



## **I. Introduction**

The assessee Besnik Hoxha, serving as a judge at the Tirana District Court, has been assessed by the Independent Qualification Commission (hereinafter “IQC”) pursuant to Article 179/b, par. 3 of the Constitution and in accordance with the provisions of the Vetting Law.

The investigation of IQC was carried out based on three criteria: assets, background, and proficiency. Upon administering the reports of the auxiliary bodies, administering evidence obtained through the investigation process and submitted by the assessee, the IQC’s Adjudication Panel closed the investigation and notified the assessee its findings, shifting the burden of proof on a set of issues and requesting for explanations.

The hearing took place on 16 May 2023 and following the deliberation as per Article 55, paragraph 5, Vetting Law, the Adjudication Panel decided to confirm the assessee in duty pursuant to Article 59 Vetting Law, and the decision was announced publicly on 18 May 2023.

The undersigned International Observers (hereinafter the “IOs”), having reviewed the case file and the results of the public hearing, deem that the evidence administered during the investigation justifies a review of the case by the Appeal Chamber.

## **II. Grounds for the recommendation**

Several issues, especially related to the assets and proficiency pillars, were not properly addressed by the IQC. This makes the decision unclear, not based on the available evidence and diverting from the standards established and followed by the IQC, in its current practice and from the principles and guidelines established by the Special Appeal Chamber.

It is the IOs’ opinion that the assessee failed to dispel the burden of proof on some crucial findings on the results of investigation, and that he tried continuously to mislead the commission in its investigation. Despite that, IQC accepted all the ungrounded explanations given in written form (since he was not present at the hearing) by the assessee upon receiving the results of the investigations.

During the investigation, the International Observer submitted an opinion with Prot.\*\*\* , dated \*\* February 2023 pursuant to Art. 49, para 11 of the Vetting Law on a possible asset concealment by the assessee.

The IQC panel decided to confirm the assessee in duty with a majority vote.



Therefore, the IOs recommend the Public Commissioners (hereinafter PCs) to file an appeal against the IQC's decision dated 18<sup>th</sup> of May 2023, which confirmed into duty the assessee Besnik Hoxha.

The IOs believe that a correct assessment of the evidence of the case, and the correct application of the relevant legal framework, would give grounds to the Special Appeal Chamber (hereinafter AC) to modify the decision of IQC pursuant to article 66, para. 1.c of the Vetting Law.

Thus, the IOs seek judicial review for the whole case on the following issues related to the assets and proficiency assessment:

## **1. Assets assessment.**

### **A. Regarding the 3-storey house in Shkodra.**

According to the **Vetting Declaration**, the assessee declared **3-storey dwelling**, total residential surface area of 299 m<sup>2</sup>, Lagjja \*\*\* , Shkodra, legalized according to Legalization Permit no. \*\*\* , dated \*\*.4.2015, purchased for the amount of 900,000 ALL with income in the amount of 1,400,000 ALL from the sale according to the sale contract no.\*\*\* /\*\*\* , dated \*\*.10.1997 (apartment benefited from privatization). For the period 2003 - 2013, investments were made in the existing facility, in the amount of 5,007,548 ALL, the origin of which is from family income.

For this asset, the IQC shifted the burden of proof to the assessee on the following findings:

- *There seems to be inconsistencies between the declarations of the assessee in terms of the period of construction of the house; in the Vetting Declaration, he has specified the period 2003 - 2013 and in response to the questionnaires, he has specified the period 2003 - 2007.*
- *It seems that the assessee has failed to disclose the expenses/investments made in relation to the property, 3-storey residential building, over the years 2003-2007.*
- *As to the construction of this house, during 2003 – 2007 (as confirmed by the above-mentioned orthophotos), it seems that the assessee lacked lawful financial sources in the amount of - 3,455,325 ALL. However, even if it was considered according to the statement in the Vetting Declaration, it would still result in a lack of lawful financial sources, in the amount of - 3,298,417 ALL.*
- *The claim that the furnishing of a 3-story apartment cost only 300,000 ALL seems unconvincing.*
- *Pursuant to Article 52 of the Law No. 84/2016 and paragraph 5 of Article Ç of the Annex to the Constitution, you are shifted the burden of proof to provide convincing explanations and submit legal documents to refute the results of the Commission on the aforementioned property.*



**In his final explanations the assessee** stated the following:

1. regarding the period of construction, he claimed that is true that the construction of the house in terms of floors was completed within 2007 as the orthophotos show, but the interior works continued until 2013.
2. regarding the costs of construction, he claimed that most works for the second floor were carried out during 2003 and the remaining part of the works related to the second floor (amounting to 500.000 ALL) was carried out during 2004, as declared in the relevant annual declaration. Further, he stated that in the annual declaration of 2003 he declared that the first and second floors were under construction and no value for informal construction was specified. According to the assessee, the value he declared in 2003 of 1,100,000 ALL was a typo, because the value of the house is 900,000 ALL as specified in the sale/purchase contract. As a result, the total cost of the construction of the first and second floor, amounting to circa 2,4 million ALL, should be divided, as it was sustained for 1,9 million ALL in 2003 and 500.000 ALL in 2004.
3. regarding the furnishing, he claims that it was done through second hand furniture bought in “flea market” and there are no invoices for the purchase.

**The IQC** decided to accept all the claims of the assessee, even though without any supporting evidence and overturned the financial analysis that had been notified to the assessee by calculating that out of all the costs of construction (i.e. 5,007,548 ALL<sup>1</sup>), 2,475,063 ALL was to be distributed for the first and second floor by considering 500,000 as incurred and declared in 2004, and the remaining 1,975,063 as incurred in 2003. This approach would result in a minus of 1,440,037 ALL for the construction of the house. Alternatively, if to be deemed that the construction lasted until 2013, the minus would be 1.1 million ALL.

Either way, the IQC considered the amount to be not relevant and according to objectivity and proportionality principles could not amount to disciplinary measures under art. 63.3 of Vetting Law.

**The IOs** want to highlight that the practice of the IQC and AC so far has been that, in the absence of any evidence confirming the periods and costs of constructions over the years, other evidence such as orthophotos and reference prices have been considered as fair and reasonable standard to be applied in these cases.

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<sup>1</sup> This was the value he declared in the Vetting Declaration, while according to the calculations of IQC referring to the National Housing Entity the costs would be 5,279,997 ALL.



IQC, deviating from such standard, has passively and unquestioningly accepted the final, non-evidenced explanations by the assessee, by illogically assigning the value of proof only to the information given by the assessee in the 2004 PD, where he declared to have sustained a cost amounting to 500.000 ALL. Thereby decontextualizing it from all the elements, circumstances, information and declarations available in the case file, that lead to a different conclusion.

On this regard, it is worth stressing that the information given by the assessee over the years, in the PDs, in the VD, during the investigation and in his final explanations, are totally inconsistent with each other.

They paint a picture of the period of construction and of the construction costs which is so uncertain and unreliable, that it is not plausible to assign the value of undisputed evidence only to the information given by the assessee in the 2004 PD, as IQC has done.

In particular:

1. Regarding the costs of the construction, as declared by the assessee in the VD and amounting to 5.007.548 ALL.

The IQC accepted the value of the construction costs as declared by the assessee, based on the assumption that it is very close to the average cost based on the NHE figures. That approach is not correct, because the value established according to the parameters of the NHE are significantly higher than the value indicated by the assessee. In fact, in determining the value of the construction costs IQC did not take into consideration the costs related to the extension of the 1<sup>st</sup> floor of the house<sup>2</sup> and counted only the costs for the second and third floor (calculating a value of 5,279,997 ALL). Considering also the extension of the first floor, the value of the construction according to the NHE criteria would result in 5,627,517 ALL<sup>3</sup>. This is the value to be taken into consideration for the purpose of the financial analysis.

2. Regarding the claims that the second-floor costs were incurred mainly in 2003 whereas in 2004 it should be considered the amount declared by him as incurred for the construction i.e., 500.000 ALL.

According to the assessee, this was even supported by the google earth images submitted by him in capacity of evidence in which he claims that the images of the year 2003 show that the second floor was mainly constructed in 2003. In relation to this claim, taking into account even the short time frame since the house was purchased until the end of the year 2003 (only 5 months), we

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<sup>2</sup> According to the sale contract dated on \*\*08.2003 Rep \*\*\* Kol \*\*\* , the surface of the house was specified as 52 m<sup>2</sup>- surface that was reflected initially to the property card found at the IPRO Shkoder reply to HIDAACI dated prot. \*\*\* /\* dated on \*\*08.2017. Based on the building plans issued on \*\* .04.2015 the surface of the ground floor is 88.2 m<sup>2</sup>; first floor is 105.4 m<sup>2</sup>; second floor is 105.4 m<sup>2</sup>

<sup>3</sup> In case we consider, as it should be in our opinion, a distribution of the costs along the period between 2003-2007. In case it is accepted the claim of the assessee that the construction was carried out between 2003 and 2013, the estimation of the costs would result in a slight bigger amount, as reflected in the table below.



evaluate that: his claim is inconsistent with his declarations to HIDAACI over the years, since he failed to disclose the construction costs over the years, therefore we cannot base our evaluation only in one declaration filed by the assessee in 2004 – which goes in favor of adjusting his financial situation-, considering even the fact that he claims that he didn't have the obligation to disclose the costs of the construction over the years and that he lacked documentation about the costs incurred. On the other hand, the assessee claims that in the declaration of the year 2003 he didn't disclose any value for the construction while he claims that the main costs for the construction of the second floor were incurred in 2003.

