



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

Prot. No. 92/1

Tirana, 16 February 2023

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



Case Number: **DC-P/TIR/1/56**
Assessee: **Mariola Mërtiri**

RECOMMENDATION TO FILE AN APPEAL

according to
Article B, paragraph 3, letter "c" of the Constitution of the Republic of Albania, Annex "Transitional re-evaluation of judges and prosecutors", Article B, paragraph 3, letter b and Article 65, paragraph 2 of the Law no. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania"

1. Introduction

Assessee Mariola Mërtiri holds the office of the prosecutor at the Prosecution Office of Tirana. She is an assessee pursuant to Article 179/b, paragraph 3 of the Constitution.

2. Summary of recommendation

The International Observers (hereafter referred to as IOs) recommend the Public Commissioners to file an appeal against the Independent Qualification Commission's (hereafter referred to as IQC) decision to confirm the assessee in duty.

Several assets, background and proficiency related shortcomings, in the view of the IOs, are not thoroughly dealt with by the IQC.

In the view of the IOs, adequate reasoning, based on a full and comprehensive examination of the facts and supporting files, would impact the assessment of the raised issues and would affect the outcome of the IQC decision.

3. The decision of the IQC

The decision of the IQC to confirm the assessee in duty was based on three pillars. Several issues related to each of the pillars remain unclear as to the investigation and examination of the available evidence, notwithstanding the explanations of the assessee and assessment and reasoning of the IQC.

During the investigation, the panel administered three findings by the International Observer, related to asset, background and proficiency shortcomings as follows:

- IMO finding with Prot. no. ***, dated July **, 2022;
- IMO finding with Prot. no. ***, dated October**, 2022;
- IMO finding with Prot. no. ***, dated October **, 2022.

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

4. Reasons for an appeal

The IOs have doubts whether by confirming the assessee in duty, the IQC has comprehensively and duly evaluated the facts, circumstances and evidence on the raised issues. In the IQC results of investigation for all questions raised to the assessee Art. 52 of the Law no. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania" (hereinafter, VL) was applied.

More specifically:

4/1 Asset related issues

a) *Financial capability of the brother-in-law **** to donate 1 million ALL.*

The assessee was asked to evidence the financial capability of her brother-in-law **** to donate her 1 million ALL, as one of the sources for the purchase of the apartment in Fier. This especially in view

of the capital investments of *** in " *** " JSC (6 million ALL) and " ***
*** " JSC (4 million ALL).

In her explanations to the results of investigation¹ the assessee substantially argued that:

(i) the financial analysis should not include the investments of *** dating back to 2002 and 2004, but only his income from salaries earned through the above-mentioned companies during 2005-2011;

(ii) the investments occurred long time before she married her husband, *** **;

(iii) the investment with " *** ** " JSC was returned after *** sold his shares in December 2004;

(iv) *** also had investments returned after the dissolution of " *** " JSC in December 2006.

The IQC reasoned that the financial analysis shall only include the income from salaries of *** during 2005 - March 2011. The IQC did not include the investments made by the donor to create capital in both companies, " *** " JSC and " *** ** " JSC and the minuses deriving from it because these investments took place many years before the donation to the assessee.

The IQC argued that having the investments included would lead to a need for investigation and assessment of all assets and income of the donor by the time he initiated work relationships and of the creation of these financial income. The IQC also, in general, referred to the Appeal Chamber (AC) jurisprudence on not extending the obligation to justify all lawful sources to the other related person, which would according to the IQC consist in a violation of the principle of proportionality. The IQC substantially found the assessee in a positive financial balance for this loan.

In the IOs' view:

(i) The employment of *** with " *** " JSC, dates back to March *, 2003² when he was nominated as administrator of the company, until June *, 2003, when he was dismissed from duty on incompetence grounds³, and substituted by his brother *** (husband of the assessee). ***
***⁴ was at the same time main shareholder of the company, with 60% of shares, amounting up to 6 million ALL. He established this company on October **, 2002⁵.

