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EVALUATION REPORT

approved according to Article 40

of the Rules of Organization and Functioning

MARINA ANTON

judge of the Central Court of Appeal

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

8 April 2025

Contents

Evaluation Panel B of the Commission (hereinafter the "Commission") established by Law No. 65/2023 on the External Evaluation of Judges and Candidates for Judges of the Supreme Court of Justice and discharging the powers under Law No. 252/2023 on the external evaluation of judges and prosecutors and amending some normative acts (hereinafter "Law No. 252/2023") deliberated on the matter on 6 February 2025 and approved the following report on 8 April 2025. The members participating in the approval of the report were:

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

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

I. Introduction

1. This report concerns Mrs. Marina Anton (hereinafter the "subject"), a judge of the Central Court of Appeal.

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

3. The Commission concluded that the subject does not meet the criteria identified in Law No. 252/2023 for ethical integrity.

II. Subject of the Evaluation

4. The subject has served as a judge at the Central Court of Appeal since 2005. This court was known as the Chișinău Court of Appeal until it was renamed on 27 December 2024.

5. She was a judge at the Chișinău District Court (Ciocana office) from 2001 to 2005 and at the Ialoveni Court from 1999 - 2001. Previously, between 1996 – 1999, she was a counsellor of the president of the Supreme Court of Justice.

6. The subject received a bachelor's degree in law in 1996 from the Moldova State University.

III. Evaluation Criteria

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

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

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

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

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

10. The 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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).

17. 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

18. 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.

19. 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-year declaration"). The subject returned the completed five-year declaration and questionnaire on 1 May 2024.

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

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

22. 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.

23. 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 Anticorruption 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 **(**Eximbank JSC, Moldinconbank JSC, MAIB JSC, Procredit Bank JSC, Victoriabank JSC, Banca de Finanțe și Comerț (FincomBank) JSC, OTP Bank JSC, Banca de Economii JSC), Office for Prevention and Fight Against Money Laundering (in Romanian: *Serviciul Prevenirea și Combaterea Spălării Banilor*, hence hereinafter – "SPCSB"), and the Public Service Agency (hereinafter "PSA"). Information was also sought and, where applicable, obtained from other public institutions and private entities, open sources such as social media and investigative journalism reports. Several petitions were received from members of civil society, both individuals and companies. These were included in the evaluation file. All information received was carefully screened for accuracy and relevance.

24. On 2 October 2024, the Commission asked the subject to provide additional information by 14 October 2024 to clarify certain matters (hereinafter the "first round of questions"). On 14 October 2024, the subject requested an extension until 24 October 2024 to respond, which the Commission granted. The subject provided answers and documents within the extended deadline.

25. On 8 November 2024, the Commission asked the subject to provide additional information by 17 November 2024 to clarify certain matters (hereinafter the "second round of questions"). On 17 November 2024, the subject requested an extension to respond, which the Commission granted until 27 November 2024. The subject provided answers and documents within the extended deadline.

26. On 11 December 2024, the Commission asked the subject to provide additional information by 19 December 2024 to clarify certain matters (hereinafter the "third round of questions"). On 19 December 2024, the subject requested an extension to respond, which the Commission granted until 25 December 2024. The subject provided answers and documents within the extended deadline.

27. 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 criterion and had preliminarily established a non-compliance with the ethical integrity criterion 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 considered during the evaluation.

28. As provided in Article 39 point (4) of the Rules, the subject sought and was provided access to all the materials in her evaluation file on 31 January 2025. The subject was assisted in this procedure by her attorney-at-law.

29. On 30 January 2025**,** the subject submitted a request to the Commission to hold the hearing partially in a closed session. She stated that the issue of the failure to declare the right of use for the house in Ialoveni concerns aspects of the private lives of her husband and father-in-law. Pursuant to the subject's request under Article 16 para. (3) of Law No. 252/2023, the Commission determined to conduct a part of the hearing in a closed session, which was attended by the subject and her counsel.

30. On 5 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.

31. On 6 February 2025, the Commission held a public hearing. At the hearing, the subject reaffirmed the accuracy of her answers in the five-year declaration and the ethics questionnaire. She also stated that she did not have any corrections or additions to the answers previously provided to the Commission's requests for information.

32. The subject was assisted at the hearing by attorney-at-law Mr. Antuan Anton.

33. After the hearing, on 21 March 2025, the subject submitted additional documents. The Commission included them in the evaluation file and discusses their relevance in the Analysis section.

V. Analysis

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

35. 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. potential beneficial ownership over the property in Ialoveni;

    b. potential ethical breaches related to the decisions issued by the subject;

    c. violation of the legal regime of conflict of interest; and,

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

A. Doubts not leading to failure

- **Potential beneficial ownership over the property in Ialoveni**

36. The subject's father-in-law has owned a plot of land located in Ialoveni since November 2000. Satellite data illustrates a house on the land, which has not been officially registered. In 2016, a journalistic investigation reported about the subject's potential beneficial ownership. NIA initiated and later closed an investigation concerning the same property.

37. According to information provided by utility suppliers (electricity, gas, water), the contracts were concluded with the subject's in-laws. However, the signatures thereon and the contact details appeared to be of the subject's husband. He also signed contracts for internet and security services. Traffic security cameras recorded the subject's husband's vehicles as traveling to and from the property in Ialoveni. The frequency of the daily itinerary for the past 3 months indicates that the subject and/or her husband seemed to drive to and from the property in Ialoveni on an almost daily basis. The vehicle crossings recorded by the national traffic surveillance cameras (Information Technologies Service of the Ministry of Internal Affairs), identified 85 instances of movement in the direction towards or from the Ialoveni property – representing a total of 43 days out from the available date from the past 3 months.

38. The subject explained that the property belonged to her father-in-law, who passed away in December 2022. Her in-laws bought the land in 2000 and gradually built the house, which became habitable in 2011, although it was never permanently occupied. During the evaluation procedure (2012-2023), no construction works or improvements were made to the house. Disputes with neighbors regarding boundary delimitation have prevented its registration. The subject stated that the house was funded from her in-laws' lifetime earnings—her father-in-law, an accountant, who worked despite mobility limitations, and her mother-in-law was a pharmacist.

39. On 5 February 2025, the subject submitted further explanations and documents, stating that her husband managed all administrative tasks, including utility contracts, due to her father-in-law's mobility limitations. She reaffirmed that she lives in an apartment in Chișinău, as supported by signed declarations from neighbors, and mentioned that she only went to the house in Ialoveni when her in-laws were there. She also provided data from

a security company, according to which the house is secured during the night as a closed object and that it, during September – December 2024, it was opened rarely and for determined timeframes.

40. The Commission retains doubts regarding the beneficiary of the house. However, the issue of beneficial ownership is always assessed from the perspective of inexplicable wealth. For any beneficial ownership attributed, it is relevant whether the asset acquired, or expenses made creates a negative balance in the period of the evaluation (2012-2023). In this case, the property was acquired prior to the evaluation period, and no construction works or improvements were carried out during the evaluation period under review. Accordingly, considering the circumstances, this matter falls outside the Commission's mandate, as set out in Article 11, para. (3) of Law No. 252/2023.

41. Based on the above findings, the Commission concludes that the doubts concerning the potential beneficial ownership of the property in Ialoveni are mitigated.

- **Potential ethical breaches related to the decisions issued by the subject**

42. The Commission received several petitions complaining about the decisions issued by the subject, or allegations of technical manipulation of the distribution of cases through the PIGD. Upon analyzing the cases, the Commission finds that, in general, they either reflect dissatisfaction with the judicial outcomes rather than evidence of an ethical misconduct or concern decisions issued outside the relevant five-year evaluation period. However, two cases were further reviewed for potential ethical breaches.

Eximbank Case

43. The case involves Eximbank, which granted loans to several companies, secured by property including land owned by LLC "S-C." After the borrowers defaulted, Eximbank sold the collateral (two buildings and land) via auction to LLC "T.", recovering about 73 million MDL.

44. Eximbank then sued the borrowers for the remaining debt. The borrowers, including LLC "S.-C.", counterclaimed, demanding the annulment of the auction and compensation (about 104 million MDL), arguing the land was undervalued. In July 2019, a court upheld Eximbank's claims and rejected the counterclaims. This ruling is under appeal by all parties except Eximbank ("first case").

45. Separately, in LLC "T."'s' insolvency proceedings, LLC "S-C" reasserted the same 104 million MDL claim. In February 2020, the court partially validated the claim (about 76 million MDL), citing fraud by Eximbank and LLC "T.", which were found to be affiliated. The claim was based on alleged tortious conduct by Eximbank ("second case").

46. Eximbank was not a party in the insolvency proceedings and later tried to challenge the decision, but its revision request was denied. Eximbank has since filed a complaint with the European Court of Human Rights (ECtHR), which is currently pending, alleging violations of its right to a fair trial, claiming the insolvency ruling harms its legal interests.

Caravita Co LLC ("Caravita case")

47. This case involves Caravita, a company undergoing insolvency, who auctioned off 226 hectares of agricultural land, which was awarded to CVC "E.". However, Caravita's founder, V.R., contested the auction results in court. On 4 November 2019, V.R. filed a challenge with the Anenii Noi Court, which dismissed the claim on 16 November 2020. He then appealed the judgment, and the Court of Appeal accepted the appeal on 24 February 2021. Later, a different panel of the Court of Appeal reclassified the appeal, ex officio, as one on points of law, arguing that the auction, being part of enforcement proceedings, should have been addressed via a ruling rather than a judgment.

48. This re-registration led to the case being reassigned to another panel of judges, including the subject. This panel ultimately annulled both the first-instance judgment and the auction results. The annulment was based on the view that the auction had not complied with legal requirements. CVC "E." contested both decisions before the Supreme Court of Justice, arguing that there were serious procedural violations during the appeal procedure.

49. The Supreme Court upheld the appeal on points of law on 3 November 2021 founding that the Court of Appeal's reclassification of the case had no legal justification and constituted an abuse of procedure. It criticized the court for denying the parties' fair access to justice, annulled the decisions made by the Court of Appeal, and returned the case for a fresh examination. Upon reconsideration, the Court of Appeal dismissed V.R.'s appeal, and the Supreme Court later upheld this final decision, affirming the auction's legality.

The Commission's findings

50. In the context of the ethical integrity requirements under Article 11 para. (2) lit. a) of Law No. 252/2023, the Constitutional Court has clarified that the term "seriously violated" sets a high threshold for establishing breaches of ethical and professional rules applicable to judges and prosecutors (Constitutional Court Judgment No. 2 of 16 January 2025, § 185). Additionally, the Court has noted that the Commission should not rule on the legality of the decisions issued by the judges.

51. Considering the evidence provided by the petitioners or otherwise gathered by the Commission, while certain decisions rendered by the subject raise legitimate concerns—particularly regarding procedural irregularities and disregard of mandatory legal provisions—the Commission considers that these instances are more indicative of professional errors or performance issues than a serious violation of ethical standards as required under Article 11 para. (2) lit. a) of Law No. 252/2023.

52. Consequently, while these actions may potentially be addressed through disciplinary procedures, they do not meet the higher threshold for establishing serious ethical violations within the Commission's mandate.

