



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

Prot. No. 232/1

Tirana, 02/05/2023

To the  
**Public Commissioners**  
Bulevardi "Dëshmorët e Kombit", Nr. 6  
Tirana  
Albania



11-50

Case Number            **DC-P-TIR-1-44**

Assessee                **Naim TOTA**

**RECOMMENDATION TO FILE AN APPEAL**

**According to**

Article B, par. 3, point c of the Constitution of the Republic of Albania (hereinafter "Constitution"), Annex "Transitional Qualification Assessment", and Article 65, par. 2 of Law No. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania" (hereinafter "Vetting Law" or VL).

## 1. Introduction

2. Mr. Naim TOTA 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 IQC decided to confirm the assessee in duty with a majority vote, whereas the dissenting panel member voted for dismissal.

3. The International Observers (further: IOs or IMO) recommend the Public Commissioners (further: PCs) to file an appeal against the results of the assets and proficiency assessments. As far as the assets assessment is concerned, in IMO's views the burden of proof was not met by the assessee on some issues which the same IQC decision did not clarify either. That was the result of wrong assessment of the available evidence in crucial matters that should have brought the IQC to a different outcome.

3.1. IMO assesses, as it will be shown in the further paragraphs of this Recommendation and with regards to the assets assessment, that:

3.2. There is more than a reasonable suspicion of a concealment of an asset over the years through the husband of the sister of the assessee \*\*\*\* (further: \*\* ) concerning the apartment with an area of 86.21 m<sup>2</sup> and a common area of 10.58 m<sup>2</sup>, located in street " \*\*\*\* ". IMO believes that the burden of proof was not met by the assessee in dispelling the relevant doubts;

3.3 The assessee and his related persons lack the lawful financial sources, at least<sup>1</sup> by ALL (-) 2,319,328<sup>2</sup> to create the assets and pay the expenses incurred for the period 2003-2016. Therefore, IMO assesses that the burden of proof was not rebutted by the assessee.

4. With regards to the proficiency assessment, IMO's concerns are particularly related to the analysis of four cases related to the following complaints:

- Complaint filed by citizen \*\*\*\* ;
- Complaint filed by the citizen \*\*\*\* ;
- Complaint filed by the citizen \*\*\*\* ;
- Complaint filed by the citizen \*\*\*\* ;

## 2. Grounds of the recommendation and their analysis:

5. Considering the above, in regard to the asset assessment, IMO evaluates:

i) That there is a more than reasonable suspicion that the assessee was the *de facto* owner of apartment located on " \*\*\*\* " Street, in Tirana, and that since 2003 to 2016, the

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<sup>1</sup> In case the apartment will be considered as purchased by assessee in the year 2003, then the negative balance identified according to IMO's calculations will be (ALL 1,577,274 [ years 2004, 2005, 2006, 2007, 2009] + ALL 400,000 [not proved loan from \*\* ] + ALL 5,103,776 [the purchase price of the apartment pad in 2003] = total ALL -7,081,050)

<sup>2</sup> The negative balance identified according to IMO's calculations (ALL 1,577,274 [years 2004, 2005, 2006, 2007, 2009] + ALL 400,000 [not proved loan from \*\* ] + ALL 342,054 [in case the apartment will be considered as purchased in March 2016 as declared and evidenced] = total ALL -2,319,328)



husband of the sister of the assessee ( \* \* ) held the ownership for the assessee as a front man (straw man, cipher);

ii) The lender - the sister of his late spouse, \*\*\* \*\* (further: \* \* ), lacked legitimate sources to provide the loan in the amount of ALL 400,000 to the assessee's late wife, which was used as a source for the purchase of the shares of the company " \*\*\* " sh.a. in 2005;

iii) The assessee lacked the legitimate sources to create the assets and pay for the expenses that have been declared and identified over the years;

iv) There are several inaccurate declarations in the PADs and in the vetting declaration regarding the assets owned by the assessee and his related persons;

### **2.1. Concerning the asset: Residential apartment 2+1 on Rr. " \*\*\* \*\* ", in Tirana**

6. In the vetting declaration, the assessee declared a residential apartment, located at \*\*\* \*\* street, Tirana, acquired through the assignment contract dated \* .3.2016 in the amount of 50,000 USD<sup>3</sup>. The same apartment was disclosed in the periodic annual declaration for the year 2016<sup>4</sup>.