With regard to the assessee's claim that the orthophoto of 2003 would prove that the second floor was already almost entirely constructed by that year, the IOs note that: (i) the orthophotos provided by the assessee do not bear a date, whereas according to the images from the platform Google Earth, it seems that the earliest photos for the area dated on 05/2003 i.e., before the purchase of the existing one-story house took place.

Therefore, we cannot draw a conclusion on the construction carried out in 2003 based on this image.

Considering the evidence in harmony and based on the constant practice followed until now, we deem as a fair distribution of the costs as follows:

- (i) an equal distribution of the cost for the extension of the first floor and second floor during August 2003-2004 i.e, 141.6 m<sup>2</sup> (extension to the first floor 36.2 m<sup>2</sup>+second floor 105.4 m<sup>2</sup>);
- (ii) and the application of the construction cost based on the NHE over this time.

In relation to the cost of construction, according to the consolidated jurisprudence of AC it is established that: "... *in certain circumstances reference to the average construction cost, determined over the years by the NHE, it is valued as a reasonable standard, in the absence of any other act that proves a different construction value*<sup>5</sup>. For a just process we consider even some deductions for the elements of the construction costs (reserve fund+ planned profit) as were specified in the AC Decision (JR) nr.6 dated 17.03.2022.<sup>6</sup> We have the opinion that it is not fair to the process and it would certainly jeopardize a longstanding practice, to establish, as IQC did, a tailor-made approach for the calculation of the construction costs in order to justify this assessee's minuses over the years.

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<sup>4</sup> Based on the building plans issued on \*\* 04.2015 the surface of the ground floor is 88.2 m<sup>2</sup>; first floor is 105.4 m<sup>2</sup>; second floor is 105.4 m<sup>2</sup>.

<sup>5</sup> See AC Decision (JR) 15 Date 17.07.2019 para. 36.

<sup>6</sup> According to AC Decision (JR) nr.6 dated 17.03.2022. para 16.6 in which it was specified that the item: reserve fund+ planned profit was 9.39 % for the year 2006 and 8.55 % for the years 2007-2011 based on the manuals of the projections of constructions approved with the Guideline nr 2 dated 08.03.2003 "for the classification and the structure of costs of the construction works". We evaluate an average of the % of the deductions for the years in which data is missing as 8.97%.



### 3. Regarding the period of completion of the house.

The IOs note that the assessee mentioned several times during the investigation that the works finished in 2007 and that he only declared furnishing costs after this period<sup>7</sup>. In addition, the aerial images provided by the Aerspatial Authority and even online platforms such as ASIG and Google Earth- indicate that the residence was completed in 2007 and no substantial changes were seen in the outer image of the building by comparing the images of 2007 and 2015. Based on this evaluation it follows that the year of completion of the works shall be 2007.

Contrary to this evidence, the assessee claimed in his objections to the results of the investigation that he incurred costs for the 3<sup>rd</sup> floor until 2013; Even by hypothetically taking into account the assessee's claims and his declaration in the Vetting Declaration, and assuming that the cost of the 3rd floor are distributed during 2004-2013 (Outer frame during 2004-2007 and finishing works performed during 2008-2013), the differences between the two scenario would anyway be very modest.

Year	construction costs according to the DCM (ALL/m2)	Costs adjusted as according to AC Decision (JR) nr 6 date 17.03.2022	surface constructed/ year in m2 (V1)	Estimated cost(V1)	surface constructed/ year in m2 (V1)	% of the construction per year	Estimated cost(V2)
2003	25,414.00	23,134.36	41.65	963,478.23	41.65	100%	963,478.23
2004	24,691.00	22,476.22	99.95	2,246,564.03	99.95	100%	2,246,564.03
2005	24,564.00	22,360.61	35.13	785,602.74	35.13	44%	346,450.81
2006	25,957.00	23,519.64	35.13	826,323.27	35.13	44%	364,408.56
2007	25,072.00	22,928.34	35.13	805,549.15	35.13	44%	355,247.18
2008	27,981.00	25,588.62	-	-	17.57	56%	251,274.32
2009	27,981.00	25,588.62	-	-	17.57	56%	251,274.32
2010	29,291.00	26,786.62	-	-	17.57	56%	263,038.35
2011	30,176.00	27,595.95	-	-	17.57	56%	270,985.81
2012	30,176.00	27,469.21	-	-	17.57	56%	269,741.26
2013	30,889.00	28,118.26	-	-	17.57	56%	276,114.72
<b>Total cost</b>				<b>5,627,517.41</b>			<b>5,858,577.58</b>

Table 1: Estimated construction cost of the residence over the years

Version 1 (cost distributed during 2004-2007); Version 2 (outer frame during 2004-2007 and finishing works performed during 2008-2013).

### 4. Regarding the cost of the furniture over the years

<sup>7</sup> See assessee replies to questionnaire nr. 2 in which the assessee stated that: "... The object was under construction for around 5 years and afterwards **the furnishing was ...**" and "The first floor of the house was already built at the time I purchased the property in 2003. Whereas the works for the construction of the second and the third floor started in 2003 and finished in 2007....I cannot specify exactly the time of completion of one floor or the time of commencement of works for following floor..."



The IOs opine that the costs for furnishing a 3-storey house of 300 m<sup>2</sup> living surface, that were considered by the IQC in the financial analysis, are unreasonably low (300.000 ALL) and that the explanations given by the assessee simply do not stand as they are highly unrealistic.

#### 5. Regarding application of objectivity and proportionality principles

It is a well-established practice now that objectivity and proportionality principles apply to the resolution of the whole case and not to specific findings in the reasoning of a decision.

The AC in decision no. 2/2020 provides that *“According to the legal provisions provided by the Constitution, and Law no. 84/2016, it is seen that they refer to the application of the principle of proportionality and objectivity for the resolution of the case as a whole, aiming that in the cases subject of evaluation in the context of the re-evaluation of assessees under this law, the disciplinary measure given be in proportion with the violations found. In the case of the re-evaluation process, the application of the principle of proportionality and objectivity by the re-evaluation bodies leads these bodies to impose a disciplinary measure which dismisses assessees from the justice system only based on objective standards, ensuring that the given measure is necessary to fulfill the purpose of the law, and rendering a measure in proportion to the violations found.”*

Article 4, point 5 of Law 84/2016 provides *“The Commission and Appeal Chamber shall exercise their duties as independent and impartial institutions based on the principles of equality before the law, constitutionality and lawfulness, proportionality and other principles, which guarantee the rights of assessees for a due legal process”*. It is clear from this provision that proportionality is part of the whole set of principles governing the re-evaluation institutions, but not to be taken as a separate principle to cover inaccuracies and insufficiencies of the assessees.

#### **B. Regarding the apartment in \*\*\* \*\*\*, Street, Tirana.**

According to the Vetting Declaration in the section “Confidential Data”, the assessee entered into two “cooperation agreements”<sup>8</sup> with Ms. \*\*\* \*\*\*, whereby they exchanged their respective dwellings without remuneration for a period of 5 years.

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<sup>8</sup> These cooperation agreements, not notarized, were submitted by the assessee with the Vetting Declaration. The first Cooperation Agreement was signed on **08.08.2010** between Besnik Hoxhaj and \*\*\* \*\*\* (rent exchange) where they agreed to rent each other’s properties free of charge for 5 years period. The second one was apparently signed on **02.02.2016** and regards the exchange of the apartment in \*\*\* \*\*\* street, owned by Ms \*\*\* and the 3 storey house in Shkodra, owned by the assessee. The apartment referred in this first exchange agreement is with a different property number and different surface. So, the two cooperation agreements seem to be about two different apartments, despite the fact the assessee affirms to be the same.

The assessee was asked by IQC in questionnaire no. 2 about the apartment mentioned in the Cooperation Agreement dated **08.08.2010** and he declared: *“, \*\*\* \*\*\* had a verbal agreement with the company “\*\*\*” Sh.p.k. In 2010, we entered into an agreement with Mrs. \*\*\* to exchange apartments. Therefore, I lived in my home in Shkodër until the end of 2015, and at the beginning of 2016, I was transferred with my family to reside in Tirana.”*



On several occasions during the investigation (questionnaires nr 1, 2, 4 and 5) the assessee confirmed that although in 2010 he was assigned in Tirana District Court, he continued to live in Shkodra and only in 2016 he moved to Tirana with his family to the apartment of Ms. \*\*\* according to the second cooperation agreement of 2016. He even declared in replying to questionnaire nr 5 that he used to commute between Shkodra and Tirana by public transport and **hitchhiking**.

