



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

Prot. No. 145/1

Tirana, 09/03 / 2023

To the
Public Commissioners
Bulevardi "Deshmoret e Kombit", Nr. 6
Tirana



Case Number **ADC/TIR/1/10**
Assessee **Erarbër MADHI**

RECOMMENDATION TO FILE AN APPEAL

according to the Constitution of the Republic of Albania, Annex 'Transitional Qualification Assessment', Article B, paragraph 3, letter c

Introduction

The Assessee Erarbër Madhi holds the office of Judge in the Administrative District Court of Tirana. He is assessed *ex officio* pursuant to Article 179/b, paragraph 3 of the Constitution of the Republic of Albania.

The Re-evaluation process was carried out by the Independent Qualification Commission ("IQC") based on three criteria: assets, background and proficiency. Upon administering the reports of the auxiliary bodies, thorough investigation of the case, 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 10 February 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 13 February 2023.

The undersigned International Observers, 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.

Grounds for the recommendation

1. The criticalities in the case of assessee Erarbër Madhi revolve around the assets which he inherited on **05.2019 from his mother *** **

Namely:

- a) the apartment of 124.7 sqm located in Tirana, *** ** Street, admin. unit no.**, building no.**, entrance ** *** ** had bought this asset on ** 04.2012 for the price of 16,776,450 ALL;
- b) a bank account of 4,490,000 ALL resulting from the maturity of treasury bonds which *** ** had acquired on 5.1.2009 at the value of 4.000.000 ALL.

The compound value of these two assets amounts thus to ALL 20.776.450 at the moment of purchase.

The Independent Qualification Commission at the end of the investigation reached the preliminary conclusion that these assets could not have originated from income of the assessee's late parents *** ** and *** ** (as he claimed), but rather from his own undeclared sources.

Thus, the IQC notified to the assessee that under article 52 Law 84/2016 and article D, para 5, of the Constitution Annex he had the burden to prove the origins of these assets.

2. The International Observers deem that the case file contains objective and consistent evidence, of circumstantial nature, that it was the assessee to provide the source of creation of the assets and that he was unable to dispel the burden of proof resting on him.

In fact:

- The two assets in question are of significant value.
- The assessee is the only son of *** *** and *** ***. The former passed away in the year 2005 and the latter passed away in the year 2019.
- The treasury bonds and the apartment had been acquired by *** *** , respectively, in 2009 and 2012.
- The assessee is the sole legal heir of his mother.
During her lifespan their mutual ties were always maintained, and the assessee eventually inherited the assets in the year 2019.
- *** *** could not possibly have generated sufficient income to purchase the assets. Her salary as teacher and her pension were negligible in comparison to their value. It must be noted that the assessee, on the occasion of the first, second and third questionnaire, refused to respond to the IQC's queries related to the mother's sources of income, alleging that she could not be considered as a person related to him pursuant to Law 84/2016.
Eventually, on the occasion of the fourth questionnaire, the assessee stated that the money used by the mother to purchase the assets had been inherited by her from her husband *** *** in 2005.
- *** *** could not have earned income in the amounts and modalities alleged by the assessee.

In fact:

- o *** ***'s income from the Ministry of Defence (net 1,898,399 ALL for the whole period 1997 to 2005 in the capacity of Colonel, retired in 2002) was barely sufficient to cover the family's living expenses.
- o The International Observers accept that *** *** , technical expert in the field of chemistry, participated in several international conferences and working groups on behalf of the Albanian State. However, the assessee's allegation that his late father could have earned and saved astronomic *extra* income for such kind of activities (totaling up to 511.000 US\$ + 2.640.000 ALL in a timespan of around 10 years) appears *per se* preposterous, in light of the sheer amount claimed
Some further details confirm the criticality of the assessee's allegation:
 - The assessee claims that his father for nine years (1996-2005) earned at the same time two (and even three, between 1998 and 2000) *stable* monthly salaries, each one of a significant amount¹, on top of his normal salary as army Colonel. This fourfold regular work commitment (and salary) appears extravagant.
 - The Ministry of Defence of Albania, in charge of ordering missions and deployments of Army officials, did not confirm either the assessee's

¹ In particular, the assessee claims that for nine years, from 1996 to 2005, his father earned 2000 US\$ per month from the NATO ETWG Group (totaling 216.000 US\$) and in the same period additional 1.500 US\$ per months from the Organization for Prevention of Chemical weapons (totaling 148.000 US\$), plus (between 1998 and 2000) an additional salary of 2000 US\$ per month from NATO's working group on low radiation level in military operations.

allegations about several stable long-duration work relationships with third organizations, or the existence of any monetary compensation².

- The MoD did confirm that it did not pay any additional compensation to the assessee in conjunction with expert missions abroad.
 - The assessee claims that 35.000 US\$ were earned additionally by his father in the form of per diems. Even though the number of his missions abroad remained unclear, it is a fact that the related per diems cannot be considered as savings (considering their function of coverage of daily costs). The jurisprudence of the Appeal Chamber in this sense is clear.
 - There has never been any bank trail of these alleged extra incomes. The sums did not even emerge on the occasion of ***'s succession, when allegedly they were left to ***.
 - The assessee, during the public hearing, claimed that no taxes were paid on these additional incomes, because they were tax-exempt due to their source. The IOs disagree with this argument³, which appears rather an ex-post justification. They deem that the absence of even a minimum tax payment is a further hint against the existence of the income.
 - The assessee specifically pointed at his father's alleged income from international organizations as the source for the creation of the mother's assets. Further (significant) sources of income of the father were neither stated by the assessee nor found through investigation.
- The documents of the case file reliably show that *** and the assessee lived at the same address in Rruga ***, even after the assessee formally departed from the mother's family certificate in **4.2012⁴. It is therefore surprising - and

² The Ministry of Defence (see communication prot. ***/**f* October 2022) provided the IQC merely with two orders, whereby *** was commanded to collaborate with the Stability Pact for Southeastern Europe in 2000 and to participate in study activities abroad in 1998.