7. Regarding the said assets, it must be noted that:

7.1. On \* .4.2003, Mr. \* \* , (identified as the husband of the sister of the assessee), ordered<sup>5</sup> from the company " \*\*\* " sh.p.k., the property residential apartment (2+1) with an area of 102.51 m<sup>2</sup>, located on the third floor of the apartment building that would be built/was being built by this company on \*\*\* \*\* street, Tirana.

Together with the entrepreneurial contract dated \* .4.2003, 3 partially legible payment slips<sup>6</sup> are evident from which it seems that Mr. \* \* , has completely liquidated during the year 2003, the amount of 50,000 USD, in favour of the company " \*\*\* " sh.p.k.

7.2. In the PADs for the years 2004 - 2015, the assessee declared \*\*\* \*\* street, Tirana, ( \*\*\* building), as the address where he was registered in the civil registry office and as his residential address. The latter relates to the address of the property subject to assessment.

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<sup>3</sup> Declared Source:

- (i) the income in the amount of 5,000,000 ALL obtained from the sale of the apartment in Kukës and;
- (ii) the income and savings over the years.

<sup>4</sup> In the Declaration of Private Interests/ periodic annual of 2016 (submitted to HIDAACI on \*\* .03.2017) the assessee has declared the property 2+1 residential apartment, located at \*\*\* \*\* street, Tirana, acquired through the assignment contract dated \*\* .3.2016, with the source of creation (i) income from the sale of the apartment in Kukës and (ii) income and savings over the years.

<sup>5</sup> Entrepreneurial contract, confirmed with a notarial document "confirmation of signature no. \*\*\* rep., dated \* .4.2003, drawn up by a public notary Mrs. \*\*\* \*\*

<sup>6</sup> The three payment slips attached to the contracts: (i) on \* .4.2003, the amount of 25,000 USD; (ii) date \* .6.2003, the amount of 10,000 USD; and (iii) on \* .12.2003, the amount of 15,000 USD.



7.3. On \*\*03.2016, the contract of assignment of the rights<sup>7</sup> to the entrepreneurial contract no. \*\*\* rep., dated \*4.2003 is signed – in reference to which the citizen, \*\* , appears as the “Assignor” of the rights and the assessee, in the capacity of the “Assignee” of the rights in relation to the property subject to assessment.

7.4. Given the registration issues of the construction, the assessee filed a lawsuit<sup>8</sup> with Tirana Court against the construction company. Following the relevant court decision rendered on the case, the property was registered in the public register of real estate in the name of the assessee, and the Ownership Certificate<sup>9</sup> was issued on \*\*08.2017.

8. During the administrative investigation carried out by the IQC, it was established that:

8.1. The original orderer/buyer of this property has never used it<sup>10</sup>. The chronology of the facts, as accepted by both parties, indicate that the assessee was entitled to use this property since 2004 onwards, i.e., for a relatively long time, hence it cannot be considered that he made a random and inconsequential use of the apartment.

8.2. The assessee acquired the 102.51 m<sup>2</sup> apartment in Tirana with the assignment contract dated \*\*3.2016, in the amount of \$50,000 from the citizen \*\* , (husband of the assessee’s sister) while the latter owns him an amount of 40,000 EUR since 2008.

8.3. There are contradictory declarations on the nature of the relationship with this asset. It turns out that on the one hand the assessee declares that he has used this property without compensation for a period of about 12 years, while on the other hand in 2008, he has given a loan in the amount \$40,000 with interest to the citizen, \*\* , who had left this property in use. In the answers to questionnaire no. 2, the assessee stated that he had used the apartment without compensation due to the fact that the interest of the amount of 40 thousand euros loaned by him in 2008 was not

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<sup>7</sup> Contract of assignment of the rights of the entrepreneurial contract with no. \*\*\* rep., no. \*\* col., dated \*\*03.2016, drawn up by the public notary, Mrs. \*\*\* \*\* .