B. Doubts leading to failure

- **Violation of the legal regime of conflict of interest**

53. In carrying out its evaluation, the Commission identified that the subject may have examined cases in violation of her obligation to self-recuse. She appeared to have had a prior relationship with the attorney at law S.P., the former prosecutor R.S., and the spouse of a judge whose case she examined.

Legal principles

54. Under Article 11 para. (2) lit. b) of Law No. 252/2023, a subject does not meet the criteria of ethical integrity if the Commission has established that in the last 10 years, he/she has admitted incompatibilities and conflicts of interest affecting his position.

55. As already noted in the Commission's previous reports (e.g., *Ursachi Report* of 5 November 2024), in its Judgement No. 18 of 27 September 2022, the Constitutional Court mentioned that a distinction must be made between the conflicts of interest of judges arising in administrative activity (e.g. presidents of courts) and in jurisdictional activity.

56. Judges must perform their functional duties impartially and objectively. In general, this obligation requires a judge to refrain from examining an application or making a decision if he or she has a personal interest that

influences or could influence the impartial exercise and objective performance of his or her duties.

57. According to Article 50 para. (1) lit. e) of the Code of Civil Procedure, a judge handling a case shall be recused if:

> "he/she has a personal, direct, or indirect interest in the resolution of the case, or if there are other circumstances that call into question her/his objectivity and impartiality."

58. Article 52 para. (1) of the Code of Civil Procedure provides:

> "If the grounds specified in Articles 50 and 51 exist, the judge, […] is obliged to refrain from examining the case. […]."

59. Under Article 4 para. (1) lit. a) of Law No. 178/2014 on disciplinary responsibility of judges, a disciplinary offense can be:

> "non-compliance by intention or gross negligence with the duty to abstain when the judge knew or should have known that circumstances provided by law requiring abstention existed […]."

60. Under Article 15 para. (1) lit. a) and d) of Law No. 544/1995 on the status of judges, a judge is obliged:

> "a) to be impartial; d) to refrain from acts that compromise the honor and dignity of judges or that cause doubts about the judge's objectivity."

61. Under Article 4 para. (4) and (5) of the Code of Ethics:

> "The judge shall refrain from making decisions, when his/her interests, those related by blood, adoption, affinity, or other persons who have close ties with his/her family, could influence the correctness of decisions."
>
> "The family and social relations of the judge must not influence the court decisions he/she adopts in the performance of his/her professional duties."

62. Under the Commentary of the Code of Ethics, if a judge:

> "[…] finds a conflict of interest, his task is to disclose this fact to the appropriate parties, taking all necessary steps to eliminate the conflict of interest and/or to refrain from judging the case."

63. According to the well-established case-law of the ECtHR, impartiality is evaluated based on: (1) a subjective test, which considers the personal conviction and behavior of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also (2) an objective test, that is to say by ascertaining whether the tribunal itself and, among other

aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality.

64. There is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test) (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 6 November 2018, § 145).

65. The ECtHR also stated that justice must not only be done, but it must also be seen to be done. Judges should comply with both subjective and objective tests of impartiality. Appearance of partiality under the objective test is to be measured by the standard of an objective observer. A personal friendship between a judge and any member of the public involved in the case or close acquaintance of a judge with any member of the public involved in the case might give rise to a reasonable apprehension of bias.

66. The above standards serve to promote the confidence which the courts in a democratic society must inspire within the public (*Castillo Algar v. Spain*, 28 October 1998, § 45).

67. Depending on the circumstances, a reasonable apprehension of bias might be thought to arise if there is personal animosity between the judge and a participant in the case[1].

Examination of cases involving S.P. – co-traveler on vacation and attorney at law

Facts

68. On 27 March 2024, the Anticorruption Prosecution Office (hereinafter "APO") initiated a criminal case (*proces penal*) against the subject. This was based on a complaint filed by employees of a tourism company alleging illegal acts committed by certain judges of the Central Court of Appeal. The complaint states that in spring-summer 2023, LLC "M." organized familiarization tours in Turkey for tourism company employees to promote hotels along Antalya Bay. Each participant paid 750 EUR. The petitioners were surprised to see the subject and her family on the tour, alleging she had joined similar trips for years due to her connection with attorney S.P., the spouse of LLC "M."'s administrator. On 8 May 2024, APO refused to initiate

[1] Commentary on the Bangalore Principles of Judicial Conduct, § 90.

a criminal investigation, concluding that the circumstances of the case did not constitute elements of a crime.

69. According to the information provided by LLC "M.", per the Commission's request, between 2019 and 2023, the subject and her family purchased 16 times tourism services from LLC "M.", including six informative tours, six full tourism packages, and four airline ticket purchases. Informative tour prices ranged from 12,500 to 14,500 MDL (650–750 EUR). See the table below.

No.	Date	Type of vacation	Price / Persons	Destination	The cases of the subject
1.	July 2019/ 7 days	Accommodation / Flight tickets	85,000 MDL/ 3 pers	Antalya	**25 June 2020**/ case on inheritance rights
2.	September 2020/ 10 days	Accommodation / Flight tickets	67,500 MDL/ 3 pers	Antalya	
3.	**October 2020/ 6 days**	**Informative tour**	**14,000 MDL/ 3 pers.**	**Antalya**	
4.	April-May 2021/ 14 days	Accommodation / Flight tickets	38,336 MDL/ 2 pers	Egypt/ Sharm El Sheikh,	
5.	August 2021	Flight tickets	8,000 MDL/ 3 pers	Antalya	
6.	**October 2021/ 7 days**	**Informative tour**	**12,500 MDL/ 3 pers**	**Antalya**	
7.	February 2022/ 5 days	Accommodation /Flight tickets	36,000 MDL/ 2 pers	Dubai	
8.	April 2022/ 2 days	Accommodation / Flight tickets	12,240 MDL/ 2 pers	Cappadocia (Turkey)	
9.	April 2022/ 14 days	Accommodation / Flight tickets	62,100 MDL/ 2 pers	Egypt/ Sharm El Sheikh,	
10.	**May 2022/ 7 days**	**Informative tour**	**10,000 MDL/ 2 pers**	**Antalya**	**3 May 2022**/ Ruling on the return of the appeal
11.	August 2022	Flight tickets	14,500 MDL/ 3 pers	Antalya	
12.	April 2023	Flight tickets	22,000 MDL/ 3 pers	Egypt/ Hurghada	

13.	**May 2023/ 7 days**	**Informative tour**	**12,000 MDL/ 2 pers**	**Antalya**	
14.	August 2023	Flight tickets	15,000 MDL/ 3 pers	Antalya	
15.	**October 2023/ 7 days**	**Informative tour**	**14,500 MDL/ 3 pers**	**Antalya**	
16.	**December 2023/ 7 days**	**Informative tour**	**14,000 MDL/ 3 pers**	**Egypt Hurghada**	

70. LLC "M." also explained that informative tours are intended to present participants with tourist destinations, facilities, and services offered by a particular region, so that they can assess tourism opportunities for future collaborations, promotions, sales, or leisure. These tours are usually aimed at professionals in the tourism industry, travel agents, journalists, or potential tourists, with the goal of increasing sales volume.

71. Participants may be selected based on a direct invitation from the organizers or through an application process, where they must demonstrate their interest and the relevance of their participation. Another selection criterion may be the number of clients they have attracted in the past.

72. These tours differ from client-booked vacations, as they are promotional in nature, often free or low-cost for participants, and aim to raise awareness rather than provide personalized leisure experiences. In contrast, vacations booked with a tourist voucher are paid for by the client and tailored to their recreational preferences.

73. According to the Border Police and the materials from the criminal case, the subject and S.P. had nine joint trips as passengers on the same flight route, travelling to the same destination. The first recorded trip known to the Commission was to Turkey (Antalya) in October 2020.

74. According to the Integrated Case Management System (PIGD), between 2014 and 2022, the subject examined six cases involving LLC "M." or S.P. Three cases were examined on the merits, while in other three cases, the subject issued rulings on the return of the lawsuits (*încheiere de restituire a cererii de chemare în judecată*).

75. Four cases were examined before 2018, the year when, according to the subject, her husband met the administrator of LLC "M.". As the Commission

could not establish that the relationship between the subject's family and LLC "M." started before 2018, it did not consider these cases. The cases examined are listed below.

a. In a case on inheritance rights, S.P. claimed partial nullity of her father's will and sought recognition of a ¾ share in five properties in Soldanesti district. The first instance court rejected the claim. On 25 June 2020, the Court of Appeal, in a panel chaired by the subject, upheld S.P.'s appeal and overturned the decision of the first instance court. One of the judges issued a dissenting opinion in favor of the first instance court's judgment.

b. In a case concerning debt recovery, S.P. represented the creditor, an Association of Co-owners in Condominium, in proceedings against the debtor A.C. On 3 May 2022, the Court of Appeal, with the subject sitting as a panel member, ordered the return of A.C.'s appeal due to the absence of proof of the state fee payment and failure to submit a reasoned appeal.

76. The Commission asked the subject about the purchase of informative tours from LLC "M." and about her relationship with S.P. In the second round of questions, the subject stated that her husband had known V.B., the administrator of LLC "M.", since 2018. She explained that the offers for informative tours were received by her husband via Viber, given that they were previous clients of the company. The low prices were because the tours were off season.

77. In the third round of questions, the subject stated that she does not personally know the administrator of LLC "M." or S.P. She emphasized that their presence on the same flight does not imply that they travelled together. The informative tours included approximately 40 participants.

78. Before the hearing, the subject submitted additional explanations, reiterating that she has no relationship with S.P. She stated that the prices for the informative tours were in line with market practice. As concerns her involvement in the inheritance case (see § 75), she noted that the decision complied with the law. She also stated that the mere common use of public transport is not a self-recusal ground provided by the Code of Civil Procedure. The subject reaffirmed these statements during the hearing.

The Commission's findings

79. The Commission notes that informative tours are typically intended for travel agencies, journalists, or influencers – individuals capable of promoting

hotels or other travel-related businesses. The subject, however, submitted a statement from LLC "M." claiming that it made these tours available to regular clients. It is unclear why a tourism agency would sell tour packages at a reduced price to individuals who are not expected to promote the travel destinations.

80. After 2018, the subject's family purchased 16 touristic packages from LLC "M.". Six of these packages were for informative tours at prices lower than those of standard touristic packages. The subject claimed that her family was invited to these informative tours because they were regular clients of the company. However, the Commission notes that, prior to the first informative tour in October 2020, the subject's family had taken only two regular vacations with the company. Furthermore, after April 2022, they made no further purchases of regular vacation packages, yet they benefited from four additional informative tours. Moreover, five of the informative tours were to the same destination: Antalya. If the stated purpose of an informative tour is to familiarize participants with a tourist destination, it is unclear why a tour operator would invite a so-called "regular" client on five such tours to the same location. Notably, the most recent informative tour, in December 2023, was to Hurghada, Egypt—a destination the subject and her family had already visited six months earlier, in April 2023 (see § 69).

81. In all six informative tours, the subject and S.P. traveled together on the same round-trip flights. Furthermore, during one non-informative (regular vacation) tour, they also shared both outbound and return flights. In two other non-informative tours, they were on the same flight for one direction of the journey. Given the number of trips and the fact that no more than 40 people participated in the informative tours, the Commission notes that the subject may have interacted with S.P. more than merely as a co-traveler in public transport.