During the investigation, some circumstances were identified that raised serious suspicions that the house inhabited in Tirana by the assessee was in reality a concealed asset belonging to him. The following findings were included in the results of the investigation.

- **Loan contract between \*\*\* and Besnik Hoxha dated \*\*,01.2011** (not in front of the public notary). By this contract \*\*\* lent to Besnik Hoxha the amount of 110 000 EUR in two installments: 1). 75 000 within 15.01.2011 and 2). 35 000 by 31.01.2011. The amount must be returned on 31.01.2016, without interest (after 5 years).
- **Off plan contract dated \*\*,01.2011, before the notary, between Besnik Hoxha and the Investor “\*\*\*” shpk** represented by \*\*\* . By this contract Besnik Hoxhaj ordered an apartment 3+1 (147m2+19,87 m2 common area) second floor, in street “\*\*\*” for the amount EUR 225 342.

According to this contract EUR 75 000 (part of the first installment of EUR 112 671) were **paid cash** in the moment of the signing of the contract. The remaining part of the first installment was to be paid within 15 days.

- Declaration dated \*\*,12.2011, between Besnik Hoxha and \*\*\* (not in front of the public notary). By this declaration they agree that the rights on the apartment ordered by him will be transferred to \*\*\* due to the fact that Besnik Hoxha cannot return the debt to \*\*\*.
- Notarial declaration dated \*\*,12.2011, in front of the public notary. Declarants “\*\*\*” shpk declare to revoke the off-plan contract with Besnik Hoxha and the payment made should be transfer in the name of \*\*\*.
- Pre-sale contract dated \*\*,12.2011, between \*\*\* and “\*\*\*” shpk for the sale of an apt 3+1, second floor, surface 147,05 m2+ 19,87m2 common area, in street “\*\*\*”. The payment of EUR **107 500 paid outside the notary office by Besnik Hoxha** will be transferred to \*\*\*.
- Bank Loan between \*\*\* and \*\*\* dated \*\*,05.2012 for the amount ALL 19 100 000, for the purchase of an apt from \*\*\* shpk, in street “\*\*\*”. **Besnik Hoxha signed as a guarantor.**
- Notarial Declaration dated \*\*,05.2012, with declarants “\*\*\*” shpk and \*\*\*. They declare the transfer of the amount 18 000 000 ALL into the account of “\*\*\*” shpk for the



purchase of the apt. The amount 6 952 500 will stay in the company bank account for the payment of the installment. The remaining part of ALL 11 047 500 will be withdrawn from the representative of the company \*\*\* \*\*\* and will be returned to \*\*\* \*\*\*. The latter declares to have received this amount from \*\*\* \*\*\*.

- The notarial declaration dated \*\*..01.2016, between declarants “\*\*\* ’ shpk and \*\*\* \*\*\* declare that in May 2013 they revoked the pre-sale contract, and all the payments were returned to \*\*\* \*\*\*.

In addition, the assessee has declared twice, namely to the police and to the prosecutor's office respectively in 2010 and 2011, as the residence address " \*\*\* \*\*\* Boulevard", Tirana<sup>9</sup>.

The assessee's wife and his children were transferred respectively for work and studies to the city of Tirana in 2010, although - in response to the questionnaires sent by the Commission - it seems that the assessee gave false answers, stating that they continued to live in the city of Shkodra until 2016.

Further, the electricity supply contract for the apartment in \*\*\* \*\*\* street was concluded in the name of Mr. \*\*\* \*\*\* from 2012 until 2018, when this contract is further transferred in the name of the company "\*\*\* [ & .\*\* ' ] sh.p.k., although Mr. \*\*\* had revoked the order of this property much earlier - as the assessee himself had done, transferring the expected rights over the same property to the latter.

Based on above and according to the financial analysis carried out for the lender \*\*\* \*\*\* , the following burden of proof was shifted to the assessee:

- *It seems that the assessee has been and continues to be the only user/owner of the property under analysis, uninterruptedly, although over the years the purchasers and owners of the apartment in question have changed. Under these conditions, the Commission raises suspicions that this may be an asset created with the financial means of the assessee, to his benefit and not declared, in order to avoid the verification of the sources used for its creation.*
- *It seems that the lender Mr. \*\*\* in granting the assessee the loan of EUR 107,500 lacked the legal financial sources in the amount of - ALL 9,524,478. Therefore, it seems that the assessee, at the time of making the payment of apartment first instalment lacked the legal financial sources of - ALL 9,524,478.*
- *It seems that there was a false disclosure by the assessee during the re-evaluation process concerning the place of residence of his family during 2010 – 2015.*

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<sup>9</sup> \*\*\* \*\*\* Boulevard is the main road just adjacent \*\*\* \*\*\* street and specifically the building where the assessee was and is living.



- *Based on Article 52 of Law 84/2016 and Paragraph 5 of Article Ç of the Annex to the Constitution, you have the burden of proof to provide convincing explanations and submit legal documents to prove the opposite of the Commission's results on this property.*

**In his final explanations the assessee** claims **for the first time** that during the period 2010-2015 he was living in Tirana (at least during the weekdays) in another apartment of Ms. \*\*\* located in \*\*\* Street according to the first rental exchange agreement of 2010. The assessee claims that he did not have the obligation to declare the use of these apartments. In addition, he claims that it was his legal representative's fault that the replies to the questionnaires gave the impression that he and his family continued to live in Shkodra until 2015.

Regarding the statements to the police and judicial police officer about the robbery in 2010 where he gave as his living address Bul. \*\*\* , the assessee claims that it was a mistake made in the minutes of the judicial police officer.

Regarding the financial capacity of the lender \*\*\* , the assessee brought some additional evidence to prove that the lender had the financial means to justify the loan of 107,500 Euros.

**The IQC decided** to not consider this as hidden asset by reasoning that the formal buyers had financial capacity, and when used by the assessee in 2016 there was an exchange agreement in place. In addition, the IQC reasoned that there is no intent to conceal this asset, so the subjective element is missing. Thus, IQC took for granted the explanations of the assessee regarding usage of this apartment and applied the proportionality principle for the inaccuracies or confusion created by his explanations.

Regarding the financial incapacity of \*\*\* to lend 107,500 Euros to the assessee, the IQC tried to apply the principle of objectivity by reasoning that since the lender was not a declarant and this payment was only temporary (i.e. the assessee was not the final buyer), then this could not be grounds to burden the assessee.

**The IOs**, based on the documents and transactions related to this asset, highlight that it is obvious that the intention of the assessee has always been to invest and live in the building located in \*\*\* Street. Ever since (at least) he first booked the apartment by the off-plan contract in 2011 (it should be stressed that he was transferred to the District Court of Tirana in 2010). We state that, despite that the apartment in \*\*\* was apparently subject to different transactions by potential buyers (the assessee, \*\*\* , \*\* & \*\* shpk), the only real subject interested to the use of this apartment is the one living in it - the assessee.



Firstly, he entered into a Cooperation Agreement on \*\*08.2010 with \*\*\* \*\* (rent exchange) where they agreed to rent each other's properties free of charge for 5 years period. The apartment referred to in this first exchange agreement is with a different property number and different surface. Thus, the two cooperation agreements seem to be about two different apartments. Secondly, he claimed during the investigation that it was always about the same apartment, which he could not use because it was inhabitable at that time and not completed.

More in detail, in replying to questionnaire no 3 (question 7), he justified the fact that he affirmed to have lived in Shkodra until 2015, despite the first rental exchange contract on 2010, by saying that \*\*\* \*\* had a verbal agreement with \*\*\* company. In replying to questionnaire 5 (question 8) he added that the 1st rental exchange contract could not have an effect because the apartment was not completed.

Thus, he claims that only in 2016 with the 2nd exchange contract he moved to the apartment in Tirana.

It is worth noting that strangely, despite the verbal agreement between \*\*\* company and \*\*\* \*\*, it is the assessee who tried to buy the apartment in January 2011. After that it is \*\*\* \*\* to promise to buy the apartment in December 2011. And only in 2016 (after the revocation of the pre-sale contract in the name of \*\*\* \*\*) the apartment was apparently bought by Ms. \*\*\* \*\*. And then finally given in use to the assessee according to the second exchange contract. Eventually, the assessee tried to change the story regarding this asset in his final explanations.

The IOs strongly opine – in light of the serious, punctual and unambiguous circumstantial elements available in the case file - that we are dealing here with concealment of an asset by the assessee. An asset for which the assessee took active steps to not disclose during the years, covering it up for Vetting purposes through the above described “cooperation agreements”.

On this regard, the claim of the assessee according to which he was not obliged to declare the use of the house in the PDs does not stand, since all the declarants had to declare even at that time (2010-2015) in the pertinent box of the HIDAACI form the other addresses where they used to live, other than the address declared in the civil registry. What the assessee never did until the VD.