<sup>8</sup> Lawsuit with subject matter: “*Obligation of the respondent “\*\*\* ” shpk company to implement the effects of the entrepreneurial contract dated \*4.2003 with no. \*\*\* rep., recognizing the claimant as the owner of the real estate apartment, consisting of 2 rooms and a kitchen, with an area of 108.31 m<sup>2</sup> with an address on “\*\*\* \*\* ” street, Tirana... – on \*\*12.2016, the Court of the Judicial District of Tirana decided: (i) To admit of the claim; (ii) the obligation of the respondent to implement the effects of the entrepreneurial contract dated \*03.2003 no. \*\*\* rep., recognizing the claimant as the owner of the real estate apartment consisting of 2 rooms and 1 kitchen, with an area of 108.31 m<sup>2</sup>, with the address on “\*\*\* \*\* ” street, Tirana; (iii) the obligation of the respondent to register in the public registers of LIPRO Tirana the immovable property owned by the claimant.*”

<sup>9</sup> LIPRO Tirana issued the certificate of ownership for the property subject to assessment, specifically for the property with no.\*/\*\*\*/ND+2-3, vol. \*\*, page \*\*\*, CZ. \*\*\*, an apartment with an area of 96.21 m<sup>2</sup> and a common area of 10.58 m<sup>2</sup>, in the name of the assessee Naim Tota.

<sup>10</sup> Referring to the declarations made to HIDAACI, the assessee started living in this property - the apartment in Tirana, since 2004. Meanwhile, referring to the explanations given by him to the HIDAACI through the “*Minutes on the explanations of the assessee*” he stated that he started living in this apartment in 2006. Whereas, after being asked by the Commission about his residential addresses since the beginning of his duty, the assessee filed the document - notarial statement dated \*\*.07.2020, of citizens \*\*\*\* and \*\*\*\* (brother-in-law and sister), in reference to which they stated that the assessee and his family started to live in their apartment (asset subject to assessment) from 2005 onwards.



being repaid, while the citizen, \*\* , during his testimony, seems to have stated that the use of this apartment was given to the assessee without compensation in 2004 thanks to close family relations. In addition, the assessee has declared this apartment as rented in the annual statement of 2008, implying that this condition may have existed in previous years as well.

8.4. In the contract of assignment of rights, dated \*\* .03.2016, it is stipulated inter-alia that: "The assignor declares that money for these 3 installments totaling USD 50,000 paid to the entrepreneur, was given by the assignee". It seems that, only after the minutes on the explanations given by the assessee in HIDAACI on \*\* .05.2016, the "Rectification to the contract" document dated \*\* .06.2016 was compiled and signed between the "Assignor" and the "Assignee" of the rights, in reference to which he states that: "This paragraph is a mistake they made, given that the amount of USD 50,000 is handed over to the entrepreneur by the assignor and indeed not by the assignee, therefore in this paragraph the wording "given by the assignee" should be removed, as it is a mistake.

8.5. In the contract of assignment of rights, the same value in the amount of \$50,000 (or the corresponding value in ALL 6,226,000) paid by the assessee (as the assignee) in 2016 is determined, as the one paid by the assignor (husband of the assessee's sister \*\* ) in 2003 when the latter acquired the apartment. Meanwhile, referring to the Instruction of the Council of Ministers no. 3, dated 28.12.2016, "On the approval of the average cost of housing construction by the National Housing Authority for the year 2016", it seems that according to the average value of housing in the free market for the area where the property subject to assessment was located, specifically in Rr. \*\*\* \*\* , Tirana, between area 5/1 and 5/2, of Administrative Unit no.\* , the price per square meter for these areas ranged from 132,000 ALL m/2 to 190,000 ALL/m2. Thus, seemingly, the market value for this apartment in 2016 ranged between the value of 12,766,208 ALL and 18,390,100 ALL.

8.6. There is no evidence that the amount of USD 50,000, the selling price of the apartment was transferred to \*\* in 2016.

**9. The attitude of \*\*\* \*\* towards this apartment, purchased for a considerable price, does not seem to be the one of an owner. Given that the property was only used by the assessee for a very long period before the formal transfer in 2016 (since 2004 onwards) and that Mr. \*\*\* did not get material benefit in the form of rent or any compensation invokes the conclusion that Mr. \*\*\* was not the real proprietor.**

10. Following the factual situation described above and in order to verify the suspicion for concealment, the Commission verified the financial capacity of \*\* , for the purchase of the apartment located on " \*\*\* \*\* " street, Tirana, in 2003.