The IOs note that, amongst the sources for the donation, the assessee declared in her replies to the second questionnaire, income of *** from employment with " *** " JSC, as of 2004. Following the above, the IOs note that a comprehensive analysis is needed of the employment sources of *** , including the establishment expenses of the company, as well as clarification of the position he allegedly covered in 2004, while being fired already in June 2003 on grounds of incompetence. The IO's view is that the financial analysis should start with the donors' working relations with those two companies. Therefore, the financial analysis should start with the income of the donor from 2002 on, when he started working as a director and being a shareholder for the company " *** " JSC. *** ** registered

¹ Forwarded to the assessee via e-mail, on November *, 2022.

² See the court decision no. *** , dated March *, 2003.

³ By court decision (***), dated May *, 2003.

⁴ The acts of the company indicate that the establishing partner with 60% is *** which turned out to be the other identity of *** within the same company, during 2002-2006.

⁵ See the court decision no. ** , dated October * 2002, on the registration of the company as a legal person.

the company “ *** ” JSC with court decision (***) on October *, 2002 with himself as director and shareholder owning 60 % of the shares of the company (equivalent to 6 million ALL)⁶. Regarding his involvement of the donor with “ *** ” JCS the financial analysis should start with the year 2004: *** established the company “] *** ” JSC with court decision, dated May * 2004, and became administrator/director as well as shareholder by May *, 2004⁷. Under these facts and circumstances, the investments in both companies in 2004 and 2006 should be taken into consideration to objectively assess *** financial capability for the donation. The same goes for the employment with “ *** ” JSC, a company initially established (May 2004) by the main shareholders . *** and *** , with 40% of shares each, and administered by *** as of May 2004 until at least August 2017⁸. Calculating the salaries of *** as of 2005, would not amount to an objective, proportionate and comprehensive analysis of his sources, as required by the VL. The reasoning of the IQC that an assessment of all assets of the donor would not be proportionate, is not grounded. In this case only the relevant assets should be assessed. The comprehensive financial analysis should involve only these two companies, both of them relevant since claimed by the assessee during the investigation as sources of income of the donor.

(ii) As to the argument that the investments occurred a long time before, specifically before the donation occurred, the IOs again refer the above-mentioned arguments: by the time salaries deriving from companies are indicated as sources, and the companies are established by the same people benefiting from salaries, in few consecutive years.

(iii) The assessee claimed that the investment with “ *** ” JCS was returned to *** after he sold his 40% of shares in September 2004. The IOs note that according to the sale’s contract, the established selling price was 400.000 ALL⁹. It is to be noted that the assessee did not evidence the eventual monetary transaction. Even in case this amount was to be taken for granted and included in the financial analysis, the assessee would still result in a negative balance. As to the IQC stances on this issue, the IOs refer to the same line of reasoning as in point (i) of this section.

(iv) As to the claims of the assessee about other income of *** from the liquidation of “ *** ” JSC, the IOs note that the assessee did not submit evidence to prove the monetary transaction of this liquidation¹⁰. Again, including the alleged returned amount to *** a.k.a. *** (2.674.360 ALL) the financial, analysis, would still result in a negative balance for the assessee, given his initial investment of 6 million ALL in the company.

b) *Financial capability of the father-in-law *** to donate 1.260,000 ALL*

⁷ See the HIDACCI file, pg. 412 et seq., according to which, *** established “ *** ” JSC, together with his brother *** with 40% of shares each. *** also acted as director/administrator of the company. See also reply from the Ministry of Economy and Finance, no. prot. *** , dated July , 2020, and accompanying documents on “ *** ” JSC.

⁹ The sale’s contract with Rep. No. *** , Kol. No. *** , of September **, 2004, between *** and *** .

¹⁰ According to letter by the Ministry of Finance and Economy, with prot. no. *** , dated July , 2020, and attached documents, this company was dissolved and nominated as under liquidation through the court decision no. *** , dated December *, 2006. The amount to be returned to *** after liquidation would be 2.674.360 ALL.

The assessee was shifted the burden to prove the financial capability of *** to donate 1.260.000 ALL in 2011, especially in view of the other donation by *** to *** of 4 million ALL, invested in " *** " JSC in 2004.