82. In the debt recovery case, the subject returned the appeal introduced against S.P.'s client. In the inheritance case, the subject issued a decision on the merits, which was in favor of S.P. In June 2020, when the decision was issued, the subject's husband already knew the administrator of the company, and the subject's family had previously traveled using this company's services. By the date of the decision, the package for the first informative tours scheduled for October 2020 had already been purchased.

83. The repeated use of informative tours offered by LLC "M." raises ethical concerns. The judge has a duty to assess whether accepting discounted services could be perceived as a favor (*Ursachi* Report, §§ 145-147). Benefiting

from such services, while simultaneously adjudicating cases involving S.P., creates an objective appearance of an exchange of favors. The fact that the services were purchased by the subject's spouse does not relieve her of the obligation to avoid even the appearance of a conflict of interest or a *quid pro quo*. Even in the absence of clear evidence of an intentional exchange, the mere appearance of such a transaction may seriously undermine public trust in the impartiality of the judiciary.

Examination of cases involving R.S. – former prosecutor investigating the subject

Facts

84. On 5 June 2024, the Commission received a petition from R.S. He claimed that the subject breached her obligation to self-recuse in two cases involving him. He stated that he was the prosecutor in charge of a criminal investigation initiated against her in June 2015.

85. The 2015 investigation was initiated by the General Prosecutor against the subject and four other judges. The case was initiated based on the suspicion of issuance of a decision contrary to the law and falsification of public documents[2] (Articles 307 para. (1) and 332 para. (2) of the Criminal Code). R.S. recognized the subject as a suspect (*recunoscut în calitate de bănuit*). In January 2016, R.S. discontinued the criminal investigation due to a procedural error (the subject was not informed of the decision to prolong her status as a suspect within the statutory timeframe).

86. Subsequently, the subject initiated two court proceedings against R.S. and the Superior Council of Prosecutors. The first claim concerned a request for information, in which the subject asked R.S. to disclose who had pressured him to maintain her status as a suspect. The Court of Appeal Bălți dismissed the request in 2016.

87. The second claim was based on Law No. 1545/1998 on the procedure for compensating damage caused by the unlawful actions of criminal investigation bodies, the prosecution, and the courts. The claim was filed against the Ministry of Justice, the General Prosecutor's Office, the Superior

[2] The case concerned a dispute over the withdrawal of parental rights. The Court of Appeal (with the subject as the chair of the panel) dismissed the appeal following deliberations. However, the reasoned decision stated that the appeal was upheld, despite the reasoning supporting a dismissal. Later, the panel issued a ruling allegedly correcting the error, but apparently not in accordance with the proper procedure. The Supreme Court of Justice notified the Superior Council of Magistracy.

Council of Magistracy and R.S. On 12 February 2025, the first-instance court admitted the claim and awarded the subject 500,000 MDL as non-pecuniary damages[3].

88. According to the petition and the PIGD, the subject examined two cases involving R.S.

a. In a case brought by R.S. against the Ministry of Justice under Law No. 87/2011 (unreasonable duration of the criminal investigation), the first-instance court rejected the claim on 2 August 2023. R.S. appealed, and on 7 February 2024, the case was assigned to a panel including the subject. On 5 March 2024, R.S. filed a request for the subject's recusal, which was rejected by another panel on 12 March 2024.

b. In a defamation case initiated by R.S. against a TV media outlet regarding an allegedly defamatory report, the first-instance court dismissed the claim on 15 September 2023. R.S. appealed. On 22 January 2024, the Court of Appeal admitted the appeal for examination and scheduled a hearing for 26 March 2024, with the subject as a member of the panel. At the hearing, R.S. was absent and unaware that the subject was part of the panel. His representative was likewise unaware of the prior relationship between them and thus did not request the subject's recusal. By decision of 26 March 2024, R.S.'s claim was dismissed.

89. The Commission asked the subject whether she had declared a self-recusal in the second case. In response to the first round of questions, the subject stated that there were no grounds for recusal and provided the ruling of 12 March 2024, which rejected the recusal request in the first case.

90. Before the hearing, the subject submitted additional explanations reiterating her statements. During the hearing, she maintained that there were no grounds for self-recusal, as she did not have a personal interest in the case. She also stated that her relationship with R.S. was not hostile and emphasized that a judge has an obligation to act independently and impartially.

The Commission's findings

[3] https://jc.instante.justice.md/ro/pigd_integration/pdf/6922997f-1dfc-41d0-b592-02d06b12f3e1

91. The Commission notes that a mere professional relationship between a judge and a party is not sufficient to raise doubts about the judge's impartiality. However, in the present case, the relationship between the subject and R.S. went beyond a professional interaction. It was one between a prosecutor and a suspect in a criminal case, an inherently adversarial context.

92. In addition to this prosecutor–suspect relationship, the subject initiated two legal proceedings including against R.S.—one dismissed in 2016, and one upheld in 2025. In the latter case, the first-instance court awarded the subject 500,000 MDL in compensation for unlawful actions of the criminal investigation body and the prosecution based on her illegal prosecution.

93. In *Tocono and Profesorii Prometeişti v. Moldova* (No. 32263/03, 26/06/2007), the ECtHR stated that the expulsion of a judge's son from the applicant's school created a reasonable doubt as to judge impartiality. As established in *Micallef v. Malta* (§ 98, No. 17056/06, 15/10/2009) and reaffirmed in *Deli v. the Republic of Moldova* (§ 36, No. 42010/06, 22/10/2019), justice must not only be done, but it must also be seen to be done. The perception of impartiality is crucial, and while the opinion of the party involved is not decisive, it is still a relevant factor.

94. In this context, R.S. expressed doubts about the subject's impartiality, fearing that her prior adversarial relationship with him might lead to bias. Consequently, he submitted a recusal request, which the Court of Appeal rejected on 12 March 2024. However, the subject was already under an obligation to declare self-recusal during the hearing of 22 January 2024. At that time, she could not have known that R.S. would later submit a motion for recusal or that it would be rejected.

95. Moreover, during the hearing on 26 March 2024, R.S. was absent, and his legal representative was unaware of the prior relationship. The rejection of the recusal motion on 12 March 2024, in a separate case, did not absolve the subject of her obligation to disclose her prior relationship with R.S. in the current proceedings.

96. Under Article 52 para. (3) of the Code of Civil Procedure, if grounds for recusal become known after the examination on the merits has begun, the judge is legally required to disclose them to the parties. This ensures that any potential conflict of interest can be addressed, thereby safeguarding judicial impartiality.

97. Pursuant to Article 52 para. (5) of the same Code, the prohibition against repeated recusal request applies exclusively to the same case. It does not

extend to separate proceedings, even when they involve the same parties and the same judge. This is particularly relevant because the hearing on 26 March 2024 concerned the merits of the case and concluded with a final dismissal.

98. Regarding the first case, R.S. submitted a recusal motion on 5 March 2024, but the case had been assigned to the subject's panel on 7 February 2024. The subsequent rejection of the motion does not eliminate the subject's obligation to declare self-recusal at the hearing held on 7 February 2024.

99. The outcome in the case is noteworthy but does not determine whether the subject should have recused herself. The crucial aspect is whether an objective observer would conclude that the subject's prior criminal investigation by R.S., would call into question her objectivity and impartiality.

100. On 5 February 2025, R.S. sent an email to the Commission stating that he was withdrawing his petition against the subject regarding her failure to recuse herself. He explained that when he filed the complaint, he had not been aware of all the circumstances of the case, particularly the rejection of the recusal request in the first case.

101. The Commission emphasizes that the evaluation process is not a criminal proceeding, in which a victim's withdrawal may lead to the discontinuation of an investigation. R.S.'s withdrawal of the petition has no bearing on the assessment of the subject's ethical integrity, as it does not change the substance of her past conduct.

102. In light of the above, the Commission concludes that the subject failed to comply with her duty of self-recusal during the hearings on 22 January 2024 and 7 February 2024. Further, she failed to inform the parties of her adversarial and legally contentious relationship with R.S. during the hearing of 26 March 2024.

Examination of cases involving G.B. – judge and husband of her good acquaintance

Facts

103. On 26 June 2023, V.G., a judge of the first-instance court, called the subject twice regarding a case involving her husband, G.B. The first call took place between 08:39 and 08:42, and the second between 11:10 and 11:12. As V.G. was under criminal investigation, the conversation was intercepted and recorded. This interception served as basis for the registration of the criminal

case (*proces penal*) against the subject. The case concerned the suspicion about the issue of a decision contrary to law following an undue influence.

104. In summary, according to the full transcript of the conversation, V.G. asked the subject about a revision request submitted by the Chișinău municipality in a case involving her husband.

105. The subject asked whether the case was distributed to her or to her colleagues and when the hearing was scheduled. When V.G. said the hearing was scheduled for that day, the subject noted that it was unlikely, as the Court of Appeal has specific days for examining appeals and revisions. V.G. explained that it is indicated that the hearing would take place without the parties' participation. The subject told V.G. that she would verify and clarify this. Also, during the conversation, V.G. mentioned that the bailiff on the case is A.B. and commented that the person who filed the claim was a little bit "crazy" (*olecuta aiurit*). The subject assured V.G. not to worry and that she would clarify the situation. The tone of the discussion suggested a close relationship between the subject and V.G., as indicated by the affectionate language and the use of diminutives.

106. On 27 June 2023, the Chisinau Court of Appeal, (with the participation of the subject as a chair of the panel), declared inadmissible the revision request. The decision was favorable to V.G.'s husband[4].

107. On 30 July 2024, APO registered a criminal case concerning alleged illegal acts committed by the subject, namely, the issuance of a decision contrary to the law (Article 307 of the Criminal Code).

108. On 13 September 2024, the prosecutor issued an order to refuse the initiation of the criminal investigation. According to the ordinance, the alleged offense concerns the issue of a decision contrary to law. However, in this case, the decision does not appear to be unlawful.

109. At the same time, the order stated that there are indications of undue influence on a judge, and that the Superior Council of Magistracy should be

[4] The initial dispute referred to the obligation of the Chisinau Municipal Council to assign to G.B. and his family a plot of land within Chisinau, for the construction of the dwelling house, in accordance with the provisions of article 11 of the Land Code. The Chisinau municipality filed a claim against the decision of the bailiff to enforce the above decision. The first instance issued a ruling to return the claim (incheiere de restituire a cererii de chemare in judecata). The revision request was introduced against the ruling of the court for return of the claim (incheiere de restituire a cererii de chemare in judecata).

notified. According to public sources, following the notifications from APO, the Judicial Inspection, upon completing its disciplinary investigation, determined that the elements of disciplinary misconduct were present in the actions of the subject, V.G. and a third judge[5].

110. According to Court of Appeal's answer of 5 December 2024, and of the Superior Council of Magistracy of 17 January 2025, the subject did not report or otherwise disclose any instances of undue influence during her activity at the Chișinău Court of Appeal.

111. In the third round of questions, the subject stated that the intercepted conversation did not involve any discussions about adopting a favorable decision. Instead, the conversation focused on clarifying the date of the hearing, which she claimed not to know at the time.

112. The subject also informed the Commission that she had filed a complaint against the prosecutor alleging that the transcript provided to the Commission was incomplete and that sentences had been taken out of context. In support of her statement, the subject submitted the complete transcript of the 26 June 2023 conversation obtained from the APO.