Second, the assessee tried to buy the apartment through a loan from the citizen \*\*\* \*\* in January 2011. Then by cancelling altogether the loan and transferring all the rights of the apartment to \*\*\* \*\* in December 2011, the assessee avoided declaring in the PD 2011 the financial obligation. Instead of him directly becoming a borrower, which he and the other person would have had to justify, they chose to make \*\*\* \*\* a borrower from \*\*\* in 2012 for 19.100.000 ALL, while the assessee was only a guarantor. Right before \*\*\* \*\* finally got the apartment formally from the company \*\*\* shpk, in late January 2016 they decided to revoke the contract – including the presale contract – and return all the payments made to \*\*\* \*\*.

Less than a month later, the Assessee entered the second “exchange agreement” with \*\*\* \*\*, to get in a free exchange, what we believe to be the same apartment he tried to get



through \*\*\* \*\*\*. We must stress that Ms. \*\*\* clearly had no apparent personal interest in buying the apartment in Tirana, since she never used it but immediately handed it over to the assessee.

In addition, we are of the opinion that the analysis on the lack of financial means of the lender (on which see below) is relevant not only for the purpose of article 32.4 VL, but also as circumstantial element which contributes to creating the conviction that all these transactions were done for the sole purpose of hiding the asset owned by the assessee.

Third, it is worth highlighting also that according to information from law enforcement agencies, Besnik Hoxha and \*\*\* \*\*\* have a longstanding relationship involved in illegal activities. It is worth highlighting too that Ms. \*\*\* on \*\*06.2017, through an affidavit made by the public notary, gave all the rights to act on her behalf regarding the apartment to \*\*\* \*\*\* (the brother of \*\*\* \*\*\*), who would represent Ms. \*\*\* in the sale contract with the company \*\* & \*\*. Needless to say that also the latter company, which purchased the apartment, never used it for its purposes and gave it for rent immediately to the assessee, for a modest rental fee, whose payment the assessee has not been able to demonstrate, despite requested to do so during the investigation.

Further, when he was asked about his relationship with \*\*\* \*\*\* and potential conflict of interests, he stated that he had no relationship with her and knew her only from the exchange of the apartments, and there was no conflict of interest. Contrary to these allegations, the investigation found a decision of the assessee of March 2010 for the issuance of inheritance after the death of her husband \*\*\* \*\*\*, recognizing \*\*\* \*\*\* as one of 4 inheritors.

Finally, it was proven during the investigation that the children of the assessee started going to school in Tirana in 2010. Respectively, the Ministry of Education and Sports confirmed that from 2002 until 2010 \*\*\* \*\*\* the son of the assessee, attended \*\*\* College in Shkoder. **While from 2010 until 2014 he attended \*\*\* College in Tirana** and from 2014 until 2017, he attended \*\*\* University, in Tirana. Also, the ministry replied about \*\*\* \*\*\*, the daughter of the assessee, and explained that from 2005 until 2010 she attended \*\*\* College in Shkoder **and from 2010 until 2017, she attended \*\*\* College in Tirana.** She also went to \*\*\* University in Tirana. So, not only the assessee wrongfully omitted to declare the other residence address in Tirana (be this either \*\*\* \*\*\* or \*\*\* \*\*\*) in the PDs during the relevant period 2010-2015, but repeatedly he lied to the IQC during the investigation, affirming to have resided in Shkodra over that time period, commuting between the two cities even by hitchhiking (despite the investigation showed that the assessee drove Cadillac and Porsche in Tirana).

Regarding application of the proportionality and objectivity principle, as mentioned above in the first asset, it is a well-established practice now that objectivity and proportionality principles apply to the resolution of the whole case and not to specific findings in the reasoning of a decision.



Regarding the assessment made by the IQC on whether the subjective element or the intent of the assessee existed for the concealment of this asset, there is again an established practice of the AC<sup>10</sup> according to which there is no room for the re-evaluation bodies to investigate the intent of the assessee when declaring their assets. The re-evaluation process is an administrative/sanctioning procedure (and never a criminal process), which provides all the guarantees of a due legal process. With regard to the declaration of assets, the intention of the law was not to determine mitigating or aggravating circumstances, pertaining to intent or purpose. Moreover, the conduct held by the assessee over the years (by not declaring his residential address in Tirana until the VD and by attempting to mislead the investigation regarding his actual place of residence) would prove the contrary.

In light of the above, the IOs reiterate that the assessee has taken steps to conceal this asset in violation of article D para 5 of the Annex to the Constitution, which are grounds for a presumption for the disciplinary measure of dismissal that the assessee could not dispel after the burden of proof.

***Concerning the legitimate sources of \*\*\* \*\* to lend to the assessee the amount of 107.500 EUR in January 2011***

The fact that the purchase of the apartment was not finalized by the assessee does not imply that the assessee is not bound by the obligation to justify the legitimate sources of this amount, used by the assessee to pay the first installment for the purchase of the house, considering even the fact that there are elements which we deem place the assessee in the position of the Art. D point 5. – in relation to the doubts about concealed assets.

In relation to the possibilities of the citizen\* .\*, qualified as another related person since he provided a payment of 107.500 EUR to the assessee for the payment of the first installment of the apartment, we take in analysis the sources declared by the assessee in his final explanation, as follows:

- ***Proceeds from the sale of the properties.***

The assessee provided the following evidence regarding the proceeds from the sale of properties by \*.\*

Income from the sale of the properties	Amount
sale contract Nr. ***/***, date **.12.2003, for the sale of an apartment 24.5 m2	1,900,000.00
sale contract Nr. ***/***, date **.9.2006, for the sale of a plot of land 1200 m2	500,000.00
sale contract Nr. ***/***, date **.5.2004 for the sale of an apartment 118 m2	1,000,000.00

<sup>10</sup> Decision no. 7/2018; Decision no. 2/2019; Decision no. 9/2019



According to the evidence attached in reply to the questionnaire nr 3 dated on \*\* .05.2022, regarding the sale of the land 1200 m<sup>2</sup><sup>11</sup> in 2006 and the sale of the apartment 24.5 m<sup>2</sup> it appears that the purchasers applied for the registration and issuance of the certificate of ownership. Based on Law No. 8438 dated 28.12.1998 "On income tax" Article 11, it was stated that: *"The immovable property is not registered, without proving the payment of the obligation at the immovable property registration offices."* Therefore, we consider that the income fulfills the standards of Art. D point 3 of the annex to the Constitution.

Regarding the property apartment 118 m<sup>2</sup> sold in 2004, the assessee didn't prove with documentation that the alienation took place. In the financial analysis of the possibilities of\* .\*, this amount shall be reflected *with a reserve* since the assessee didn't prove the fulfilment of the tax obligation for the income at question.

- ***Income from immigration 25.886 EUR were confirmed for the period 1.1.1996 – 7.8.1998***

Based on the data from EUROSTAT it was established the estimate at risk of poverty threshold for 1998 in the amount of 5.315 EUR<sup>12</sup>. In case we consider the same living expenses during 1996 and 1997, the available amount of the lender for other expenses is 25.886-13.730=12.155 EUR. According to his notarial declaration he was living in Italy until 2003<sup>13</sup> therefore the available amount from the above analysis exceeds the amount of the living expenses in Italy until 2003.

- ***Income from rent***

In relation to the rent income the assessee provided the following notarial contracts based on which it was calculated the potential income:

Rent period	Income from rent	Amount converted in ALL
* .04.2006- **12.2009	Rent contract nr ** ./, ** date ** .03.2006 for the renting out of the object with a surface of 527 m <sup>2</sup>	2,066,692.40
starting on* .11.2009 for 4 years	Rent contract nr ** /./*** date ** .10.2009 for the renting out of the object with a surface of 527 m <sup>2</sup>	1,454,852.00
***.04.2014-,.**04.2015	Rent contract nr ** ./ / ** date ** .04.2010 for the renting out of the object with a surface of 25 m <sup>2</sup>	90,000.00

<sup>11</sup> According to the Cadaster Online portal, the property was alienated.

<sup>12</sup> [Statistics | Eurostat \(europa.eu\)](https://ec.europa.eu/eurostat/)

<sup>13</sup> According to the notarial declaration dated on \* . \* declared that: *"... Since 1992 until 2003 I have worked in Italy, and I've earned good income..."*



However, in analysis of the above, it was noticed that:

- (i) the assessee failed to provide proof of receipt of the amount of the rent by the landlord,
- (ii) there is an overlap of the period of rent for the object with a surface of 527 m<sup>2</sup> which indicates that the rent contract dated on \*\* .03.2006 might have been revoked before \*\* 10.2009,
- (iii) there is lack of documentation regarding the fulfillment of the tax obligation in order to establish if the income meets the criteria of the Art D. point 3 of the Annex of the Constitution.

*Therefore, the income is excluded from the financial analysis of the other related person.*

▪ ***Loan in the amount of 50.000 EUR taken from \*\*\* Bank***

-According to loan contract dated on \*\*.10.2010 \*\*\*\* \*\*\* borrowed from the bank the amount of 50.000 EUR with the purpose **Investment (Construction of a building)**.