In her replies to the results of investigation, the assessee substantially argued and asked as follows:

(i) To include in the financial analysis the amount of 960.000 ALL allegedly given by *** in 1994 and returned to him in 2009, as per a notarial declaration of 2020¹¹. The settlement of the loan to *** was made in cash. The parties to the loan agreement of 1994 had no obligation to keep evidence of the monetary transaction.

(ii) The notarial declaration of 2020 was to be considered an official act as to its probative value.

(iii) Not to include in the financial analysis as an expense the amount of 4 million ALL donated by *** to *** and instead to include, amongst others, income informally created by *** while in migration in Greece during 1992-1998¹².

(iv) To include income from renting and selling of the bus (minivan), registered on the name of the father-in-law.

(v) To include income from agricultural activity of the father-in-law.

The IQC's reasoning states that in the financial analysis only the donor's income from salary of his and his cohabitant from 2005 on as well as from renting out and later selling of his bus, is included. The IQC points out that the 2004 investment made by the donor was left out of the financial analysis because it took place many years before the money was donated to the assessee (the IQC refers to their stance for the above-mentioned donation by ***).

The IQC dismissed the claims about the return of the loan of 960.000 ALL and about the income from agricultural activity. The IQC did not consider the minus of 4 million ALL donated by *** to *** , by again arguing that it occurred long time before the donation to the assessee. The IQC accepted the claims of the assessee on income from the renting out of the bus and its selling, along with salaries of the donor. Thus, calculating a positive balance for this source. The IQC basically referred to the same reasoning as for the lawful sources of *** , on not assessing every asset of the other related person and also referred the proportionality principle.

In the IOs' view, the IQC did not thoroughly assess the source of creation for the purchase of the bus, which served for the rent and provided income after being sold. The bus was purchased with income from migration in Greece, which was not considered by the IQC as a lawful source of income, and which was claimed as a source by the assessee in the Vetting Declaration (VD) and through all investigation phases. The IQC did not logically reason the exclusion from the financial analysis of the donation of 4 million ALL by *** to his son, although the time when the donation and investment occurred

¹¹ Notarial declaration with Rep. No. ***, Kol. No. ***, dated June *, 2020.

¹² According to the notarial declaration issued by *** on February *, 2016, he informally worked in Greece during 1992-1998, and created approx. 6-7 million ALL.

correspond to the years when other income from salaries of the donor are counted in. In the IOs view, even in this case the AC should perform a comprehensive financial analysis of the sources.

It is also important to note that the assessee appears inconsistent in selectively asking the inclusion in the financial analysis of all income of the father-in-law, since the early 1990s, including income from employment with “ *** ” JSC. On the other hand, the assessee is asking for the exclusion from the financial analysis of minuses such as the donated 4 million ALL to her husband, or the exclusion from the financial analysis of capital investments/expenses incurred by her brother-in-law, as analyzed above.

c) Eligibility of the assessee for a soft loan and related issues

Amongst the sources for the purchase of her apartment in Fier the assessee declared in her VD a bank loan. For this purpose, she submitted the loan contract of August *, 2011. According to the contract, the loan was granted based, amongst others, on the Law on social housing no. 9232/2004.

Through the fourth questionnaire, the IQC asked the assessee to explain and evidence her eligibility for the loan. In her replies¹³ the assessee substantially referred to the bank loan contract dated August *, 2011, and to the criteria provided in Art. 4 and 18 of the Law on social housing. The assessee argued that she complied with all legal requirements because she did not benefit any asset from the Law no. 7652/1992 on the privatization of state-owned assets, did not own an apartment, did not have financial obligations towards financial institutions, did not benefit income from private activities, had a young family and was living in a rented apartment. The assessee also submitted several acts related to the application for the soft loan, all dated in 2011.