113. The subject argued that she had answered V.G.'s call because she did not know the subject of the conversation, citing ethical and collegial reasons. According to her, the transcript did not reveal any undue influence and solicitation regarding the issuance of a favorable decision for V.G.'s husband.

114. In addition, the subject stated that the decision by which the revision request was declared inadmissible was in accordance with the law. A revision request can be lodged only against judgments and decisions issued on merits of the case, and not against procedural decisions, as was in the present case.

115. During the hearing, the Commission asked the subject why she did not declare a self-recusal at the hearing on 27 June 2023. The subject stated that declarations of self-recusal are only applicable to the examination of cases on merits, not to cases in which only procedural aspects are examined.

116. After the hearing, on 21 March 2025, the subject submitted additional explanations. She reiterated that the conversation between her and V.G. did not constitute an undue influence. She stated that undue influence refers to interference in work activities manifested through pressure, threats, or

[5] https://procuratura.md/anticoruptie/en/comunicate/comunicate-de-presa/trei-judecatori-cercetati-disciplinar-urma-sesizarii-de-catre

requests. There was nothing like this in the telephone conversation between her and V.G., nor were any benefits or favors promised. She said the phrase "I will clarify this" was about the date of the hearing.

117. In addition, the subject said there was well-established judicial practice on this legal issue (revision requests against rulings), and thus undue influence could not have affected the outcome.

118. The subject also submitted an *amicus curiae* brief on the matter of undue influence from Ms. Cristina Ciubotaru, who is reportedly the author and co-author of, among others, Law No. 325/2013 on the evaluation of institutional integrity and the Guide on Judges' Integrity. According to the *amicus curiae*, undue influence exists where several criteria are met. The first is that the content of the communication must amount to interference, taking the form of a threat, pressure, or request.

119. The *amicus curiae* further notes that the subject accepted the call because she did not know that V.G. was calling her as a third party in the case. She assumed V.G. was calling in her capacity as a colleague from a lower court, seeking a consultation. From the conversation, there is no indication of threat, pressure, or request from V.G. Furthermore, V.G. did not mention that her husband was involved in the case. Additionally, there is well-established case law on this type of case, and it was clear that the request (if any) would have been inadmissible.

120. In conclusion, according to the *amicus curiae* the subject was under no obligation to submit a written report, as there was no undue influence. Thus, V.G.'s actions might, at most, be considered an initial attempt at undue influence, which she abandoned along the way. At the very least, the subject's actions lack the elements of a criminal offense or any form of undue influence.

The Commission's findings

121. According to Article 8 para. (3^1) of Law No. 544/1995 on Status of Judge, *ex parte* communication is prohibited:

> "It is prohibited for judges to communicate with participants in the proceedings or other persons, including public officials, if such communication is related to the case file before the court and is conducted in a manner other than that provided by procedural rules. Such communication is prohibited from the moment the case is registered with the Court until the irrevocable decision on the case is rendered. Any communication outside court hearings must be in writing and mandatorily attached to the case file."

122. Furthermore, Article 15 para. (2) of the same law imposes to judges an obligation to report any prohibited or attempted communication:

> "In the event that a prohibited communication or an attempt at such communication by a party to the proceedings or other persons, including public officials, with the judge has occurred under the circumstances provided in Article 8 para. (3^1), the judge is obliged to inform the Superior Council of Magistracy in writing, on the same day, about the occurrence of this fact."

123. According to Article 3 of Law No. 82/2017, undue influence is defined as:

> "the interference in the professional activity of the public official by third persons, manifested by pressure, threats or requests, in order to induce him to carry out his professional activity in a certain way, when the interference is illegal and is not accompanied by the promise, offer or giving, personally or through an intermediary, of goods, services, privileges or advantages in any form, which are not due to him (does not meet the elements of a crime)."

124. According to Article 17 para. (3) of Law No.82/2017, a public official who is subject to undue influence is obliged to:

> (a) expressly reject the improper influence;
>
> (b) lawfully perform the activity for which the improper influence was given;
>
> (c) in case of the inability to expressly reject the undue influence and the resulting impairment of his/her professional activity, to submit a written report on the exercise of the undue influence within 3 working days to the responsible person in the public body designated by the head;

125. The Commission notes that V.G. called the subject twice regarding a case involving her husband, which was under the subject's examination. While it might be plausible that, during the first call, the subject was not aware that V.G. was calling in relation to her husband's case, this was no longer the case during the second call.

126. The claim that the subject and V.G. had only a professional relationship, and V.G. used an affectionate tone out of gratitude for a previous consultation, is contradicted by the subject's greeting: "Hi, sweetheart" (Salut, puiu). They ended their conversation with "kisses" ("pupici"). Moreover, the absence of formal pressure or explicit requests does not mean that there was no undue influence. The nature of the relationship and the context of communication could still be perceived as exerting undue influence.

127. The argument put forward by the subject, that there was no undue influence because V.G. did not promise her any favors or benefits, is not pertinent.

According to Article 3 of Law no. 82/2017, undue influence is the interference that is not accompanied by the promise, offer, or giving of goods, services, privileges, or advantages—regardless of their form. Otherwise, the act may meet the constitutive elements of a criminal offense, such as passive corruption or influence peddling.

128. The subject contended that the conversation did not constitute an undue influence but instead was an inquiry about the hearing date. However, the transcript of the conversation reveals that V.G. already knew the date of the hearing and the case assignment to the subject. In addition, V.G. had the summons and explicitly stated that the hearing would take place without the participation of the parties. The fact that the subject was unaware of the hearing date does not negate V.G.'s intention.

129. The assertion that the subject was unaware that the case involved V.G.'s husband (as claimed by *amicus curiae*) is also contradicted by the transcript of the conversation. V.G. informed the subject that she had a revision case involving her husband and the Chișinău municipality. She also informed the subject that the case was scheduled for hearing that same day, the 26th. The subject replied that this was unlikely, as the Court of Appeal has designated days for appeals and revisions, and there might be an error. She said she would clarify and call back. V.G. also mentioned the name of the bailiff handling the case and commented that the person who filed the claim was "a little bit crazy."

130. The subject argued that the decision rendered on the case was in accordance with the law. The Commission, however, notes that the core issue is not whether the decision was lawful but whether the communication and subsequent inaction breached legal provisions stipulated above. Article 307 of the Criminal Code pertains to rendering decisions contrary to the law, which is a separate legal issue from *ex parte* communication and undue influence. The APO confirmed that the decision itself was not unlawful, reinforcing the distinction between judicial conduct and legal correctness of rulings.

131. The prohibition on *ex parte* communication and undue influence applies regardless of whether the final judicial decision complies with the law. The prohibition of *ex parte* communication aims to prevent any perception of bias, favoritism, or external influence on the judge. Even if a judge does not alter their decision due to external communication, such interactions may create an appearance of bias that undermines public confidence in the justice

system. The failure to reject improper influence or report prohibited communication weakens the integrity of the judicial process.

132. Therefore, the Commission notes that the subject engaged in prohibited communication with the spouse of a party in an ongoing case, breaching Article 8 para. (3[1]) of Law No. 544/1995. The subject did not expressly reject the influence exerted by V.G., nor did she submit a report within three working days, violating Article 17 para. (3) of Law No. 82/2017. Additionally, the subject did not report the communication to the Superior Council of Magistracy, contrary to Article 15 para. (2) of Law No. 544/1995.

133. These cumulative violations reflect a manifest disregard for core judicial obligations and ethical standards and fall within the scope of a serious breach of ethical rules as defined in Article 11 para. (2) lit. a) of Law No. 252/2023.

134. Finally, the subject also had the opportunity to declare self-recusal from the examination of the case on 27 June 2023 but she failed to do so. During the hearing, the subject claimed that the declarations of self-recusal are not admitted when the case is not examined on merits.

135. According to the Supreme Court of Justice's advisory opinion on declarations of self-recusal, the civil process begins when a person brings an action to court.[6] The civil process for the plaintiff begins when the claim is submitted to the court, and the judge becomes involved as soon as he or she receives the claim through PIGD. If legal grounds for recusal are established, the judge is obliged to abstain from deciding the case both at the stage of preparing the case for court hearing and at the initial stage, starting from the day he/she receives the application through the PIGD.

136. As a result, the subject did not comply with the provisions of Article 50 para. (1) lit. (e) and Article 52 para. (1) of the Code of Civil Procedure. These provisions require a judge to abstain from adjudicating a case if they have a personal, direct, or indirect interest in its resolution or if other circumstances raise doubts about their impartiality and objectivity.

Conclusion

137. The evaluation of the subject's actions and inactions reveals a consistent pattern of examining and adjudicating cases involving individuals with whom she had prior close interactions. Despite these circumstances, the

[6] https://jurisprudenta.csj.md/search_rec_csj.php?id=165

subject neither recused herself nor disclosed the potential conflict to the parties involved. This conduct crosses the boundaries of conflict of interest and falls short of the standards expected for ethical integrity. The following elements are noted:

a. **Indirect relations with an involved party**: the subject repeatedly benefited from informative tours offered by company LLC "M.", during the same period, using the same means of transport and to the same destination as S.P., a person involved in cases adjudicated by the subject.

b. **Adjudicating cases involving prosecutor R.S.**: the subject failed to declare recusal during the hearing of 22 January 2024 and did not inform the parties during the hearing of 26 March 2024 in case no. 2. The subject also omitted to declare recusal in the hearing of 7 February 2024 in case no. 1, despite a prior conflictual history with the prosecutor (§ 88).

c. **Non-disclosure of undue influence and *ex parte* communication**: the subject engaged in a phone conversation with the wife of a judge who was a party in the case, using familiar language and potentially suggestive expressions (e.g., "I will clarify"), without reporting this interference or subsequently declaring recusal.

138. The rules governing judicial recusal serve multiple purposes. In addition to ensuring the absence of actual bias, they also aim to eliminate any appearance of partiality. In doing so, they promote the public's confidence that courts in a democratic society. Accordingly, failure to abide by these rules means that the case was adjudicated by a court whose impartiality, under national law, was susceptible to reasonable doubt (*Mežnarić v. Croatia*, § 27; Judgment No. 2 of 16 January 2025, Constitutional Court § 193).

139. Even in the absence of clear evidence of an intentional exchange of favors, these situations create an objective suspicion of lack of impartiality, sufficient to undermine public confidence in the judiciary. Based on the above finding, the Commission concludes that the subject does not meet the ethical integrity criteria as provided in Article 11 para. (2) lit. a) and b) of Law No. 252/2023.