11. IMO does not share the IQC conclusion in paragraph 26.53 of its decision, stating: *"Having analysed and examined the explanations, evidence and circumstances established on the income and financial sources of the \*\*\* family, the Adjudication Panel assesses that they had a healthy financial situation, meaning that they had sufficient income from lawful sources to fully justify the payment made during 2003 for the settlement of the purchase price of the apartment in Tirana..."*

12. Regarding the financial analysis of \*\* the following findings stand:



12.1. The consideration of the amounts generated from the sale contracts of the two assets in Kukes as claimed by the assessee<sup>11</sup>, as opposed to the amounts indicated in the sale contracts seems to contradict the long-standing Appeal Chamber jurisprudence which tends to give prevalence to the documentary evidence rather to the claimed paid prices;

12.2. Bank deposits<sup>12</sup> withdrawn from \*.\* before the payment of the purchase price of the apartment in Tirana on \*\*.12.2003, could not be considered in the financial analysis of the other related person, \*\*, since their source, legitimacy and their destinations were not verified;

12.3. The additional incomes allegedly originating from commissions/ fees from the work with insurance companies could not be considered when assessing the financial capacity of \*.\* , as long their amount remained at declarative level. Their legitimacy was not confirmed according to the standard required by Art. D, para. 3 of the Annex of the Constitution;

12.4. The expenses sustained by \*.\* . to construct his house in \*\*\* district of Tirana, and the related timing, should be considered in assessing the financial capability of \*.\* . to invest in the apartment located in \*\*\*\_ building, Rruga \*\*\*\*\* , Tirana, because they might significantly affect the result and, therefore, the entire viewpoint on the possible hidden asset conclusion.

13. As a result of the above considerations, in IMO's view, the financial analysis of the other related person, Mr. \*.\*., shows that there exists a lack of legitimate sources to cover the purchase of the apartment in 2003.

**14. Based on the above the IOs conclude that the assessee has been the possessor and the de facto owner of this asset since 2004. In 2016 this factual situation was only legalized by formal transfer of a property which was already his for 12 years. The described circumstances in the opinion of the IOs, trigger the application of the provisions of Article D, paragraph 5 of the Annex to the Constitution and Article 33, paragraph 5, letter "c" of Law no. 84.2016, relating to the concealment of assets. Since these facts concern the period before submitting the vetting declaration, they might as well affect the veracity of the said declaration in terms of possible false statements. It is therefore the IOs opinion that, this situation should be considered in view of the overall assessment of the case under article 4 (2) and article 61 (5) of the Vetting Law.**

## **2.2. Concerning the legitimate source of the loan 400,000 ALL lent by \*.\***

15. **In the vetting declaration**, the assessee disclosed *shares with value of 1%* (deposited with value of 12,500 EUR) of the total value of all shares of the company “ \*\*\* ” sh.a., Kosovo Branch, put on \*\*.12.2005, by his late wife, acquired by him as an inheritor. In addition, in the declaration of income section of the same declaration, the assessee disclosed the income with net

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<sup>11</sup>The assessee claimed that the real value of the sale of the apartment with an area of 85 m<sup>2</sup> was about ALL 2,500,000, whereas in the Sale contract with rep. No. \*\*\*, col. No. \*\*, dated \*\*.08.2002 there is indicated the price of ALL 1,000,000. While for the other apartment with an area of 96 [m<sup>2</sup>] and the building plot of 240 m<sup>2</sup> the assessee claimed that the real value was in the amount of ALL 2,800,000, whereas in the sale-purchase contract with rep. No. \*\*\*, col. No.\*\*\*, dated \*.12.2003 for this asset, there is indicated the price of ALL 1,000,000.

<sup>12</sup> As elaborated in the paragraphs 26.48; 26.49; 26.51 of the IQC decision



value of 40,000 EUR<sup>13</sup> acquired by inheritance from the sale of shares in the amount of 1% in the ownership of his late wife, \*\*\* \*\*

16. It turns out that the assessee declared neither in the 'assets' section of the vetting declaration nor in the periodic declaration of the year of its creation, **the source of the creation of this asset**, contrary to the provisions of article D, paragraph 2 of the Annex to the Constitution and Annex no. 2 of the law no. 84/2016, in conjunction with article 33, paragraph 5, letter "a" of law no. 84/2016.