As a result of the investigation, the IQC addressed the assessee again on several issues related to her eligibility for the soft loan, with a main focus on:

- (i) the impact of the shares of her husband with “ *** *** ” JSC in her application and eligibility for the soft loan;
- (ii) whether the level of her family income complied with the provisions of Art. 5 and Art. 19/1 of the Law on social housing, apparently aiming at supporting the most vulnerable categories of beneficiaries, with very low income;
- (iii) not mentioning or submitting evidence during investigation about her application in 2010 for the soft loan;
- (iv) her compliance with the limitations set in Art. 20 of the Law on social housing, while selling her apartment in Fier in 2017¹⁴.

In her replies to the results, the assessee argued as follows:

- (i) The shares of her husband did not provide her any income and were basically lost.

¹⁴ Art. 20 “Limitations” of the Law on social housing provides as follows: 1. *The family benefitting a low-cost asset, cannot transfer its rights or rent it to another person, or rent it while settling the loan.* 2. *The family benefitting a low-cost asset, and that has settled it by becoming the owner, is obliged to not sell it for a period of 15 years. When the family for any reason, seeks to sell the asset within this time limit, it is obliged to sell it to the subject it purchased it from, and for a value not higher than the purchase value.*

(ii) In her case, paragraph 2 of Art. 19 (instead of paragraph 1) would apply, meaning that the level of maximum income to consider would not be 120% at a regional level, but the one approved by the minister responsible for social housing. The assessee also referred to her secondment during 2010-2011 which made for a temporary and not fixed level of salary. She also referred to the fact that in March 2011, when the Municipality included her family amongst the beneficiaries for the soft loan, her husband had no salary. Hence, in her view her family income resulted within the maximum level approved by the ministry.

(iii) The assessee argued that, through letter no. ***, dated November , 2022, of the Municipality of Fier, she had provided all available documents on her application, where information on her application of 2010 was missing. According to the assessee, it was up to the Municipality and not her to preserve the application file.

(iv) As to the limitations set in Art. 20 of the Law on social housing, the assessee argued that her apartment was not to be considered as a low cost one. As to the higher selling price (5.5 million ALL) than the purchase price (4.5 million ALL), the assessee explained that they did not earn anything from the sale, as the difference was due to the inclusion in the price of the furniture.

The IQC argued in its decision that the selection procedure of the assessee for the soft loan, went through all legal phases and was approved by the Municipality Council. According to the IQC the soft loan was not revoked so far by the approving bodies or through a court decision. *

Also, the IQC did not find any problems with the later sale in 2017, so within the 15 year's limitation, of the apartment in Fier. The IQC reasoned that the assessee was not in the restrictive conditions set out in Article 20 of Law no. 9232/2004 as amended.

In the view of the IOs the assessee did not provide credible and exhausting evidence about the raised issues. More specifically:

(i) The assessee did not provide explanations or evidence on whether the state body was acknowledged of the existence of her husband's share and value at the time, when selecting her for a soft loan. Although the assessee refers to that investment as being lost, no evidence was submitted by her to support this claim. On the contrary the administered acts of " *** ** " JSC show that the basic capital increased in 2004 with another 3 million ALL, meaning that the value of the shares of her husband has increased compared to the initial investment of 4 million ALL. No evidence was submitted to evidence decreases or losses of the basic capital or of the shares of her husband at the time of the application for the soft loan.

(ii) The assessee failed to evidence the maximum level of income approved by the minister responsible for social housing at the time of her application. Furthermore, the IOs note that her family income resulting from the submitted documents in 2011 (approx. 170.000-190.000 ALL/monthly), is higher than the one resulting from the decision of the Municipality of Fier, dated March **, 2011, which included the assessee amongst the beneficiaries for the soft loan (150.000 ALL/monthly). Even if the latter figure were to be considered for the purpose of the application, the assessee's family income *per capita* would be very high compared to other beneficiaries.

(iii) Her explanations about the responsibility of the Municipality to preserve documentation, including her application as of 2010, is merely declarative and does not explain, why she neither disclosed

her application in 2010 to the IQC, nor provided explanations about why those documents could not be retrieved.