- **Involvement of the subject in cases which led to the finding of a violation by the European Court of Human Rights**

140. According to the Government Agent, as a judge, the subject was involved in 24 cases which led to the finding of a violation by the European Court of Human Rights (hereinafter "ECtHR"), namely:

- *Radu v. the Republic of Moldova*, No. 50073/07, 15 July 2014;
- *Cereale Flor S.A. and Roșca v. the Republic of Moldova*, No. 24042/09, 14 February 2017;
- *Grecu v. the Republic of Moldova*, No. 51099/10, 30 August 2017;
- *Ichim v. the Republic of Moldova*, No. 50886/08, 5 March 2019;
- *Electronservice-Nord S.A. v. the Republic of Moldova*, No. 12918/12, 2 July 2019;
- *Colesnic v. the Republic of Moldova*, No. 18081/07, 5 March 2019;
- *Ialtexgal Aurica S.A. v. the Republic of Moldova*, No. 16000/10, 16 February 2021;
- *Caraman v. the Republic of Moldova*, No. 49937/08, 16 February 2021;
- *Mihailov v. the Republic of Moldova*, No. 53209/12, 29 June 2021;
- *Canţer v. the Republic of Moldova*, No. 46578/09, 28 September 2021;
- *Balan v. the Republic of Moldova*, No. 17947/13, 1 March 2022;
- *Bisello SRL v. the Republic of Moldova*, No. 67988/13, 16 January 2021;
- *Moţpan v. the Republic of Moldova*, No. 600/13, 25 November 2021;
- *Scripcaru v. the Republic of Moldova*, No. 42133/14, 4 May 2023;
- *P.P. Glasul Naţiunii S.A. v. the Republic of Moldova*, No. 26067/14, 28 September 2023;
- *Tarnovschi and others v. the Republic of Moldova*, No. 23604/15, 6 April 2023;
- *Spînu v. the Republic of Moldova*, No. 16313/15, 30 January 2020;
- *Crețoi v. Republic of Moldova*, No. 49960/19, 14 December 2021;
- *Prodius and Others v. the Republic of Moldova*, No. 44894/13, 69759/13, 2598/15, 7640/15, 19 October 2021;
- *Hohlov and Others v. the Republic of Moldova*, No. 81519/12, 2437/14, and 26747/17, 5 October 2023;
- *Girbu and Others v. the Republic of Moldova*, No. 72146/14, 40547/15, 51218/15, 52032/16, 55072/16, 44686/19, 5 October 2023;
- *A.O. Falun Dafa and others v. the Republic of Moldova*, 29458/15, 26 June 2021;
- *Bocşa v. Republic of Moldova*, No. 6147/18, 4 April 2023;
- *Viotto v. Republic of Moldova*, No. 12083/20, 13 June 2023.

141. 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.

142. 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 Evaluation Commission must establish that two cumulative conditions are met. The first condition is that the act in question is contrary to imperative rules of law. The second condition is that, prior to the adoption of the act, the ECtHR had found a similar decision to be contrary to the European Convention on Human Rights.

143. 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.

144. 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".

145. Furthermore, in *Balliktaș Bingöllü v. Turkey*, 22 June 2021, § 75, the ECtHR stated that a "manifest error" may be considered to have been committed by a judicial decision if the court has committed an error of law or of fact that no reasonable court could ever have made, and which may disturb the fairness of the proceedings.

146. 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.

147. In 11 cases, the decisions issued by the subject are outside the 10-year period and therefore will not be considered by the Commission. The cases are: *Radu, Cereale Flor S.A. and Rosca, Grecu, Ichim, Electronservice-Nord S.A., Colesnic, Ialtexgal Aurica S.A., Caraman, Mihailov, Canţer and Balan.*

148. Another six cases were settled by a strike out decision following a friendly settlement (*Bisello SRL, Moţpan, Scripcaru, P.P. Glasul Naţiunii S.A., Tarnovschi and others)* or a unilateral declaration (*Spînu).* Consistent with its practice, the Commission will not analyze the involvement of the subject in cases that led to a strike-out decision.

149. The *Crețoi* case concerns proceedings initiated by the applicant under the Hague Convention on the Civil Aspects of International Child Abduction (hereinafter "Hague Convention"). The ECtHR found a violation of Article 8 because the proceedings lasted too long.

150. Article 11 of the Hague Convention requires the authorities to act expeditiously in proceedings for the return of children (six weeks). Although the six-week time limit is not obligatory, exceeding it by a significant time will be contrary to Article 8. In the case *Rhinau v. Lithuania* (No. 0926/09, 14 January 2020, § 194), the ECtHR found that a delay of five months, although exceeding the six-week time limit, did not violate Article 8 considering the circumstances of the case.

151. In *Crețoi* case, the proceedings lasted three years and three months (December 2015-27 March 2019). The proceedings before the Court of Appeal, in which the subject participated as a judge, lasted six months (December 2017-June 2018). Therefore, the Court of Appeal cannot be considered as having contributed significantly to the overall length of the proceedings.

152. The cases *Prodius and others*, *Hohlov and others*, and *Gîrbu and others* concern 13 applications. The ECtHR found violations of Article 6 and Article 1 of Protocol No. 1 due to the non-enforcement of final decisions and the inefficiency of the national remedy.

153. The subject participated as a judge of the Court of Appeal in six proceedings, covering four applications: *Prodius, Dari, Stariș* and *Gîrbu*. In two of these, the decisions fall outside the 10-year period and in one the subject ruled on aspects unrelated to those examined by the ECtHR in its judgments.

154. The Commission will therefore analyze the decisions issued by the subject in the *Dari* case (decision of 5 April 2018), in the *Starîș* case (decision of 24 May 2018) and in *Gîrbu* case (decision of 2 March 2017).

155. In all three cases, the applicants had final court judgments requiring local public authorities to provide them with housing. Because these judgments were not enforced, the applicants initiated several lawsuits under Law No. 87/2011. In most of these proceedings, the courts upheld the applicants' claims, found violations of their rights under Article 6 and Article 1 of Protocol No. 1, and awarded compensation for both pecuniary and non-pecuniary damages.

156. The subject confirmed that the final decisions remained unenforced but rejected the claims as unfounded. In *Dari*, the applicant allegedly lost the right to housing after ceasing to be a public officer. In *Starîș*, the rejection was based on the lack of fund. In *Gîrbu*, the applicant was required to wait their turn for enforcement.

157. Law No. 87/2011 provides that damages may only be denied if the delay in enforcement is either not unreasonable or is attributable to the applicant. It does not provide reasons such as lack of funds or the need to wait one's turn as valid grounds for rejecting a claim. Moreover, the ECtHR has consistently held that national authorities cannot justify non-enforcement by citing a lack of resources (*Prodan v. Moldova*, No. 49806/99, 18 May 2004).

158. In these cases, the subject acknowledged the non-enforcement of final decisions but rejected the claims on grounds not provided by domestic law or ECtHR case law. As such, the subjects reasoning in these decisions appear to contradict both the provisions of Law No. 87/2011 and the ECtHR standards.

159. Nevertheless, the Commission notes that in the *Dari, Starîș, and Gîrbu* cases, the ECtHR did not specifically assess the subject's decisions on the dismissal of the claims. The ECtHR analyzed the overall of the national proceedings, focusing on whether the enforcement delays met the reasonable time requirements and whether compensation was in line with ECtHR standards.

160. The delays in the enforcement of final judgments—central to the violations identified by the ECtHR—reflect a broader systemic problem in the Republic of Moldova. The main causes of non-enforcement are primarily structural and administrative, including chronic underfunding, weak institutional accountability, and ineffective enforcement mechanisms. In this context, the Commission considers that the shortcomings observed in the subject's decisions appear to be part of a wider institutional issue and therefore do not fall within the scope of an ethical criteria under Law No. 252/2023.

161. The Commission will therefore analyze the involvement of the subject in three other cases applying the criteria under Article 11 para. (2) lit. a) of Law No. 252/2023, namely:

- *A.O. Falun Dafa and others v. the Republic of Moldova*, No. 29458/15;
- *Bocşa v. the Republic of Moldova*, No. 6147/18;
- *Viotto v. the Republic of Moldova*, No. 12083/20.

Case of A.O. Falun Dafa and others v. Moldova, No. 29458/15, 26 June 2021

162. The case concerns the banning of the two applicant organizations' symbol, which resembles a reversed swastika, followed by the organizations' dissolution, allegedly at the request of the Chinese Government. The ECtHR found a violation of Articles 9 and 11 of the Convention.

163. The subject participated as a judge of the Court of Appeal panel that dismissed the applicants 'appeal on 15 July 2014.

Facts concerning the national proceedings

164. A non-governmental organization (the Association of Veterans and Invalids of the Second World War "Echitate", hereinafter "Echitate") initiated two court proceedings in December 2013 and February 2014, seeking the ban of the applicant organizations' symbol and their dissolution. The reasons given were that they used a swastika as a symbol and that they propagated hatred and social unrest.

165. The applicant organizations argued that their symbol was not a Nazi swastika and that it had been registered in over eighty countries around the world. They emphasized that A.O. Falun Dafa and Falun Gong are human rights associations, do not support Nazism and do not incite hatred or violence. In addition, the applicants highlighted a previous court decision confirming that the Falun symbol was not extremist.

166. They argued that the procedure was not in accordance with the law as only the General Prosecutor could request the declaration of the symbol as extremist and the dissolution of the associations. The veterans' association also failed to prove how its rights had been affected by the applicant's activities. Finally, the applicant invoked a disproportionate interference with their rights relying on Article 9 and 11 of the Convention and on ECtHR case law.

167. The first-instance court upheld the actions against the Ministry of Justice and the applicant organizations, banned their symbol and ordered their

dissolution. On 15 July 2014, the Court of Appeal (the subject was a member) dismissed the applicant's appeal relying on the same grounds as the first instance. On 11 February 2015, the Supreme Court of Justice rejected the appeal on points of law.

Findings in the revision proceedings

168. Following the notification of the case by the ECtHR, the Government Agent introduced two revision requests seeking the annulment of the two court judgments. The Agent also sought the acknowledgement of a violation of Articles 9 and 11 of the Convention and the award of non-pecuniary damage.

169. The Supreme Court of Justice upheld the revision requests and annulled the judgments concluding that the dissolution of the associations had been an excessive measure and did not correspond to a pressing social need. It also found that the associations' doctrine had nothing in common with Nazism, they were human rights associations and there was no evidence of violence or of criminal complaints introduced against the associations. At the same time, the Supreme Court refused to award damages, stating that this was the responsibility of the Government Agent.

The ECtHR findings

170. The ECtHR found that the Government acknowledged the violation of Article 9 and 11 relying on the Supreme Court of Justice decisions (see § 169). Therefore, it found no reason to depart from the conclusion of the Supreme Court of Justice and did not consider it necessary to re-examine the merits of these complaints.

171. Given the fact that the Supreme Court did not award any compensation to the applicants and the Government had not fully complied with the judgments of the Supreme Court of Justice, the ECtHR found a violation of Articles 9 and 11 of the Convention. The finding of the violation arises from the banning of the applicant organizations' symbol and their dissolution (§ 21 of the ECtHR judgment).

The subject's explanations

172. In the first round of questions, the subject claimed that the Court of Appeal's decision did not contribute to the violation found by the ECtHR. According to her, only the decisions of the Supreme Court of Justice served as the basis for the Court's finding.

173. In the second round of questions, the subject stated that the Court of Appeal had applied ECtHR case law on the dissolution of associations, citing *Hoffer*

and Annen v. Germany (13 January 2011, Nos. 397/07 and 2322/07) and *Peta v. Germany* (18 March 2013, No. 43481/09).

174. The subject stated that the Court of Appeal ordered the dissolution of the associations due to their failure to comply with the judgment of 20 January 2014, ordering the introduction of the Falun symbol into the registry of extremist materials.