Significantly, upon request of the IQC, the NATO representative of Albania clarified that "*the Military Mission of the Republic of Albania to NATO possesses no data that ... *** has been employed by the Military Mission of the Republic of Albania to NATO or the International Military Staff as a representative of Albania at NATO structures.*

*During 1995 – 2002, as an active member of armed forces, Colonel *** might have represented and followed the Working Group for Low Level Radiation in NATO Military Operations. In all instances that he has participated in these meetings, his financial benefits were paid based on the order of the Minister of Defence for sending the employee on service abroad."* The financial benefits paid by the Ministry of Defence have been considered by the IQC in its analysis.

³ The IOs concur that expert fees paid by international organizations (including NATO) to technical experts are not by default tax-exempt in the Country which is seconding, deploying or sending the expert. International agreements normally grant tax exemption, but only with regard to the hosting country, with no prejudice for tax obligations of experts towards the respective sending countries. Furthermore, *** was not part of NATO personnel (and Albania was not even part of NATO at that time).

⁴ This conclusion is based:

- On the official statements filed by *** with her banks (in 2009 with the Bank of Albania, when she bought the treasury bonds; in 2014 with ***; in 2015 with *** Bank);
- On the official declaration of residence made by *** to the Court of Tirana on the occasion of a lawsuit.
During this trial in 2006 she (in the capacity of plaintiff) had declared as her address the same declared by the assessee in his periodic HIDAACI declarations. It is significant that in this lawsuit *** asked to be allowed to live in the apartment inherited by her and her brother from their father. Thus, it is difficult

suspicious – that during the vetting investigation, the assessee tried to radically contradict this previously undisputed state of play, by affirming:

- that he and his mother (since 2005) always lived in separate addresses. In the standard questionnaire, the assessee stated that he had been living alone “since 2004”.
- that throughout his career he had “never stayed or used (his) parents’ home. Since the moment of separation in 2004 onwards, (he had) always lived in a rented property at the address that (he had) duly declared to HIDAACI. Throughout the period of (his) career as a judge, (he had) never stayed or used the properties of (his) late parents”⁵.
- that his relationship with his mother had become cold and distant and therefore he was completely unaware of the financial and real estate investments she had been undertaking⁶.
- That when he worked as a judge in Vlora between 2005 and 2013 he rented there an apartment for the sum of 10.000 ALL per month (contrary to what he stated to HIDAACI inspectors in 2014)⁷.

This radical change of version by the assessee is questionable, because it runs against several previously given official statements (including the one given to the HIDAACI inspector, as such protected by the sanctions set forth by article 38 of law 9049/2003 on ILDPKI⁸).

The new version is also logically inconsistent, because on the one side the assessee maintains that the assessee’s relationship with his mother had become cold and distant, but - on the other side – he affirms that his mother unilaterally (and apparently without consulting the assessee) took the initiative to provide the assessee’s address to banks and the Court because “she felt certain that (over there) she would receive (the communications)”.

The IOs note that such bizarre change of version can find reasonable explanation by arguing that after his mother had purchased assets which she could not afford, the assessee concocted to artificially distance himself from her. Not by chance, the official separation

to accept the assessee’s claim that his mother had lived in this apartment, at least until 2007 (when the first instance decision was issued) or in 2009 (when the decision became final).

- On the statement made by the assessee himself on * August 2014 to HIDAACI inspector Albana Cami⁴. It is interesting to note that on this occasion the assessee declared that this apartment was being rented by the mother and the expenses were paid by her. He also added that when he was a judge in Fier and Vlora, he mostly “came back every night in Tirana” and sometimes (in Vlora) he stayed at friends without compensation.

The above-mentioned statements and documents (both from the assessee and from her mother) are fully consistent and detailed about their common place of living.

⁵ See the hearing minutes.

⁶ *Ibid.*

⁷ When asked by the HIDAACI inspector, the assessee stated as follows: “During the period I served as judge in Fier and Vlora, I used to go and return every day, and in some cases I lived at my acquaintances without rent”.

⁸HIDAACI inspector *** ***, upon interrogating Erarber Madhi on * August 2014, warned him that any false declarations would make him liable under Article 38 of Law 9049 dated 10.04.2003

of the assessee from the mother's family certificate took place on ** 4.2012, only 4 days after the mother's purchase of the 124,7 sqm apartment.

Conclusions

The International Observers concur that the above factual circumstances, read in conjunction, find reasonable explanation in admitting that the treasury bonds and the apartment of 124,7 sqm located in Tirana, *** ** Street, purchased by ' *** ** respectively in 2009 and 2012, were, in reality, hidden assets of the assessee.

His contrary allegations do not enjoy the same level of rational credibility and are not proven. The issues (both in terms of declaratory shortcomings and in terms of financial analysis), and their potential consequences for the assessee, are of such relevance that they warrant a review by the Appeal Chamber.

In light of the foregoing, the undersigned International Observers

RECOMMEND

that the Public Commissioners appeal the decision of the Independent Qualification Commission of 13 February 2023 confirming Erarbër Machi in duty.

International Observer



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