-According to the account statement at \*\*\* Bank, it was confirmed that the amount of 49.500 EUR was disbursed on 28.10.2010 in the account of \*. \*. Out of the total disbursed, the amount of 25.000 EUR was transferred to \*\*\* \*\*\* with a description "transfer from \*\*\* \*\*\* for liquidation of works". On \*\*.11.2010 the amount of 8.000 EUR was liquidated in favor of \*\*\* shpk. (5000 EUR was refunded back to his account by this company). The total amount of withdrawals effectuated during 2010 until the end of January 2011 is 21.200 EUR.

-The assessee in his objection presented in capacity of evidence:

(i) a notarial declaration in which \*\*\* \*\*\* declares that: "we returned back the amount of 25.000 EUR transferred to him by \*. \* since there were no construction works carried out in his residence.

(ii) a notarial declaration in which \*. \* declared that he took a loan by pretending for the purpose of the house adjustments, but this was not the real purpose (instead he claimed that the loan was intended to be used for starting a business which was not further continued). The transfer of the loan amount was done in order to comply with the obligations imposed by the bank. The construction works were not carried out and the construction company returned the money back to him therefore he had available cash to be provided to the assessee.

-In relation to this clam we deem that

(i) the purpose of the loan was for investment in the building and hence there is no proof that the amounts withdrew by \*. \*. served as a source for the amount lent to the assessee.



(ii) the return of the amount 25.000 EUR from \*\*\* \*\*\* -(evidenced as a claim only in the assessee's objections)- remains unproved with documentation and the level of proof of his declaration is low considering the consolidated practice of . \*. \* (iii) the application for a loan with interest from the bank and the claim that it was used for granting of a loan without interest to the assessee- gives another indication that raises doubts on the real capacity of the lender to provide the amount of 107.500 EUR to the assessee.

*As per the above, we deem that the amount of the loan taken from \*\*\* bank should not be considered among the legitimate sources of the lender.*

In conclusion, after analyzing all the sources of the lender we evaluate his situation as follows:

Description 2004-01/2011	Amount
Income from the sale of the properties	3,400,000.00
Income from renting out properties	-
Loan taken in 2010	-
<b>Legitimate income</b>	3,400,000.00
Living expenses per capita 2004-01/2011	970,191.00
Loan given in January 2011	14,867,250.00
<b>Difference</b>	<b>-12,437,441.00</b>

*We argue that the assessee will lack sources for the payment of the installment in the amount of 107.500 EUR during January 2011 in favor of company \*\*\* shpk. The capacity of the other related person to cover the amount of the loan with legitimate sources remains unproven. This inevitably should have been reflected in the financial analysis for the year 2011, when that amount was paid by the assessee to the \*\*\* sh.p.k. What IQC wrongfully disregarded.*

### **C. Regarding the use of vehicles.**

During the investigation it was ascertained that the assessee had used different cars in the ownership of third parties. For one car specifically with plate number \*\*\* , owned by citizen \*\*\* \*\*\* , it was ascertained that the name of the assessee was in the insurance policy for the period 2014-2018.

For this reason, the following burden of proof was shifted to the assessee.

- *It seems that the assessee failed to disclose the use of the Mercedes Benz vehicle in the Vetting Declaration, thus violating Article D, paragraph 1 of the Annex to the Constitution and Article 31, paragraph 1 of Law no. 84/2016.*



**In his final explanations, the assessee** claims that he used it only once to travel abroad, and only in sporadic occasions domestically but in any case, not in the meaning of daily use.

The IQC accepted the explanations of the assessee and reasoned in its decision that the usage was proven only once. To support this rationale, the IQC refers to the decision no. 42/2022 of the AC.

The IOs think that the fact that he had an insurance policy under his name during the period 2014-2018 is strong evidence that he was using the car during those years. In addition, the case of decision no. 42/2022 that IQC is referring to is nowhere similar to the case at hand regarding the usage of the car.

In our opinion the relevant precedent is the decision of AC no. 12/2021. In \*\*\* case the AC reasoned the following *“The AC deems that regarding the actual use of the vehicle by the assessee found by the Commission’s investigation, he was required to disclose this relationship in the Vetting Declaration pursuant to Article 3, paragraph 11 of Law no. 84/2016, which stipulates the following definition of “asset”, “Asset means all movable and immovable properties in the Republic of Albania or abroad, under the provisions of Article 4 of the Law on the declaration and audit of assets, financial obligations of elected persons and certain public officials”, as amended, being in the ownership, possession or use of the assessee.” This stipulation, regarded in harmony with Article 30 of Law no. 84/2016, according to which “The object of asset assessment is the declaration and audit of assets, the legitimacy of the source of their creation, financial obligations, including private interests, for the assessee and persons related to him or her” – provides the assessee’s requirement to declare it as an asset in use because based on the insurance policies as per FSU’s system, he had usage rights on this vehicle for the insurance period from 12.07.2016 – 11.07.2017, which includes the time when the Vetting Declaration was filed, 26.01.2017.*

*The AC holds that at the time when the Vetting Declaration was filed (26.01.2017), the acts of the file prove that the assessee had said vehicle in use, as it is true that there was a valid TPL insurance policy at that point in time. This situation leads to the conclusion that the assessee violated the declaration requirement stipulated by Article D, paragraph 1 of the Annex to the Constitution and Article 31, paragraph 1 of Law no. 84/2016 regarding assets in use. As per the above analysis, based on the entirety of circumstances, the assessee failed to disclose the use of this vehicle in the Periodic Declarations and the Vetting Declaration. In conclusion of the analysis of this ground of appeal raised by the Public Commissioner, as regards the non-disclosure of the use of said vehicle, the assessee has made an incorrect and incomplete declaration of the asset in use, contrary to Article D, paragraph 1 of the Annex to the Constitution.”*



Therefore, we reiterate that the Assessee had the obligation to declare the use of the car, and he failed to do so in violation of art. D para 1 of the Annex to the Constitution and art. 33 para 5.a of the Vetting Law.

**D. Regarding the travel expenses.**

The travel expenses were calculated based on the entry/exit of the assessee and the persons related to him according to the TIMS system, based on SAC Decision no. 11/2019 (JR), dated 22.05.2019<sup>14</sup>.

**The assessee** in his final explanations after the results of investigation, brought several declarations from alleged hosts in the countries where he and his family travelled. Therefore, according to his claims the calculation of travel costs had to be reduced substantially since he and his family had not incurred any expenses for bed and board.

**The IQC** decided to accept these claims and declarations submitted by the assessee after the results of investigation, and without any further investigation, overturned the financial analysis with the final result of -1,252,435 ALL.

**The IOs** want to highlight that the assessee has been asked during the investigation to provide information regarding his travel costs and he did not give any information or asked for additional time to provide them. In our view, those notarial declarations, very similar to one another, submitted *en bloc* only after the results of investigation, and without any supporting elements (such as the actual location of the declarants in the time period when the travels occurred), do not have a convincing probative value, since it seems they are drafted only for the scope to benefit of the assessee, especially those declaration made by subjects who have no family relationship with the assessee, what might justify the coverage of some expenses by the hosts. In fact, in case of family members and with the proper supporting documents there could be cases where the expenses abroad could be considered as incurred by the hosts<sup>15</sup>.

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<sup>14</sup> Food and accommodations expenses for travels abroad are calculated to be 50 Euro/USD22 for each day for adults (18+ years), 25 Euro/USD for each day children (5- 18 years) and 15 Euro/USD for each day for children (0 – day they turn 5 years old). In cases where assessees prove that the cost for food and accommodation for them and/or their related persons has been covered by a third party, only EUR/USD 5 will be calculated as an expense of theirs.

<sup>15</sup> See decision of AC no. 25/2021 “*On the other hand, the notarized declarations of relatives and friends, issued in the months of June - July 2019 for the trips made by the assessee as a family in the USA, Canada, Italy, Germany, Greece, Turkey and France, are not accompanied by certificates that prove the location of the declarants in the time period in question, or data on the financial possibilities of the hosts to cope with the assessee’s situation of his family in the time periods in question, through which it would be possible to deduce, even indirectly, the financial condition or lifestyle that enables the full - as stated by the declarants - or even partial coverage of the accommodation and stay expenses for the assessee and the spouse or the whole family, during the stay period. Therefore, not being based on documents and evidentiary documents, the claims of the assessee2 for the further reduction of the assessee’s travel expenses, based only on the notarial statements presented during the revaluation process, contradict the legal obligations of the Chamber and Commission, pursuant to Articles 45 and 49 of Law no. 84/2016, and case law of the Chamber*”.



In addition, in the decision no. 12/2020 AC treated each one trip according to the evidence that the assessee submitted. In this case, the IQC decided to accept *en bloc* all the claims of the assessee without evaluating either the value of the declarations, the connection with the persons that issued them, the time period and the amount of expenses, documents regarding payment of tickets etc.