17. It was established that no shares or other investments of this kind made by the related person, the assessee's wife, the late \*\*\* \*\*, were disclosed in the PAD 2005 and PAD 2006.

18. However, in **the PAD 2007**, the assessee disclosed shares in " \*\*\* ", deposited by his wife in December 2005, at the amount of 12,500 EUR, for which he was informed in 2007 by the company - after his wife passed away. Further, he disclosed a deposit at " \*\*\* \*\* " in the amount of 44,463 EUR, in the name of the late Mrs. \*\*\* , value created from the sale of shares in " \*\*\* " <sup>14</sup>, which he states that it shall be withdrawn upon opening *the certificate of succession*. Share 25%.

19. In **the liabilities section** of the same declaration, he disclosed the outstanding liability to his sister, from the loan obtained by his late wife since 2005, in the amount of 1,000,000 ALL, whereupon after she passed away, his sister forgave him 400,000 ALL and he repaid the amount of 200,000 ALL in 2006. There is an outstanding liability of 400,000 ALL free of any interest and for an undefined period. Hence, the outstanding liability amounts to 400,000ALL.

20. The other loan from the sister of the late wife, Mrs. \*\* in the amount of ALL 400,000 was declared by the assessee neither in PDs nor in the VD. It was only explained to HIDAACI inspectors when they asked him in 2008 and to IQC through responses to questions.

21. Article 32, paragraph 4 of law no. 84/2016 expressly provides that:

*"The Assessee and his or her related persons or other related persons who have been declared in the capacity of donors, lenders and borrowers, when they confirm these relations, shall bare the obligation to justify the legitimacy of the source of the creation of these assets."*

22. Consequently, the Commission investigated and analysed the sources of income disclosed by the assessee regarding the amount of EUR 12,500, which his spouse, the late Mrs. \*\*\* , invested in 2005.

23. The assessee has submitted documentation on employment income received by citizens, \*.\* and \*.\* (identified as the husband of \*.\* )<sup>15</sup>.

<sup>13</sup> As regards this income, as mentioned above in this document, this was the amount which was lent to Mr. \*\*\* \*\* with 1.5% interest rate per year.

<sup>14</sup> The assessee submitted to HIDAACI a document – certificate dated 11.11.2008, of the company " \*\*\* \*\* sh.a., which confirms that: As an employee of \*\*\* sh.a, Ms. \*\*\* \*\* has invested the amount of 12,500 EUR in the Kosovo branch. Upon the sale of a part of the shares of \*\*\* sh.a. to the company \*\*\* \*\* in 2007 and closing the investment in Kosovo, Mr. Naim Tota benefited return on investment in the amount of 44,463 EUR. The relevant income tax liability was withheld.

<sup>15</sup> Basic salary confirmation issued by the SII for the years 1997 - 2000; 2001 - 2004 and 2005 - 2008, for Mrs. \*\*\* (\*\*\*) \*\* ; Confirmation for the basic salary issued by the SII for the years 1998 - 2000; 2002 - 2003 and 2004 - 2006, for Mr. \*\*\* \*\*



24. Based on the declarations made and the documentation processed on file, the IQC conducted a financial analysis - with reserve - in order to verify the capacity of Mrs. \*.\* for the amount of ALL 400,000 lent to the assessee's late spouse, Mrs. \*\*\* \*\*\* in 2005, calculating only minimum living expenses according to their family composition for those years, as shown in the table below:

**Financial analysis for Mrs. \*.\* , for the period 1994 – 2005**

Income (in ALL)	Living Expenses (in ALL)	Savings Capacity (in ALL)
2,276,357	2,454,713	- 178,356

25. In reply to the results of the investigation, with regard to the source of the loan provided by \*.\* , the assessee provided a bank confirmation in which is stated that Mr. \*.\* (husband of \*.\* ) had taken two loans in 2005:

- 1) ALL 200,000 on date \*\*.12.2005 and closed on \*\*.04.2007;
- 2) ALL 200,000 on date \*\*.12.2005 and closed on \*\*.10.2006.

26. Regarding these sources claimed by the assessee the following findings stand:

26.1. Regarding the loan provided by \*.\* , it was not disclosed as a source, neither in the vetting declaration nor in the annual declarations of the relevant year. Therefore, it should not be considered as source at all.