175. Regarding the non-application of Law No. 54/2003 on Extremist Activities, in particular Article 6, the subject argued that this provision regulates the liability of associations for extremism. In her view, the present case concerned a civil dispute initiated by the association "Echitate" to defend its rights and thus fell under the general contentious procedure. In contrast, she emphasized that Law No.54/2003 provides standing exclusively to public authorities, particularly—the General Prosecutor's Office.

176. On 5 February 2025, the subject submitted additional explanations. She reiterated that she examined the case in light of the associations' failure to comply with the 2014 judgment concerning the registration of the Falun symbol as extremist material. Applying the proportionality test, the court prioritized the protection of historical memory and the victims of the Nazism and Holocaust over the interests of the Falun Dafa and Falun Gong associations, taking into account the national context.

177. During the hearing, the subject expressed disagreement with the notified doubt and reiterated her statements provided in the rounds of questions and in the additional submissions of 5 February 2025.

The Commission's findings

178. The Court of Appeal's decision of 15 July 2014 falls within the 10-year period, and the ECtHR found a violation of Articles 9 and 11. The subject's claim that the Court of Appeal's decision did not contribute to the finding of the violation is contradicted by the ECtHR judgment. The Court explicitly found that the violation of Articles 9 and 11 resulted from the banning of the applicant organizations' symbol and their dissolution, as well as the failure to award sufficient compensation (§ 21 of the ECtHR judgment). As concerns

the ECtHR cases[7] invoked by the subject, they appear to be irrelevant to the present case.

179. The Commission will further analyze the decision by the Court of Appeals in light of the Constitutional Court's judgment. It will assess whether the decision is arbitrary as interpreted by the ECtHR (see §§ 142-145), whether was contrary to an imperative rule of law, and whether relevant prior ECtHR case law existed.

180. Article 6 of Law No. 54/2003 sets out the procedure to be followed when extremist activities are identified as being conducted by an association:

> "(2) If acts indicating extremism are detected in the activities of an […] association, […] it shall be notified or warned in writing about the inadmissibility of such activities. The notification/warning must specify the concrete grounds for the measure, including the violations committed. If it is possible to adopt measures to eliminate the violations, the notification/warning must also indicate the deadline for their rectification, which shall be one month from the date of the notification/warning.
>
> (3) The notification/warning […], is issued by the General Prosecutor or subordinate prosecutors, or by the Ministry of Justice or the State Service for Religious Affairs.
>
> (4) The notification/warning may be challenged in court according to the established legal procedure.

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[7] The case *Hoffer and Annen v. Germany* concerns two applicants who distributed anti-abortion pamphlets comparing abortion to the Holocaust and targeting a doctor. Initially acquitted by the District Court, they were later convicted of defamation by the Regional Court, which ruled the pamphlets unjustifiably debased the doctor by equating his lawful actions with crimes against humanity. Finally, the Constitutional Court upheld the conviction stressing the need to balance freedom of expression with the doctor's dignity. Subsequent proceedings reduced the fines while affirming the criticism exceeded permissible limits. https://hudoc.echr.coe.int/eng?i=001-102804

The case *Peta v. Germany*, PETA's German branch launched a campaign, "The Holocaust on Your Plate," comparing animal treatment in factory farming to Holocaust suffering using provocative posters. Three Holocaust survivors obtained an injunction, arguing the campaign violated their dignity and trivialized their suffering. Courts ruled the campaign debased Holocaust victims, crossing the limits of free expression under Germany's Basic Law. Appeals upheld the decision, with the Federal Constitutional Court emphasizing human dignity over animal rights and noting the campaign banalized the Holocaust. https://hudoc.echr.coe.int/eng?i=001-114273

> (5) If the notification/warning is not challenged in court as prescribed, or if it is not declared unlawful by the court, and if the respective […] association fails to eliminate the identified violations within the given timeframe, or if, within 12 months from the notification/warning, new acts indicating extremist activities are discovered, then upon the request of the General Prosecutor, subordinate prosecutors, the Ministry of Justice, or the State Service for Religious Affairs, the court issue a ruling on the termination or suspension of the organization's activities for up to one year."

181. The Court of Appeal upheld the first-instance judgment ordering the dissolution of the associations as being extremist. While such dissolution is regulated by Law No. 54/2003, the Court of Appeal issued its decision without applying the provisions of that law.

182. The claim was introduced by another association rather than by one of the legally designated authorities (General Prosecutor, subordinate prosecutors, Ministry of Justice or the State Service for Religious Affairs). In addition, the procedural safeguards required by Law No. 54/2003—such as prior notification, a rectification period, and proper legal standing—were entirely disregarded.

183. The subject argued that Law No. 54/2003 was not applicable because the claim was initiated by an association under the general contentious procedure. However, no legal provision allows the dissolution of an association for extremism based on general provisions and bypassing the explicit procedural safeguards in Law No. 54/2003. The subject's reasoning—prioritize the right of the claimant association "Echitate" to access a court—raises serious concerns, particularly given the significant impact on fundamental rights, including freedom of association, freedom of religion, and the right to a fair trial of A.O. Falun Dafa and Falun Gong.

184. Even assuming that the decision on dissolution could be based on Law No. 837/1996 on public association, none of the legal grounds set out in Article 36 of that law were present in this case[8].

[8] The public association may be dissolved by a court decision in the following cases: a) *Preparation and/or execution of actions aimed at violently changing the constitutional regime or undermining the territorial integrity of the Republic of Moldova; b) Preparation and/or execution of actions aimed at overthrowing legally established public authorities; c) Incitement of social, racial, national, or religious hatred and discord; d) Violation of the legitimate rights and freedoms of individuals; e) Creation of paramilitary formations; f) Repeated warnings issued to the public association regarding the necessity of eliminating legal violations, given within one year by the authority that registered the association, in cases where the violations have not been remedied.*

185. The subject further claimed that the Court of Appeal ordered the associations' dissolution because they had failed to enforce a previous decision declaring their symbol extremist.

186. However, the enforcement of a decision designating a symbol as extremist is expressly regulated by Article 10 of Law No. 54/2003. This provision requires the court to transmit the judgment to the Ministry of Justice, which is then formally responsible for registering the symbol or association in the Registry of Extremist Materials.

187. Accordingly, the assertion that the associations were dissolved for failing to enforce the judgment is inconsistent with Article 10 of Law No. 54/2003. The law imposes no enforcement obligation on the association itself. That responsibility lies with the Ministry of Justice. Holding the association accountable for a duty it did not - and legally could not - goes against the express legal provisions.

188. Furthermore, the two sets of proceedings (symbol declaration and dissolution) were conducted almost simultaneously. The claim regarding the symbol was introduced in December 2013, while the claim for dissolution followed shortly thereafter, in February 2014. The Court of Appeal's issued its decision on the symbol in April 2014 and the decision on dissolution, in July 2014. Notably, at the time the dissolution decision was issued, the case concerning the symbol was under examination before the Supreme Court of Justice.

189. As a result, the Court of Appeal's justification for dissolving the associations on the basis of non-enforcement of the decision concerning the symbol is not only legally unfounded but also procedurally inconsistent. Expecting the associations to enforce a decision that was not irrevocable, and which had no legal obligation to enforce in the first place, contradicts the procedural safeguards of Article 10 of Law No. 54/2003 and of a fair trial, in general.

190. The Court of Appeal—and subsequently, the subject—claimed to have conducted a proportionality assessment between the protection of the memory of the victims of Nazism/Holocaust victims and the rights of the Falun Dafa and Falun Gong associations. However, there is no indication in the case file that the claimant association, "Echitate," represented Holocaust survivors or victims of the Nazi regime.

191. In fact, the association was composed of World War II veterans. While their contributions are historically significant, not all veterans can be equated with Holocaust victims or victims of Nazi persecution. Automatically conferring

such status risks distorting historical truth and trivializing the Holocaust, thereby undermining the distinct and profound suffering endured by its victims.

192. The subject argued that the decision was lawful, citing the fact that it had been upheld by the Supreme Court of Justice. However, the Commission notes that the Supreme Court ultimately annulled both the decision concerning the symbol and the dissolution decision. The Court found that dissolving the associations was a disproportionate measure that did not respond to a pressing social need. It further emphasized that the associations promoted human rights, had no ideological connection to Nazism, and that there was no evidence of incitement to violence or any criminal complaints filed against it (see § 169).

193. The dissolution of an association is among the severest restrictions on freedom of association (*Vona v. Hungary*, No. 35943/10, § 58, 9 July 2013). Such a measure must always comply with national provisions and the requirements of Article 9 and 11 of the Convention. Given the severity of these measures, they may only be used when there is a clear and imminent threat to, for example, national security. It must be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.

194. The ECtHR cases *Vajnai v. Hungary* (No. 33629/06, 8 July 2008) and *Fratanolo v. Hungary* (No. 29459/10, 3 November 2011) addressed sanctions for wearing symbols like the red star, linked to totalitarian regimes. The Court found that such symbols have multiple meanings, and while they may cause discomfort, such feelings could not override freedom of expression.

195. The only element cited as evidence of alleged extremism was the applicants' use of the Falun symbol, which visually resembles a reversed swastika. However, the applicants were never accused of inciting violence or engaging in any other form of extremist activity. The domestic courts' conclusions were not supported by factual findings that could indicate the promotion of violence, hatred, or intolerance. Moreover, the courts failed to assess the actual aims and activities of the associations when ordering their dissolution, offering no justification for this omission. Additionally, the procedural requirements set out in Article 6 of Law No. 54/2003 were not observed, without any plausible legal explanation.

196. When the decision was issued, there existed an extensive case law of the ECtHR on the dissolution of the associations. In addition to the cases cited in previous paragraphs, the Commission notes the following cases: *Biblical*

Centre of the Chuvash Republic v. Russia (No. 33203/08, 12/06/2014), *Jehovah's Witnesses of Moscow and Others v. Russia* (No. 302/02, 10/06/2010), *Rhino and others v. Switzerland* (No. 48848/07, 11 October 2011), *Gorzelik and others v. Poland* (No. 44,158/98, 17 February 2004).

197. The Commission notes that the subject failed to provide reasonable justification for disregarding mandatory legal provisions and relevant case law of the ECtHR. Based on findings in §§ 178-196, the decision issued in this case presents characteristics of arbitrariness as defined by both the ECtHR and the Constitutional Court. The dissolution of the associations lacked a legal basis, as the procedural safeguards under Law No. 54/2003 were not applied, and the outcome of the proceedings was disconnected from the factual context, given the absence of any evidence of unlawful conduct or threats to public security attributable to the associations.

The case of Bocsa v. Republic of Moldova, No. 6147/18, 4 April 2023

198. The case concerns the non-enforcement of a court decision setting the contact schedule between the applicant and his children, which amounted to the factual withdrawal of his contact rights. The ECtHR found a violation of Article 8.

199. The subject participated as a judge of the Court of Appeal that annulled the bailiff order on 27 June 2017.

Facts concerning national proceedings

200. The applicant and G. have two children. Following their divorce in October 2012, the court determined the children's domicile with G. and granted the applicant visiting/contact rights.

201. In 2014, G. requested the court to modify the contact schedule, arguing that since the children spent every weekend with their father, they were unable to see their grandparents and other relatives. She proposed a new schedule with alternating weekends and equal time of school holidays between the parents.

202. The applicant agreed, and G. subsequently requested termination of the proceedings, as they had reached an agreement. By a June 2014 ruling, the first-instance court approved their friendly settlement and established the new contact schedule.