More in detail, the assessee claimed a revision of his travel expenses by providing the following documents:

***Concerning his personal and family travels in Turkey, the assessee provided:***

(i) Notarial Declaration issued on 04.2023 by his brother \*\*\* \*\* which immigrated in Turkey during the 90s. The assessee claims that his accommodation and occasionally even the travel expenses in Turkey were covered by \*\*\* .

(ii) the assessee provided an income statement for the period of some months during 2018 and (iii) a bank account statement -not in the form required by law.

-In relation to the travels in Turkey, where assessee's brother was a resident concerning the accommodation and living expenses, in consideration of the family relationship and in order to guarantee a fair process, we consider the scenario where the assessee was offered accommodation by his brother therefore we might recognize a reduction of the accommodation expenses in the amount of 5 EUR/day as provided in the AC Decision (JR) Nr. 11 dated 22.05.2019. However, it was observed that most of the travels to Turkey the assessee and his family travelled via Charter flight<sup>16</sup> – which might suggest that the trip was booked as part of touristic package offered by travel agencies. Therefore, for these trips operated via charter flights- the standard cost of 50 EUR/day shall apply in line with the methodology established by the Appeal Chamber<sup>17</sup>

Whereas for the coverage of the travel costs we deem that the latter should follow the methodology of the Appeal Chamber in the situation where there is lack of documentation to prove the covering of such costs for the assessee and his family as a result these costs shall be borne by the assessee. In addition, the expenses were not declared in the section “Gifts and preferential treatment” as based on the provision of the law 9049/2003.<sup>18</sup>

***Concerning his personal and family travels in various countries for which it was claimed the expenses were covered by third parties<sup>19</sup>:***

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<sup>16</sup> See more for the description of a charter flight: [Charter Flights | US Department of Transportation](#)

<sup>17</sup> See AC Decision (JR) nr 11 date 22.05.2019 para 27.7.

<sup>18</sup> Art 4point f)<sup>18</sup> of the law 9049 date 10.4.2003 on “the declaration and control of assets, financial liabilities of the elected and some public employees”, amended: “The term and the object of the declaration: [...]f) preferential gifts and treatments, including the identity of the natural or legal person, where the preferential gifts or treatments come from or are created. Gifts or preferential treatment are not declared when their value is less than 10 000 (ten thousand) ALL, as well as when two or more preferential gifts or treatments, given by the same person, together, do not exceed this value, during the same declaration period.

<sup>19</sup> The assessee provided the following documents:



In the evaluation of the travel expenses, it is observed that the assessee claims that the costs of accommodation/travel in various countries were borne by third parties (either friends or his relatives). However by observing the declarations provided it is noticed that: either the place of residence or the information regarding legitimate income of the declarant during the concerned travel period is not confirmed (i.e., the documents were issued after the years of the travel); in some instances the full costs including even the tickets and visits were claimed to have been covered<sup>20</sup> while such gift/preferential treatment was not disclosed by the assessee in his respective declaration over the years to HIDAACI; or only a declaration was provided without proof of the place of residence<sup>21</sup>; in some instances the declarants didn't quote the specific trips during which they allegedly hosted the assessee<sup>22</sup> Therefore, these expenses will be considered as borne by the assessee.

In conclusion, the IOs opine:

- That it is not realistic that the travels of the assessee and his family might have been paid for by unrelated third parties, to the extent alleged by the assessee

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- Notarial Declaration issued on \*\*04.2023 by the citizen \*\*\* \*\* in which the latter stated that the assessee was accommodated in his residence he during his trips to \*\*\* , Montenegro. An ID was provided by this citizen which was issued on \* .02.2014; Declaration by the citizen \*\*\* \*\* for the coverage of his trips to \*\*\* in which the latter stated that the assessee was accommodated in his residence he during his trips to \*\*\* , Montenegro. An ID was provided by this citizen which was issued on \* .12.2021; Declaration issued by the citizen \*\*\* \*\* , in which he stated that he covered the expenses of the assessee and his family during their trips in London. The expenses covered are the tickets, accommodation and the visits and he claimed he had the financial means. He results as a British citizen according to the attached passport issued in November 2012. In addition, the assessee in his explanations stated that: *"In 2010 I traveled to England and stayed at the address \*\*\* \*\* , London \*\* (DX), which belongs to my friend \*\*\* \*\* . Mr. \*\*\* owns a travel agency in the city of London and in 2010, he organized me a trip to London Attached notarial deed certifying signature with No. \*\*\* rep date\*\* 04.2023"*; Declaration issued by the nephew \*\*\* \*\* , which lives in Italy, \*\*\* . Through an e-mail the latter stated that the accommodation expenses of the assessee and his family were covered by him. An ID was attached which was issued on\*\* .01.2023. In addition, it was provided a notarial sale and purchase contract dated on \*\*09.2018 for the purchase of an apartment by \*\*\* \*\* and the monthly income statement for the period Decemoer 2022-March 2023 were provided.; Declaration issued by the citizen \*\*\* \*\* , where the latter stated to have invited the assessee and his family during 2010-2013 in Germany and the accommodation expenses were covered by him. An ID was provided by this citizen which was issued on \*\*10.2013; Declaration issued by the citizen \*\*\* \*\* , where the latter stated to have invited the assessee and his family during 2010-2013 in \*\*\* , Italy and the accommodation expenses were covered by her. An ID was provided by this citizen which was issued on 08.03.2022.; Declaration issued by the citizen \*\*\* \*\* (friend), where the latter stated during the assessee trips during 2009-2010 in \*\*\* , Macedonia the assessee was accommodated in his residence; Declaration issued by the citizen \*\*\* \*\* (relative of the assessee) where the latter stated to have invited the assessee and his family several times by covering all of the costs of the travel and accommodation. An Italian ID was provided by this citizen for which the date of issue is not readable. In addition, it was provided a notarial sale and purchase contract dated \* .07.2006 for the purchase of an apartment by the citizen \* \* . In addition, income statements of this citizen were provided for March 2023; Declaration issued by the citizen \*\*\* \*\* (friend of the assessee) where the latter stated to have covered all of the costs of the travel and accommodation during his visits in Austria, Slovenia, Hungary and Kosovo. He holds a Kosovo ID; Declaration issued by the citizen \*\*\* \*\* (friend of the assessee) where the latter stated to have covered the costs of the accommodation during his visits in Brussels in 2015-2016.

<sup>20</sup> See declaration issued by the citizen \*\*\* \*\* and the citizen \*\*\* \*\*

<sup>21</sup> See declaration issued by the citizen \*\*\* \*\*

<sup>22</sup> See Declaration issued by the citizen \*\*\* \*\*



- That if these donations had occurred, the assessee should have declared them as gifts/preferential treatments (which he never did).

The allegations of the assessee cannot, therefore, be accepted as evidence.

### E. Regarding the financial analysis

As a result of their wrongful and unjustified factual conclusions, the IQC's financial analysis reflects a financial minus which is limited to 1.2 million ALL.

On the contrary, based on the analysis reported above on the construction costs sustained by the assessee over the years for the house in Shkodra, on the incapacity of the other related person \*\*\* to lend the sum of 107,500 euros to the assessee and on the calculation of the travel expenses, the IOs are of the opinion that the real financial minus is significantly higher, as highlighted in the table below:

Year	August-December 2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Construction cost V1	963,478.23	2,246,564.03	785,602.74	826,323.27	805,549.15	-	-	-	-	-	-	-	-	-
Construction cost V2	963,478.23	2,246,564.03	346,450.81	364,408.56	355,247.18	251,274.32	251,274.32	263,038.35	270,985.81	269,741.26	276,114.72	-	-	-
Income	345,785.83	1,037,688.00	1,101,049.00	1,146,151.00	1,259,630.00	1,319,971.00	1,574,453.00	1,535,277.00	1,164,274.00	1,077,890.00	1,682,982.00	1,923,194.00	1,903,475.00	1,900,852.00
Expenses	(256,440.00)	(614,870.00)	(780,374.40)	(758,564.25)	(967,495.42)	(1,589,073.52)	(1,640,830.36)	(1,398,058.29)	(1,276,122.23)	(1,065,665.55)	(1,659,507.14)	(2,281,408.81)	(2,204,911.53)	(2,354,471.49)
Assets									(14,867,250.00)					
Loan from ***														
possible savings carried forward	1,662,566.00													
change in liquidities	(346.83)	334.77	(106,621.17)	27,643.61	34,856.80	(55,196.51)	66,521.30	46,503.51	(17,673.88)	2,704.61	(2,513.95)	(44,918.68)	32,747.42	(565,770.76)
<b>Difference V1</b>	<b>789,087</b>	<b>-1,823,411</b>	<b>-571,549</b>	<b>-411,093</b>	<b>-478,558</b>	<b>-324,299</b>	<b>143.94</b>	<b>183,722</b>	<b>-14,998,772</b>	<b>14,229</b>	<b>20,961</b>	<b>-403,133</b>	<b>-268,639</b>	<b>-1,019,390</b>
<b>Difference V2</b>	<b>789,087</b>	<b>-1,823,411</b>	<b>-132,397</b>	<b>50,822</b>	<b>-38,256</b>	<b>-575,573</b>	<b>-251,130</b>	<b>-79,316</b>	<b>-15,269,758</b>	<b>-255,512</b>	<b>-255,154</b>	<b>-403,133</b>	<b>-268,639</b>	<b>-1,019,390</b>

In conclusion as it was shown above, in both versions the assessee is found in lack of legitimate source respectively in the amounts: **V1: -20,298,895 ALL; V2 -20,361,721 ALL**

The financial analysis incorporates a reduction of the accommodation expenses for the travels in Turkey -not operated by a charter flight - during which the assessee claims that was hosted by his brother- was recognized in the amount of 5 EUR/day as provided in the AC Decision (JR) Nr. 11 dated 22.05.2019.