26.2. There is no evidence that this amount was used as a source for the loan, since these two loans were not declared by the assessee in the replies of the questionnaires during the investigation. Above that, \*.\* in the Notarial Declaration, signed on \*\*.11.2022, stated that the source of the loan given to \*\*\* \*\*\* was from her and her husband's income as teachers in Lushnje.

26.3. In addition, it is does not appear very convincing that the lender would withdraw amounts from other loans and paying interest fee, in order to provide a loan to the assessee's late wife in the amount of ALL 400,000. Moreover, it was found that one of the loans was disbursed one day after the amount was given to the assessee's late wife.

27. Hence, as a result of the above considerations, it seems that the other related person \*.\* did not have sufficient income from lawful financial sources, to enable the creation of the amount of ALL 400,000, declared as being lent in 2005 to the assessee's late spouse, Mrs. \*\*\* \*\*\* . Consequently, it seems that the related person did not have income from lawful financial sources to justify the investment made in 2005.

**28. As a result of the above analysis, the IOs consider that the assessee couldn't discharge the burden of proof in relation to the legitimate source of the loan in the amount of ALL 400,000 which was used as a source by the assessee's late spouse for the purchase of the shares in " \*\*\* " sh.a.**

29. The IQC panel concludes in paragraph 30.3 of its decision that:



"...., after reflecting the changes which were supported on the legal justifying documentation, referring to the financial analysis final result – the Commission finds that 2004, 2005, 2006, 2007 and 2009 are presented with negative balance of funds, in the accumulated total of – 1,577,274 ALL....".

30. In the light of the above-mentioned considerations, in IOs view, the financial analysis of the assessee's assets would present a higher amount<sup>16</sup> of the negative balances for the period 2003-2016.

31. Therefore, IMO would like to point out the need for a comprehensive and accurate financial analysis to be carried out in this case.

### 2.3 Other issues concerning the asset assessment

32. It was found that when the assessee filled out the Vetting Declaration his children (assessee's related persons) owned shares of several real estate properties<sup>17</sup>, which they inherited according to the Statement of Intestate Succession, through their mother from their grandfather, \*\*\* (the father of their mother, who passed away on 15.4.2007). The assessee's children gained ownership by inheriting the shares of their mother, the late \*\*\* (\*\*\*), who passed away earlier (on 20.06.2006).

33. The assessee's children did not disclose their proportionate shares in these assets in the vetting declaration.

34. In its reasoning concerning the undisclosed assets of the assessee's related persons, the IQC states that: "the assessee, in the capacity of the legal representative of his children, through the notarial declaration, dated \*\*.03.2009, has relinquished any rights over the agricultural land and the fuel building in the overall joint ownership of the household, where it was explicitly stated that those shares go to the benefit of their uncle \*\*\*".

<sup>16</sup> The negative balance identified according to IMO's calculations at least, (ALL 1,577,274 [years 2004, 2005, 2006, 2007, 2009] + ALL 400,000 [not proved loan from \*\*\*] + ALL 342,054 [in case the apartment will be calculated as purchased in March 2016 as declared and evidenced] = total negative balance ALL -2,319,328)

In case the apartment will be calculated as purchased by assessee in the year 2003, then the negative balance identified according to IMO's calculations will be (ALL 1,577,274 [years 2004, 2005, 2006, 2007, 2009] + ALL 400,000 [not proved loan from \*\*\*] + ALL 5,103,776 [the purchase price of the apartment paid in 2003] = total ALL -7,081,050)