203. According to the applicant, as of 2016, G. no longer allowed him to see his children. He filed a police complaint, who informed him that they had

spoken with G., but she continued to deny access. In May 2016, the applicant requested the court to issue an enforceable title based on the June 2014 ruling.

204. Furthermore, the applicant requested the initiation of formal enforcement proceedings. On 30 May 2016, the bailiff received the title and issued an order (încheiere) initiating enforcement proceedings. Between April 2016 and June 2017, the bailiff drew up approximately eight protocols attesting G.'s failure to comply with contact schedule.

205. G. was informed of the bailiff's order which she contested it. On 28 March 2017, the first-instance court rejected her claim founding that the parties had previously concluded a friendly settlement regarding the contact schedule. The bailiff documented multiple instances of G.'s non-compliance with the schedule, consequently, the court found G.'s claim unfounded.

206. G. appealed, and on 27 June 2017, the Court of Appeal, in a panel including the subject, upheld the appeal and annulled the bailiff's order. The Court of Appeal stated that there was no conclusive evidence of G.'s refusal to comply with the schedule. The June 2014 ruling merely recognized the applicant's right to take/see his children, without imposing specific obligations on G. As a result, the court concluded the title unenforceable and annulled the bailiff's order. This decision was final and irrevocable. The bailiff subsequently returned the enforcement title to the applicant.

207. The applicant submitted complaints to several institutions, including: the child protection authority, the police, the prosecution office, and even the Ministry of Labor and Social Protection. The child protection authority replied that it lacked jurisdiction, and that enforcement of the contact schedule falls within the bailiff's responsibility.

The ECtHR findings

208. The ECtHR found that national authorities had a formalistic approach, relying on the vagueness of the 2014 decision to motivate the non-enforcement of the applicant's visiting and contact rights. There was no effort to mediate or facilitate contact, and the child protection authority declined involvement, leaving enforcement to judicial bailiff.

209. Although the Government later cited the children's resistance and allegations of the father's violent behavior, these concerns were not formally assessed at the time. The ECtHR noted that there is nothing in the case file to indicate that the children were reluctant to meet their father when the contact schedule had been agreed between the parents in 2014 until the stage of enforcement proceedings in 2016.

210. The ECtHR ruled that the authorities had failed to ensure a fair procedure for assessing the best interests of the children and the father's contact rights. The lack of proper assessment and procedural safeguards resulted in the effective deprivation of the applicant's contact rights.

The subject's explanation

211. In the first round of questions, and reiterated further, the subject stated that the Court of Appeal's decision did not contribute to the violation found by the ECtHR. She claimed that the bailiff's order was annulled for procedural reasons and that the original ruling establishing the contact schedule was poorly worded.

212. In the second round of questions, the subject explained that the Court of Appeal did not assess the case in light of the State's positive obligations under Article 8. Rather, it focused solely on the legality of the enforcement procedure. In the appeal, they reviewed the bailiff's actions against the debtor, not alleged G.'s failure to comply with the contact schedule.

213. On 5 February 2025, the subject submitted additional explanations reiterating her previous statements. During the hearing, she disagreed that the Court of Appeal's decision was contrary to the Convention. She added that if the friendly settlement terms were unclear, it was to the bailiff or to the parties to request clarification (*explicarea încheierii)* from the court. In her view, the Court of Appeal acted as an appeal court and examined only the bailiff's actions, which were contrary to legal provisions.

The Commission's findings

214. The Commission notes that the Court of Appeal's decision of 27 June 2017 falls within a 10-year assessment period. The ECtHR found a violation of Article 8 due to the failure to enforce the applicant's rights of contact and visitation with his two children, despite a court decision. The subject's claim that the Cout of Appeal's decision did not contribute to this violation is contradicted by the ECtHR's own findings. In § 18 of the judgment, the Court explicitly described the decision as formalistic and effectively revoking the applicant's contact rights.

215. The Commission will further analyze the decision in light of the Constitutional Court's judgment. It will examine whether the decision is contrary to an imperative rule of law, whether there is relevant prior ECtHR case law, and whether the decision is arbitrary as interpreted by the ECtHR (see §§ 142-145).

216. The Court of Appeal, with the subject's participation, annulled the bailiff order on three grounds: (1) lack of evidence that G. had failed to comply with the contact schedule; (2) failure by the bailiff to grant a deadline for compliance; and (3) the 2014 ruling approving the friendly settlement was allegedly unclear and did not impose specific obligations on G.

217. As to the alleged lack of evidence showing G.'s non-compliance, the Commission notes that the case file included two bailiff reports and at least seven protocols documenting repeated failures by G. to respect the contact schedule (see also § 7 of the ECtHR judgment). Additionally, there were court decisions ordering G. to appear at the bailiff's office and prohibiting her from leaving the country—both measures taken in response to her refusal to comply. The applicant also filed complaints with the police, prosecution, and child protection authorities regarding G.'s continued obstruction.

218. On the claim that the bailiff failed to grant a deadline for enforcement, the Commission notes that the enforcement order of 30 May 2016 clearly provided a 10-day term for voluntary compliance.

219. Regarding the alleged ambiguity of the 2014 court ruling, the Commission recalls that the contact schedule was proposed by G. herself. She initiated proceedings to modify the previous arrangement, the applicant agreed, and the court subsequently homologated their friendly settlement (see §§ 201-202).

220. The contact schedule resulted from mutual agreement and was formalized by court approval. Unlike a contested judgment, a friendly settlement reflects the parties' consent and carries binding legal force. In addition, between 2014 and 2016, G. complied with the contact schedule without contesting her obligations or raising concerns about any unclear aspects of the settlement.

221. Moreover, G. challenged the bailiff's order not on the basis of ambiguity, but by claiming there was no evidence of her refusal to comply (see p. 1 of the Court of Appeal decision). The 2014 ruling modified only two paragraphs of the earlier contact schedule, while the rest—including mutual obligations to inform one another in specific situations (such as the children's illness or the applicant's inability to comply with the schedule)—remained valid. As a rule, court decisions must be interpreted as a whole, not selectively.

222. Before the Commission, the subject argued that the bailiff's order was contrary to procedural rules, but did not specify which rules had allegedly

been violated. According to Article 61[9] of the Enforcement Code, a bailiff may refuse to initiate enforcement only under an exhaustive clearly defined circumstance. Moreover, the first-instance court had already dismissed G.'s objection, confirming that the enforcement title was valid and supported by bailiff reports documenting her non-compliance.

223. Therefore, the justification that the Court of Appeal annulled the bailiff's order due to procedural breaches lacks any evidentiary basis. The presence of multiple bailiff reports, relevant court decisions, and complaints filled by the applicant clearly demonstrated that G. repeatedly failed to comply with the contact schedule, undermining the Court of Appeal's reasoning in annulling the order on this ground.

224. Article 130 para. (3) of the Code of Civil Procedure provides that each piece of evidence must be assessed by the court regarding its relevance, admissibility, and veracity. Also, all the evidence must be assessed within the light of their mutual connection and sufficiency for resolving the case. Under para. (4) of the same article, following the assessment of the evidence, the court is obliged to reflect in the decision the reasons for its conclusions regarding the admission of some evidence and the rejection of other evidence. Additionally, the court must provide the argumentation of the preference of some evidence over others.

225. In light of the available evidence and applicable legal standards, the Commission finds that the Court of Appeal's reasoning—annulling the enforcement order on the basis that the 2014 ruling granted only a "right" to the applicant without imposing a clear "obligation" on G.—was unconvincing and overly formalistic. This interpretation ignored multiple pieces of relevant evidence attesting to G.'s repeated non-compliance and failed to meet the requirements of Article 130 of the Code of Civil Procedure regarding comprehensive and reasoned assessment of the evidence. As confirmed by the ECtHR (§§ 17–18), such a narrowly textual approach ultimately deprived the applicant of the effective enjoyment of his right to

[9] The judicial bailiff may refuse to initiate enforcement proceedings if: a) *The document does not fall within their jurisdiction; b) The deadline for submitting the document for enforcement has expired; c) The document is not drafted in accordance with the provisions of Article 14 of this Code; d) The document is submitted by a person who does not have the necessary authorization, as established by law; e) The voluntary compliance period granted by law or indicated in the enforcement document has not expired; f) The document has already been enforced.*

maintain contact with his children and did not correspond to the Court's standards under Article 8 of the Convention.

226. The mutual enjoyment by a parent and child of each other's company constitutes a fundamental element of family life. The measures that hinder such enjoyment amount to an interference with the right protected by Article 8 of the Convention. In cases concerning parental contact rights, the State has, in principle, a positive obligation to take measures aimed at reuniting parents with their children. It also has a duty to facilitate such reunions, insofar as the child's best interests require that every effort be made to preserve personal relationships.

227. When the decision was issued there existed an extensive case law of the ECtHR concerning the positive obligations under Article 8 to facilitate and enforce contact rights while respecting the best interests of the child: *Bordeianu v. Moldova* (No. 49868/08, 11 January 2011), *Tocarenco v. Republic of Moldova* (No. 769/13, 4 November 2014), *Maire v. Portugal* (No. 48206/99, 26 June 2003), *Ribic v. Croatia* (No. 27148/12, 2 April 2015), *K.B. and others v. Croatia* (No. 36216/13, 14 March 2017).

228. The Commission notes that the subject did not provide a reasonable explanation for the failure to apply mandatory legal provisions and relevant ECtHR case law. Based on the findings in §§ 214-227, the Commission concludes that the decision in this case falls within the concept of arbitrariness as defined by the ECtHR and the Constitutional Court. According to *Balliktaş Bingöllü*, a judicial decision contains a manifest error when it involves a legal or factual mistake that no reasonable court would make, thereby undermining procedural fairness. By disregarding clear evidence of the mother's repeated failure to comply with the contact schedule, by stating that the bailiff had not granted a period for voluntary enforcement—despite the 10-day period expressly indicated in the enforcement order—and by interpreting that the ruling conferred only rights and not obligations, the Court of Appeal committed such a manifest error.

The case of Viotto v. Republic of Moldova, No. 12083/20, 13 June 2023

229. The case concerns the failure of the Moldovan authorities to assist the applicant in being reunited with his child after the latter had been taken from Italy to the Republic of Moldova by the mother and retained there. The ECtHR found a violation of Article 8.

230. The subject participated as a judge of the Court of Appeal that dismissed the applicant's appeal on 18 April 2019.

Facts concerning national proceedings

231. The applicant and M. were cohabiting in Italy and had a child in 2015. After their separation, in September 2017 M. took the child to Moldova without the father's consent and refused to return. On 7 November 2017, an Italian court revoked M.'s parental authority, awarded full custody to the applicant, and set the child's residence in Italy. This decision became final on 6 May 2019 and was later recognized by a Moldovan court in 2021. In November 2017, the applicant sought the child's return through the Italian and Moldovan authorities, without success.

232. In April 2018, he filed a claim in Republic of Moldova under the Hague Convention, presenting evidence that the child had lived in Italy since birth, was an Italian citizen, and was attending kindergarten there until M. took him on 26 September 2017 and never returned. He also submitted the Italian custody judgments.