## 2. Regarding the situations of possible conflict of interest.

The investigation identified at least five situations of possible conflict of interest of the assessee, namely:

- Regarding the \*\*\* family from which he bought the land and the building in Shkoder, the assessee issued **decision No. \*\*\***, of **\*\* .6.2003** "Issuance of certificate of inheritance of testator \*\*\*", the heirs shall benefit  $\frac{1}{4}$  of the share each of the property located at the address *Lagja*. \*\*\*. Rr. \*\*\*. nr. \*\*, Shkodra". This decision became final on \* .7.2003. It was noted, besides, that about one month and a half after this decision was issued, on \* .8.2003 the assessee resulted as the buyer of the property. When he was asked about his



relationship and potential conflict of interest with the \*\*\* family, he replied that *"I have simply an indifferent relationship with the citizens, who sold the above-mentioned house to me; as it is noticed in the Letter Prot. No. \*\*\* /\*, dated \* .03.2022, on the reply provided by First Instance Court of Shkoder, I did not have any conflict of interest with them."*

- b. Regarding the relationship with \*\*\* \*\*\*, with whom he exchanged apartments and thanks to whom he pursued the aim to cover the concealment of the apartment in \*\*\* \*\*\*, there is a decision of March 2010 for issuance of inheritance after the death of her husband \*\*\* \*\*\*, recognizing \*\*\* \*\*\* as one of 4 inheritors.
- c. Regarding \*\*\* \*\*\* from whom, as explained in point B above, the assessee took a loan for the purpose to purchase the apartment in \*\*\* \*\*\*, and with whom it was ascertained he travelled several times abroad, the assessee issued decision No. \*\*\*, dated \* .3.2008, about a case with subject-matter: *"Declare partially invalid the birth certificate concerning child \*.\*"*. In the court case, the respondent was the Civil Registry Office of \*\*\* \*\*, which was absent. In conclusion of the judicial investigation, the assessee ruled on admitting the motion of Mr. \*\*\* \*\*\*. When he was asked in questionnaire no. 4 about his relationship with \*\*\* \*\*\* and whether he had adjudicated any court cases with possible conflict of interest, he sent the reply from Shkodra District Court where the reply relates to the limited period 2003-2010 and only for criminal cases.
- d. Regarding the use of cars/trips, there are three individuals \*\*\* \*\*\*, \*\*\* \*\*\*, and \*\*\* \*\*\*. When he was asked about \*\*\* \*\*\* he said *"I have a social relationship with him, and I do not have any conflict of interest."*

Regarding \*\*\* \*\*\* though, according to the reply from Shkodra District Court, there is a decision of September 2009 for issuance of inheritance after the death of \*\*\* \*\*\* in favor of \*\*\* \*\*\* as one of 8 other inheritors.

There is another decision of July 2009 where the assessee is recognizing \*\*\* \*\*\* respectively 6000 m<sup>2</sup>, 8000 m<sup>2</sup>, 12.320 m<sup>2</sup>, 5.625 m<sup>2</sup> in \*\*\* \*\*, Shkoder. In addition, his restatement of the deadline to apply to the agency of restitution and compensation, since he was an immigrant from 1993 until 2009 and missed the deadline of application that expired in 2008.

There is another decision of April 2010 with claimant \*\*\* \*\*\* for the "Objections to the actions of the Bailiff", and the bailiff as the third party, where at the end the assessee decided in favor of the claimant \*\*\* \*\*\* with the bailiff in absence. From the decision, it seems there might be some procedural issues, such as the form. He is using the same form of claim as the one in recognition of facts where there is no defendant. While here the case is of disputable nature, so the parties should have been established in the preliminary phase (the bailiff cannot be considered as third party).



Regarding \*\*\* \*\*\*, according to the reply from Shkodra District Court, there is a decision of September 2009 for issuance of inheritance after the death of \*\*\* and \*\*\* in favor of \*\*\* as one of 5 other inheritors.

Regarding \*\*\* \*\*\*, according to the reply from Shkodra District Court, there is a decision of March 2010 for issuance of inheritance after the death of \*\*\* in favor of \*\*\* as one of 5 other inheritors.

For most of these situations, the IQC shifted the following burden of proof.

- *Given that the Commission ascertained repeated instances of situations of conflict of interest and/or infringement of judicial ethics, it appears that they may have also undermined the public confidence to the image of a magistrate and the justice system overall.*

**The assessee in his explanations** stated that a) for the case with \*\*\* family it is a case beyond the re-evaluation period, b) for the cases of \*\*\* and \*\*\*, those are decision of declarative nature, c) for \*\*\* case, he said that he did not remember traveling with him, but after asking him, he found out that \*\*\* was a taxi driver and the travel must have been a coincidence.

**The IQC decided** to accept his claims and considered that the decisions were of a declarative nature. Therefore, no conflict of interest was identified.

**The IOs** are of the opinion that, regardless of the nature of the cases handled by the assessee, it was his duty to recuse himself in instances when he had ties of a personal or interest nature with the relevant parties. The fact that in a significant number of cases he failed to do so is a sign of disregard of basic procedural principles aimed at protecting the impartiality of the judiciary. Among others, the case of \*\*\* is particularly relevant, in that **Decision no. \*\*\*, dated \*\*4.2010**, with subject matter " *Opposition to enforcement actions*" is clearly a civil dispute of contentious nature, whereby the assessee ruled in favor of his acquaintance \*\*\*<sup>23</sup>.

The IOs deem that the case law indicated by the assessee and the IQC in support of their stances (decision no. 42/2022) is not relevant to this case, because it refers to a different type of conflict of interest. In fact, in the case of decision no. 42/2022 the conflict is to the administrative tasks of a head of office in relation with the law no. 9367/2005 on Conflict of Interest. On the contrary, in our case the conflict of interest is strictly speaking related to the assessee's court/procedural

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<sup>23</sup> The Assessee himself stated that he knew Mr. \*\*\*, and had coffee few times with friends. Considering that they made at least one travel abroad, it appears clear that they knew each other well. This situation, therefore, should have been analysed by the IQC in the context of integrity within the proficiency assessment.



activity as a judge (regulated by the civil procedure code in terms of article 72 and 73 and relevant under the proficiency assessment).

In fact, with decision no. 3/2020 para 33, the AC reasoned that *“eventually, if there would be proven close friendship relations between the assessee and the borrower who is a party to a court case – in the absence of circumstances that hint to a property interest gained by the assessee in the situation of conflict of interest – the Trial Panel holds that this situation should have been analysed in the context of integrity which is part of the proficiency assessment.”*

Regarding the nature of the decisions, whether the declarative ones should be grounds for recusal, the AC stated in decision no. 16/2019 para 30.2 that *“The Chamber's Decision no.10/2019, maintained the same standard in connection with the judges' conflict of interest. The assessee's claim that the above quoted case is an instance of conflicting competencies, not a judgement on the merits of the case (on which he should have lodged a recusal request) is found as ungrounded in the law, as it does not legally exempt any cases, even the conflicting competencies, that could justify the judge's presence in judging these court cases when they are found in the condition of a conflict of interest.”*

### **3. The behavior of the assessee during the vetting process**

Under article 48 VL the assesses are obliged to cooperate with the vetting bodies. The latter shall take into account the readiness and behaviour of the assessee during the re-evaluation process.

Contrary to the above, it appears clear that the assessee during the course of the investigation repeatedly tried to mislead the IQC, by providing false information regarding:

- his living address over the period 2010-2015,
- the place where his kids were studying,
- the way he commuted during the same time period between Shkodra and Tirana.

This attitude was not considered at all by IQC, on the contrary they found him cooperative and in general adopted a lenient approach towards the assessee, overturning all the findings reached during the investigation process.

### **III. Conclusions**

The IOs, after analysing all the facts and evidence administered during the investigation, recommend the Public Commissioners to file an appeal against the decision of the IQC to confirm the assessee in office, considering:

- that the financial analysis was not made in accordance with the standards set so far.
- That the assessee took steps to conceal the apartment located in Rruga \*\*\* \*\*.
- that he failed to declare in the Vetting Declaration the use of a vehicle.
- That the IQC did not properly take into account several situations of conflict of interest.



