



International Monitoring Operation
*Project for the Support to the Process of Temporary
Re-evaluation of Judges and Prosecutors in Albania*



Funded by the European Union

Prot. No. 1003/1

Tirana, 13 July 2018

To the
Public Commissioners

Bulevardi "Deshmoret e Kombit", Nr. 6
Tirana
Albania

Case Number **CC/TIR/1/01**
Assessee **Bashkim DEDJA**

RECOMMENDATION TO FILE AN APPEAL

according to

Article B, paragraph 3, littera c of the Constitution of the Republic of Albania, Annex
'Transitional Qualification Assessment', and Article 65, paragraph 2 of Law No. 84/2016 "On
the transitional re-evaluation of judges and prosecutors in the Republic of Albania"

Introduction

The assessee holds the office of the Chairman of the Constitutional Court of Albania. He is an assessee pursuant to Article 179/b, paragraph 3 of the Constitution. Pursuant to Article 4, paragraph 4 of Law 84/2016, in short: Vetting Law (VL), the assessee is subject to priority re-evaluation.

The re-evaluation process was carried out on three criteria: assets, background and proficiency. Upon administering reports of the auxiliary bodies, thorough investigation of the case, administering evidence obtained through the investigation process and submitted by the assessee, the Independent Qualification Commission (IQC) Adjudication Panel closed the ex-officio investigation on May 15, 2018, notified the assessee on the results and shifted the burden of proof on the assessee on several items related to the asset criteria. Following his submissions to rebut the established presumption, the Panel decided to summon the assessee to a hearing.

The hearing took place on June 8, 2018. Following deliberations as per Article 55, paragraph 5 VL, the Adjudication Panel decided to confirm the assessee in duty. The decision was publicly announced on June 13, 2018.

Summary of recommendation

The International Observers (IOs) recommend the Public Commissioners to file an appeal against IQC's 13 June 2018 decision in the case of this assessee, by which the assessee has been confirmed in duty.

Basis of Recommendation:

1. Under paragraph 3 of Article D of the Annex to the Constitution of the Republic of Albania *"The assessee has to credibly explain the lawful origin of assets, property and income. Income shall only be considered legitimate if it has been declared and taxes have been paid."*

Whereas, under paragraph 5 of Article D of the Annex to the Constitution *"...If the assessee takes steps to inaccurately disclose or hide assets in his or her ownership, possession or use, a presumption for the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel."*

Furthermore, under Article 52 paragraph 2 VL *"If the Commission or the Appeal Chamber concludes that the evidence has reached the standard of proof under Article 45 of this Law for its report, the assessee shall have the burden to provide evidence or arguments about evidence against that conclusion"*.

2. Through Adjudication Panel's decision of May 15, 2018 to close the *ex-officio* investigations, which revealed inaccuracy of disclosure and a failure to establish legitimate sources of assets, the burden of proof, as per Article 52, paragraph 2 VL, shifted to the assessee on the following items related to the assets criteria:

(a) Regarding the apartment of m2 and garage of m2 at Street, Apartment complex in the investigation found inconsistencies in apartment numbers in different documents and between the date of purchase and date of electricity supply contract, which led to the suspicion the assessee could own more than one apartment in that complex;

(b) Regarding the **apartment** of m2 and garage of m2 at Street, Apartment complex in the investigation found lack of documents that prove (1) accuracy of declarations regarding the declared source for this apartment, namely EUR loan from in law Mr. and EUR loan from Mr. and (2) legitimacy of source;

(c) Regarding the **apartment** of m2, at Street in the investigation found: (1) inconsistencies between assessee's Vetting Declaration, Periodic Declaration and assessee's answers to questionnaires regarding the source used for the purchase of this apartment and the part owned by him; (2) total lack of documents to prove payment of installments for this apartment; (3) lack of financial ability to pay the first installment for the purchase of this apartment as per contract;

(d) Regarding an apartment in purchased by the assessee's Mr. for which the assessee has the electricity supply contract in his name and declared, only in answer to IQC's questionnaire, to use it, the investigation found: (1) lack of documents to prove the legitimacy of income source of the Mr. to purchase this apartment, and (2) reasonable suspicion that assessee concealed ownership of this apartment

(e) Regarding arable land of **m2 of land in**, the investigation found: lack of supporting documents to prove the accuracy of declarations regarding ownership and the actual amount of land owned.

3. By the evidence and arguments provided only after he was notified on the results of the investigation and on his burden to prove the contrary, the assessee was able to rebut only findings under points (a) and (e) above. No new evidence was submitted in the hearing.

4. However, the Adjudication Panel, with majority vote, decided to confirm the assessee in duty.

5. Because findings under points (b), (c), (d) above were not rebutted, a 'confirmation in duty' decision is not justified.

Regarding these findings IOs point to the following circumstances:

Ad (b): Regarding both loans under this finding, IOs point towards the fact the assessee produced information and/or supporting documents only after IQC confronted him with the results of its *ex officio* investigations. As to the loan obtained from Mr. _____ IOs point towards the fact these documents prove only the authenticity of signatures but do not evidence the actual loan itself (the notarial act d.d. .04.2018 regarding this loan) and they do not establish the source and legitimacy of the income of Mr. _____ as lender and thereby an "other related person" as meant in Art. 32 para 4 VL. As to the loan obtained from Mr. _____ IOs point to the fact his income is largely generated in agriculture in _____, who is also an "other related person" as meant in Art. 32 paragraph 4 VL, from his agricultural work not only allegedly had sufficient income to provide the assessee with the loan of EUR _____, -, but also to co-purchase the apartment in _____ Street in _____ and to buy a plot of land of _____ m2 in the price of ALL _____.

Ad (c): In his 2003 annual declaration the assessee declared this apartment is 50/50 owned by him and his _____ whereas in his vetting declaration 2017 he declared the apartment is 100% his own. The assessee presently still owns this apartment but declares he does not live there nor rent it out. He has not explained what use is made of it or if and to what extent he generates income with it.

Ad (d): IQC's *ex officio* investigations revealed an electricity contract in assessee's name regarding this apartment. Upon questions regarding this property, the assessee answered it was purchased by his _____ Mr. _____ (who lives in _____, from where it takes quite some hours to reach _____) and that, for reasons of convenience, the assessee has the electricity supply contract in his name. In response to IQC's questionnaires, he stated that he uses the apartment for holiday purposes. The assessee never declared he uses this apartment free of charge, leading to economic benefit.

6. As a President of his Court and the highest ranking judicial official in the Republic of Albania, the assessee should be expected to scrupulously observe all applicable rules and regulations and should serve as an example for his colleagues. Regarding the three topics above, he failed to meet the legal obligation imposed by Article D of the Constitution.

In view of his repeated lack of full and accurate disclosure as required by law, assessee's attitude cannot be regarded as unintentional as the IQC's decision seems to imply.

IMO concludes that the results of the reevaluation investigation of IQC can lead to only one logical consequence: dismissal from office.

7. In view of the above, the IMO recommends an appeal against IQC's decision of June 13, 2018.

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