Russia*, 3 October 2013, §§ 64 - 69). For example, in *Popov v. Russia*, the ECtHR noted that, considering that the applicant's conviction was founded upon conflicting evidence against him, the domestic courts' refusal to examine the defense witnesses without any regard to the relevance of their statements led to a limitation of the defense rights incompatible with the guarantees of a fair trial enshrined in Article 6 of the Convention.
153. The Commission finds that the decision of the panel, including the subject, does not satisfy the ethical integrity requirement under Article 11 para. (2) lit. a) of Law No. 252/2023 because it contradicted both domestic and ECtHR legal principles. The prosecution's case was given an unfair advantage which deprived the applicant of an effective defense and therefore resulted in a conviction to 16 years of imprisonment based on flawed evidence and procedural violations. These actions represent a "denial of justice" under ECtHR standards and a manifest error—a decision no reasonable court should have made.

The conclusion regarding the involvement in cases leading to violations of the European Convention on Human Rights

154. In its Judgement No. 2 of 16 January 2025, when asked to decide on the proportionality of sanctions for failure to pass the evaluation based on the criteria of ethical integrity, the Constitutional Court referred to ECtHR judgement in the case of *Mnatsakanyan v. Armenia*, 6 December 2022, § 88. According to this case-law, in cases involving the liability of a judge a distinction is to be made between a disputable interpretation or application of the law, on the one hand, and a decision or measure which reveals a serious and flagrant breach of the law, arbitrariness, a serious distortion of the facts, or an obvious lack of legal basis for a judicial measure, on the other hand. Furthermore, such cases require consideration of the mental element of the alleged judicial misconduct. A good-faith legal error should be distinguished from bad-faith judicial misconduct.
155. All three cases fit the *Mnatsakanyan v. Armenia* criteria for judicial misconduct cited by the Constitutional Court rather than mere legal errors.

156. Summarizing, the first case concerned arbitrary rejection of release for a terminally ill detainee. The ECtHR found that Moldovan law clearly distinguished two situations for release—before sentencing and during execution—yet the court misapplied the law by treating both the same. The decision of the subject ignored the plain wording of Article 95 para. (2) of the Criminal Code and had no reasonable legal basis. It wasn't just a misinterpretation. It was an unreasonable restriction of fundamental rights.
157. The second case concerned a conviction without proper rehearing of witnesses. The law was clear—Article 415 para. (2¹) of the Criminal Procedure Code explicitly required the court to hear the accused and accusation witnesses before overturning an acquittal. The court ignored both domestic law and ECtHR precedent, violating fundamental procedural guarantees. This wasn't a simple procedural mistake, but a disregarding of a fundamental requirement for a fair trial.
158. The third case concerned a conviction based on flawed and contradictory evidence and without admitting the evidence sought by the convicted. The subject participated in a panel that upheld a conviction despite inconsistencies in a victim's statements, failure to hear a crucial defense witness and failure to hear the second victim. The ECtHR found a violation of Article 6, ruling that the failure to ensure a proper adversarial trial created an unfair advantage for the prosecution. The subject's decision was not just legally questionable but also inconsistent with both domestic law and ECtHR jurisprudence. The court's refusal to hear key witnesses, despite knowing their testimony was essential, suggests deliberate disregard for fair trial guarantees. Thus, the decision reflects serious judicial misconduct, not a good-faith legal error.

VI. Conclusion

159. Based on the information it obtained and the subject's explanations, the Commission proposes that Mrs. Oxana Robu does not promote the external evaluation on the grounds of non-compliance with the criteria set in Article 11 para. (2) lit. a) of Law No. 252/2023.

VII. Further actions and publication

160. 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.

161. 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.
162. 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.
163. This evaluation report was approved by a unanimous vote of the Panel members on 25 March 2025 and signed pursuant to Articles 33 point (2) and 40 point (5) of the Rules.
164. Done in English and Romanian.

Scott BALES,

Chairperson of the Commission

Chair of Panel B