233. On 6 December 2018, the district court dismissed the claim, holding that no abduction had occurred since M. crossed the border legally and was not present in the Republic of Moldova. It also ruled that returning the child would separate him from his mother, which was deemed contrary to the child's best interests.

234. On appeal, the applicant argued that the Hague Convention applied, that the child had been unlawfully removed without consent, and that Moldovan authorities failed to consider the revocation of M.'s parental rights. He also provided evidence that the child was residing and enrolled in preschool in Republic of Moldova.

235. On 18 April 2019, the Court of Appeal—of which the subject was a member—dismissed the appeal, repeating the lower court's reasoning. Although it cited the Hague Convention, it failed to apply its provisions. The court concluded that no abduction had occurred because M., as a Moldovan citizen, had the right to relocate, and vaguely stated that returning the child would not be in his best interests, without further justification.

236. The Supreme Court of Justice rejected the applicant's final appeal in October 2019 as ill-founded.

The ECtHR findings

237. The ECtHR found a violation of Article 8 due to two main issues: the lack of coordination between different authorities in handling the case and the absence of sufficient reasoning in the courts' decisions.

238. The ECtHR determined that the domestic courts failed to justify the inapplicability of the Hague Convention to the case. The courts did not establish Italy as the child's habitual residence prior to removal and instead focused solely on his integration in Moldova after the removal.

239. Additionally, the domestic courts did not give any weight to the fact that the child had been removed from Italy without the applicant's consent, merely noting that the child had lawfully crossed the border with proper travel documents through legally designated areas. The courts disregarded the wrongful nature of the abduction and the need to restore the pre-abduction status quo. Moreover, the court proceedings lasted one and a half years, with no indication that the national courts had assessed the child's best interests.

240. Unlike the Italian courts, which relied on expert reports, the Moldovan courts did not conduct a specialist evaluation to assess whether keeping the child in Moldova was in his best interests.

241. The decision prioritized maintaining the child's connection with the mother without properly evaluating the consequences of severing his relationship with the applicant.

The subject's explanations

242. During the rounds of questions and in her additional submissions of 5 February 2025, the subject maintained that the Court of Appeal's decision was lawful. She argued that there was no evidence of abduction, and that the applicant had not demonstrated that separating the child from the mother would serve the child's best interests.

243. She also claimed that the Court of Appeal had assessed the child's best interests and chose not to disrupt the existing situation. Regarding the Italian judgments, she noted they had not yet been formally recognized in Moldova at the time. She further explained that a special procedure for Hague Convention cases was only introduced in 2020, and since the case was adjudicated in 2019, the general civil procedure rules applied.

244. During the hearing, she reiterated her previous statements and added a new argument: by the time the Court of Appeal reviewed the case, one year and nine months had passed since the child's removal. She argued that under the Hague Convention, once more than a year has elapsed, return is no longer mandatory.

The Commission's findings

245. The Commission notes that the Court of Appeal's decision of 27 June 2017 falls within the 10-year period and the ECtHR found a violation of Article 8 due to the failure of Moldovan authorities to reunite the applicant with his child.

246. The Commission will further analyze the decision in light of the Constitutional Court's judgment. It will assess whether the decision is contrary to an imperative rule of law, whether there is relevant prior ECtHR case law, and whether the decision is arbitrary as interpreted by the ECtHR (see §§ 142-145).

247. The Republic of Moldova ratified the Hague Convention on 30 July 1998, thereby assuming a binding obligation to apply its provisions domestically and to ensure protection against international child abduction.

248. Under Article 4 of the Constitution, where conflicts arise between international human rights treaties to which Moldova is a party and domestic legislation, the international instruments take precedence.

249. By judgment No. 55 of 14 October 1999, the Constitutional Court stated that:

> "The universally recognized principles and rules of international law, as well as international treaties ratified by or acceded to by the Republic of Moldova, are part of its legal framework and become norms of its domestic law. Once ratified, international treaties on human rights become part of national law."

250. Based on this constitutional rule, the Hague Convention has been part of Moldova's national legal system since its ratification in 1998 and was therefore fully applicable and binding at the time the domestic courts examined the case.

251. Article 1 of the Convention states its primary objective is to ensure the prompt return of children wrongfully removed to or retained in another Contracting State. Its purpose is to protect the child's best interests by restoring the pre-abduction status quo and securing the child's return to their habitual residence.

252. Article 4 provides that the Convention applies to any child who was habitually resident in a Contracting State immediately before the breach of custody or access rights.

253. Under Article 12, if proceedings are initiated within one year of the wrongful removal or retention, the competent authority is obliged to order the child's return without delay.

254. Article 14 further clarifies that, in determining whether a removal or retention was wrongful, authorities in the requested State may consider the foreign law and court decisions from the child's country of habitual residence, regardless of whether those decisions have been formally recognized, and without needing to follow separate procedures for proving foreign law or recognition.

255. The Court of Appeal's decision lacked a legal basis and contradicted both the Hague Convention and Article 8 of the Convention.

256. As established in *Bochan v. Ukraine* (No. 2), a judicial decision is arbitrary if it lacks a legal basis and fails to connect the facts, applicable law, and the outcome. The Court of Appeal's reasoning met this definition of arbitrariness.

257. Article 3 of the Hague Convention defines a wrongful removal as one that breaches custody rights under the law of the child's habitual residence, where those rights were exercised or would have been exercised but for the removal.

258. In this case, both criteria were clearly met. The child's habitual residence was Italy, and neither the applicant nor the Italian child protection judge authorized the relocation. The applicant's lack of consent was central to the claim of abduction. However, the Court of Appeal ignored this and focused solely on the legality of the border crossing—an irrelevant factor under the Convention. The domestic courts interpreted and applied the law in a way that effectively nullified the applicant's parental rights (§ 20 of the ECtHR judgment). Instead of restoring the pre-abduction status quo, the court emphasized the child's post-removal integration in Moldova, contradicting the Convention's core objective.

259. The decision also failed to properly assess the child's best interests. It offered no meaningful justification as to why returning the child would have been harmful.

260. During the hearing, the subject argued that the Court of Appeal could not order the return since more than one year had passed since the child's removal. However, Article 12 of the Hague Convention makes clear that the one-year period refers to the time by which the return proceedings must be initiated—not when a decision must be rendered. In this case, the applicant took action promptly: he contacted authorities in November 2017 (one month after the removal) and initiated court proceedings in April 2018, within six months.

261. A return may only be denied after one year if the child is shown to be well integrated into the new environment, based on a thorough assessment. No such evaluation was carried out in this case. Moreover, this justification was not included in the Court of Appeal's written reasoning and was raised for the first time by the subject before the Commission, which undermines its credibility as a valid legal argument.

262. The Moldovan courts failed to consider the Italian custody decisions. Article 14 of the Hague Convention allows judicial authorities in the requested State to directly consider the law and judicial decisions of the child's habitual residence without requiring formal recognition or specific proof procedures. Therefore, the Court of Appeal could have considered these decisions. Moreover, the recognition of judicial decisions is required only for enforcement purposes. Their presentation in this case was intended to demonstrate that the child was wrongfully removed, not to seek enforcement. Even if foreign judgments are not directly enforceable, they can still be used as evidence.

263. The Court of Appeal failed to engage with key legal arguments, merely repeating the district court's flawed reasoning without assessing the applicant's evidence.

264. In international child abduction cases, the obligations under Article 8 of the European Convention on Human Rights must be interpreted in conjunction with the Hague Convention and the UN Convention on the Rights of the Child. The Hague Convention specifically aims to protect the child's right to maintain personal relationships with both parents and to prevent the harmful effects of wrongful removal or retention.

265. There existed a clear case law on the proceedings under the Hague Convention: *Ignaccolo-Zenide v. Romania*, No. 31679/96, 25 January 2000, §§ 89-113, *Iosub Caras v. Romania*, No. 7198/04, 27 July 2006, §§ 32-40, *Blaga v. Romania* (No. 54443/10, 1 July 2014), *Maire v. Portugal*, no. 48206/99, 26 June 2003), §§ 68-78, *Adžić v. Croatia*, No. 22643/14, §§ 91-99, 12 March 2015).

266. The Commission notes that the subject did not provide a reasonable explanation for the failure to apply the mandatory provisions of the Hague Convention and relevant ECtHR case law. Based on the findings in §§ 245-265, the Commission concludes that the decision issued in this case falls within the concept of arbitrariness as interpreted by the ECtHR and the Constitutional Court. According to *Bochan v. Ukraine* (No. 2) and reaffirmed in *Aykhan Akhundov v. Azerbaijan*, a judicial decision is arbitrary when it lacks

a legal basis and fails to establish a coherent connection between the facts, the applicable law, and the outcome.

267. In this case, the Court of Appeal ignored essential elements of the Hague Convention—such as the child's habitual residence, the wrongful nature of the removal, and the necessity to restore the status quo ante—and instead relied on legally irrelevant factors like the legality of the border crossing. The court's failure to engage with the applicant's key arguments or assess the best interests of the child, combined with the absence of reasoning, resulted in a manifest error that lacked legal justification and fell short of the standards of procedural fairness.

268. With respect to the *Bocșa* and *Viotto* cases, the Commission notes that the subject issued the decisions after participating in a training-of-trainers course on the Convention, held in Strasbourg from 3 to 6 November 2014. The objective of the course was to support the proper application of the Convention within national courts, including by enabling participants to train other judges. Moreover, during the evaluation procedure, the subject contested that the decisions in which she participated were incompatible with the Convention, despite the adverse findings of the ECtHR in both cases.

The conclusion regarding the involvement in ECtHR cases

269. 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.

270. All three cases examined by the Commission fall under the criteria for judicial misconduct set out in *Mnatsakanyan v. Armenia*, as cited by the Constitutional Court. They reflect more than mere legal error—they involve serious procedural and substantive failings.

271. The first case involved the arbitrary dissolution of associations for alleged extremism, despite no evidence of violence or incitement to hatred. The decision ignored the mandatory provisions of Law No. 54/2003 and applicable ECtHR jurisprudence under Article 11, amounting to a serious and unjustified judicial measure.

272. The second case concerned the annulment of an enforcement title, effectively revoking the applicant's contact rights with his children. The Court of Appeal's justification, based on alleged procedural errors by the bailiff, lacked any evidentiary support or legal assessment. The ruling's conclusion that the title was unenforceable—despite being based on a court-approved agreement—had no legal justification and undermined the principle of legal certainty.

273. The third case involved the Court of Appeal's failure to apply the Hague Convention, despite its clear applicability. The ECtHR identified major deficiencies in reasoning, procedural delays, and disregard for essential facts. This decision exceeded a mere misinterpretation of law and reflected a failure to apply the relevant legal framework altogether.

VI. Conclusion

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

275. The Commission found two separate grounds for finding non-compliance with the criteria in Article 11 of Law 252/2023. Under Article 17 of Law 252/2023, a subject will be deemed not to have passed the evaluation if one or more grounds for non-compliance are found to exist. The Commission would have issued its recommendation of non-promotion based on any one of the identified grounds.

VII. Further action and publication

276. 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.

277. 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.

278. 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.

279. This evaluation report was approved by a unanimous vote of the Panel members on 8 April 2025 and signed pursuant to Articles 33 point (2) and 40 point (5) of the Rules.

280. Done in English and Romanian.

Scott Bales

Chairperson of the Commission

Chair of Panel B