<sup>17</sup> 1) The property no. \*\*\* , type a plot of farmland measuring 3,856 m<sup>2</sup>, in \*\*\* Village in Kukes; \*\*\* owned 85,72 % of the shares of this property, whereas \*\*\* , \*\*\* and \*\*\* owned 4,76 % of the shares each. 2) The property no. \*\*\* , type a plot of farmland measuring 13,674 m<sup>2</sup>, in \*\*\* Village in Kukes; \*\*\* owned 85,72 % of the shares of this property, whereas \*\*\* , \*\*\* and \*\*\* owned 4,76 % of the shares each. 3) Asset no.\*\*\* , of the category "arable land", measuring 4,406 m<sup>2</sup>, located in \*\*\* , Kukes, owned by \*\*\* 85,72 % while \*\*\* and \*\*\* have 4,76 % each. 4) Asset no. \*\*\* , of the category "arable land" measuring 3,612.5 m<sup>2</sup> located in \*\*\* , Kukes, owned by \*\*\* 85,72 % while \*\*\* and \*\*\* have 4,76 % each. 5) Asset no. \*\*\* (\*./#/\*) of the category "plot of land", measuring 1,322.5 m<sup>2</sup>, and a fuel station, with a construction surface area of 220 m<sup>2</sup>, located in \*\*\* , Kukes, owned by \*\*\* 83.33 % while \*\*\* , \*\*\* and \*\*\* have 5,56 % each.



35. To be noted that paragraph 2 of Article 191 of the of Civil Code provides that the “*Relinquishment of immovable property ownership to the benefit of another is valid when made by notarial act and registered*”.

36. This provision provides for a particular form of transfer of ownership and conditions this form with a notarial act and relevant registration for the purpose of validity<sup>18</sup>. Neither in response to the results of the investigation, nor in the hearing has the assessee presented evidentiary documents to prove the registration of his children’s relinquishment of these assets.

37. Moreover, during the administrative investigation, it was established that in 2018 (*after the submission of the vetting declaration*), the assessee’s related persons have transferred<sup>19</sup> these assets in favor of their uncle \*\*\*\*.

38. Therefore, for the purposes of the vetting process, it must be concluded that the assessee’s related persons still enjoyed real estate rights over these assets (*land and the building*) in \*\*\* Village in Kukës, at least until 2018<sup>20</sup>. The Commission should have, therefore, ascertained and analyzed this fact, concluding that these assets should have been disclosed in the vetting declaration.

39. In addition it was established that the assessee as being part of the agricultural family as per certificate of date \*\*.08.1991, owns shares in two plots of land<sup>21</sup> acquired by his family of origin on the basis of the Law no. 7501, dated 19.07.1991 “*On land*” (AMTP no. Register \*\*\* , dated \*\*.11.1991).

40. The assessee disclosed his proportionate shares neither in the PDA nor in the vetting declaration.

**41. Considering the above, the IOs deem that failure to disclose the proportionate share of his assets and related person’s assets, both, in filling out the vetting declaration and in the annual declarations over the years indicates an inaccurate declaration and failure of full**

<sup>18</sup> Please see Decision no.\*\* -2018-\*\*\* ( ) of the Civil Chamber of the High Court.

<sup>19</sup> During the month of February 2018, \*\*\*\* - representing also the three children of the assessee by proxy, sold some assets such as arable land to “ \*\*\*\* ” shpk, profiting a total of 30,000 euros.

On\*.12.2018 \*\*\*\* , \*\*\*\* and \*\*\*\* , represented by citizen \*\*\*\* , signed a statement with no. \*\*\*\* rep., no. \*\*\*\* col., with object “*relinquishment without consideration / free of co-ownership of real estate*”, specifically for assets with no. \* /\*/\*, CZ \*\*\*\* , type “land + fuel building” with an surface area of 1,322.5 m2, on which is built one floor building with a construction area of 220 m2, as well as 3 of the 4 other assets in which they had shares, specifically: land with No.\*\*/ \*( property \*\*\*\* ) with a surface of 13,674 m2, no.\*\*/ \*(part of the property \*\*\*\*) with a surface of 2,916 m2, no.\*\*/ \*(part of the property 1602) with a surface of 3,158.5 m2,) all these properties were transferred to their other co-owner \*\*\*\* in 100%.

<sup>20</sup> Moreover during the administrative investigation, the IQC found that one of the assets, the property No.\*\*\* , consisting of a 3,856 m<sup>2</sup> arable land property, stills remains in the joint ownership of \*\*\*\* (85,72 %), \*\*\*\* (4,76 %) \*\*\*\* (4,76 %), and \*\*\*\* (4,76 %). See paragraph 29.3 of the IQC decision.