- that the assessee during the investigation was not cooperative, against to the provision of Art. 48 VL.

In light of the foregoing, and of other shortcomings which might be found during the appeal proceeding by the Court, we think that a proper consideration of all the elements, would result in the dismissal of the assessee.

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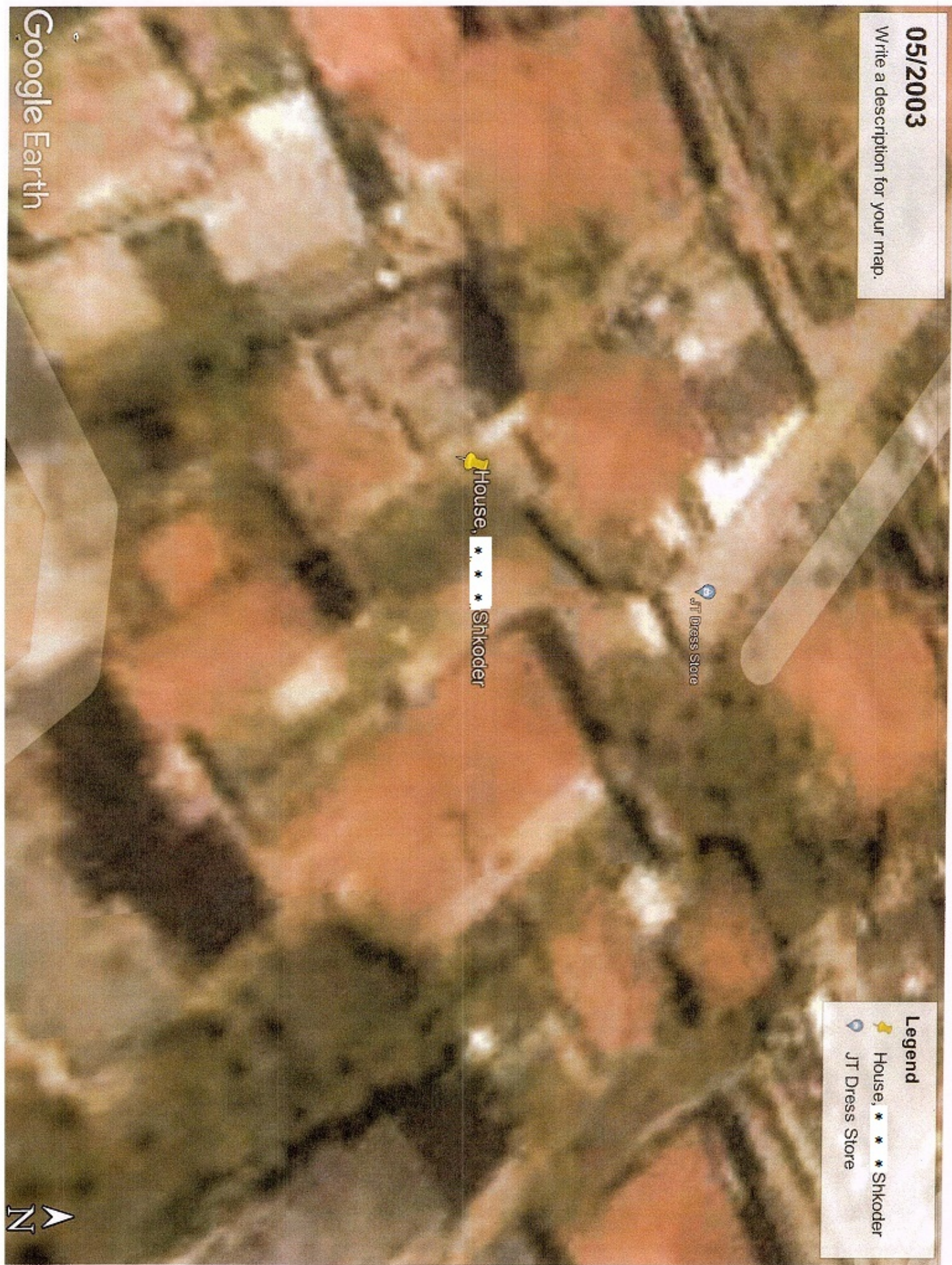
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Write a description for your map.



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-  House, \* \* \* Shkoder
-  JT Dress Store

 House, \* \* \* Shkoder

 JT Dress Store

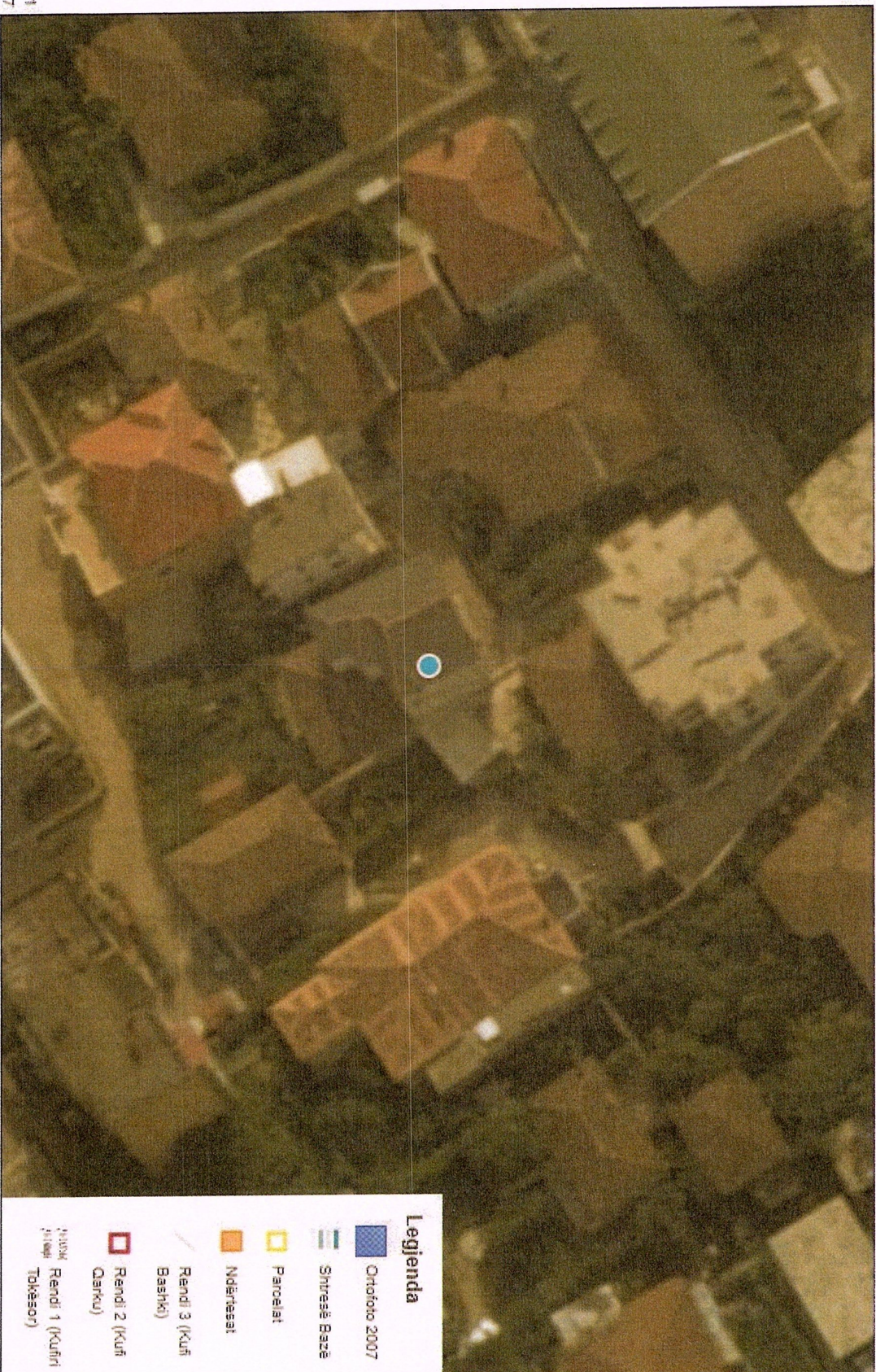
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-  Rendi 3 (Kufi Bashki)
-  Rendi 2 (Kufi Qarku)
-  Rendi 1 (Kufi Tokësor)

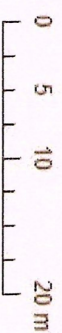
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Inventory of the IMO Recommendation to the Public Commissioners to file an appeal against the IQC decision on case of assessee Besnik Hoxha:

No	Document description	Number of pages	Number of corresponding pages
1	IMO Recommendation to file an appeal on case of assessee Besnik Hoxha	26 pages	1-26
2	Google earth image of the house in Shkodra from Year 2003	1 page	27
3	Geoportal (ASIG) image of the house in Shkodra from Year 2007	1 page	28
	<b>TOTAL</b>	<b>28 pages</b>	

- The file inventory checklist ends with serial number 3 and comprises a total of 28 pages.