<sup>21</sup> By letter, Kukës LIPRO Office with no.\*\*\* /\* prot., dated \*\*.11.2022 (administered by IQC with protocol no. \*\*\* /\* prot., dated \*\*.11.2022, it is confirmed that the following properties are registered in the name of the assessee’s father Mr. \*\*\*\* , namely:

- 687 m2 of farmland, property No.\*\*\*/\*, Cadastral Zone No. \*\*\*\* , in the village \*\*\* , Kukës. This land is registered to the assessee’s father, the late Mr. \*\*\*\* ;
- 1,437 m<sup>2</sup> of farmland, property No.\*\*\* /\*, Cadastral Zone No. \*\*\*\* , in the village \*\*\* , Kukës. This land is registered to the assessee’s father, the late Mr. \*\*\*\*.



disclosure of assets, *a contrario* to Article 33, para. 5, letter "a" of Law no. 84/2016. This finding alone may not amount to the gravity of a dismissal offence, but added to the totality of the relevant factual circumstances presents an additional negative element in the overall assessment of the case<sup>22</sup>.

#### 2.4 Concerns related to the proficiency assessment

42. The IQC decision on proficiency issues appears to lack adequate reasoning as the analysis of cases on which the burden of proof was shifted to the assessee with the results of the investigation as well as the explanations of the assessee on the relevant findings are not elaborated at all. Therefore, it is not clear how the IQC reached its conclusion on these issues.

43. IMO would like to draw the PCs' attention to the cases/complaints identified as follows:

- Complaint filed by citizen \*\*\* \*\* ;
- Complaint filed by the citizen \*\*\* \*\* ;
- Complaint filed by the citizen \*\*\* \*\* ;
- Complaint filed by the citizen \*\*\* \*\* ;

44. The above denunciations concern the professional deficiencies in handling the cases as indicated in relevant court decisions on the investigation performed by the assessee, such as lack of legal knowledge; failure to deliver all necessary investigative actions, which fall in contradiction with the requirements provided in Article 73 and article 74 of Law no. 96/2016.

45. **After studying the explanations and the documents provided by the assessee, the IOs consider the findings unrebutted by the assessee. The latter can be relevant either to assess the prosecutorial capacity of the assessee in the meaning of Article 73 and 74 of Law no. 96/2016, as a sub-indicator in the proficiency evaluation of the assessee or to be considered in the overall assessment of the case under art. 4, para 2 of the Vetting Law.**

46. **Based on the above, the IOs deem that the deficient reasoning of the IQC raises doubts whether all the findings are fully addressed and properly evaluated, therefore, a thorough and comprehensive assessment should be performed with regard to the proficiency component.**

### 3. Conclusions

47. The IOs deem that the information and documentation gathered through the administrative investigation demonstrate a concealment of an asset located on " \*\*\* \*\* " Street, in Tirana through the husband of the sister of the assessee \*.\* Hence, the IQC should have reached a different conclusion, in line with what has been presented in this Recommendation. For that matter

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<sup>22</sup> See, for the impact on the public trust of similar situations of inaccuracies, *mutatis mutandis*, AC 2/2020, para 24.5; 25,3



the IQC decision is deficient in arguing on the matter and in accepting the assessee's version, which led to his confirmation in office.

48. As shown in this Recommendation, a financial analysis focused on the other related person <sup>\*,\*</sup>, shows a lack of legitimate sources to provide the loan in the amount of ALL 400,000 to the assessee's late wife, which was used as a source for the purchase of the shares of the company " <sup>\*\*\*</sup> " *sh.a* in 2005;

49. Moreover, a comprehensive and accurate financial analysis is needed to be performed by SAC in order to identify whether the assessee had sufficient lawful sources to create the assets and pay for the expenses incurred over the years, approached under the angle of the inaccurate statements done by the assessee in his periodical annual declarations and in the vetting declaration.


50. IMO believes that the scope of the appeal should also include evaluation of the IQC's findings on the proficiency assessment, so that the Special Appeal Chamber could carry out a thorough and comprehensive assessment of the casefiles handled by the assessee, and received based on the public denunciations, in consideration (*inter alia*)- of the provisions of art. 41(3)(4) and art. 4(2) of the Vetting Law.


51. IOs conclude that a proper consideration of all elements will most likely result in a dismissal of the assessee and in view of the above, the IMO recommends an appeal against the IQC's decision in this case.

Respectfully submitted,

  
International Observer



  
International Observer

  
International Observer