(iv) The Law on social housing, and especially chapter V on low-cost assets, is clearly and fully dedicated to low-cost assets. Even paragraph 2 of Art. 19 of the law, recalled by the assessee in her replies to the results, clearly refers to this category. Further to this issue, the IOs also note that the assessee appears to have sold the apartment while still continuing to pay off the loan rates in the coming years¹⁵. Assessee's explanation that the higher selling price was due to the in the sale included furniture, is not supported by the content of the sale's contract, in which no furniture is mentioned¹⁶.

Following the above, the IOs note that the IQC neither analyzed and reasoned upon the raised issues, nor argued upon their compliance with the law. Thorough investigation of relevant issues such as the exact level of income for applicants during 2010-2011, for soft loans, might also raise questions about ethical issues.

d) Preferential price for the apartment in Fier

Questioned about the purchase of her apartment in Fier for 4.5 million ALL being a lower price than the market price 5.064.166 ALL, the assessee substantially argued that:

- (i) the price was freely determined by the parties;
- (ii) the IQC should not include in the calculations the common spaces;
- (iii) the positioning of the apartment was not very convenient, and she paid the price in a short period of time.

The IQC did not provide any reasoning in its decision.

In the IOs' view, the assessee's explanations are not convincing and supported by evidence. The price was determined in an off-the-plan contract, in which common spaces are also included. The difference between the paid price and the market value price should be considered a preferential treatment.

*e) Non-disclosure in the vetting declaration of 40% of shares of the husband at " ***
*** " JSC and lack of lawful sources*

In her replies to the results of investigation the assessee explained substantially that:

- (i) These shares belonged to her husband, were created before marriage, whereas she never benefitted from any of them. The assessee explained that the company had no activity as since 2007 and did not generate income. Amongst the reasons for not disclosing the shares the assessee mentioned the passive status of the company " *** *** " JSC as of May 2016. She also claimed in her replies that the company had no offices or administrators to take care of the liquidation of the company, whereas in her view it was up to the tax office to deal with the activity/passivity of the company.

¹⁵ See periodic declaration for year 2017, filed in March 2018. The assessee declares to have settled the loan with the bank in the amount of 143.730.60 ALL, as well as the remaining amount to be settled of 1.670.487.22 ALL.

¹⁶ Contract Rep. No. ***, and Kol. No. ***, dated December ** 2017, submitted in her replies to the first questionnaire on question 20.

(ii) As to the lack of lawful sources of creation of the shares, in her replies to the results of investigation, the assessee referred amongst others, to the informal income created by her father-in-law while in migration in Greece during 1992-1998, and to the fact that she was in objective impossibility to find documents to evidence the income, because of the long time when they were created (19 years ago) and because the Greek state allowed migrants to legalize their staying in Greece only as of 1998.

The IQC argued substantially that the company did not generate income as of 2007. The IQC reasoned further that the commercial activity of the related person (assessee's husband) is neither related to the assessee, nor to the exercise of her duty. The IQC reasoned that since the income did not even bring benefits to the joint family economy, it cannot constitute a reason for taking any disciplinary measure against the assessee.

Regarding the income generated by the father-in-law *** from work in Greece, the IQC reasoned that the assessee met the criteria of objective impossibility considering that the work was performed during 1992-1998 and the Greek state provided the opportunity to legalize the emigrants' work only in 1998. Concluding that Art. 32/4 of the VL on the objective impossibility should apply. The IQC reasoned that given the fact that assessee's husband contributed to this company in 2004, long before the marriage with the assessee hence, the adjudication panel could not penalize the assessee in the framework of the vetting process.

In the IOs' view:

(i) Although the assessee claimed a passive status of the company as of 2007, this company generated salaries for *** and *** until 2010¹⁷. These salaries were claimed by the assessee as sources for the donation in 2011. Assessee's claim that the company had no offices or administrators to take care of the liquidation of the company, and it was up to the tax administration to deal with the activity/passivity of the company is unclear. After all it does not clarify that her husband as the main shareholder, and her brother-in-law as the administrator of the company, had less responsibility than the tax administration on the activity and state of affairs of the company.

(ii) The IOs note that the assessee admitted that the income of the father-in-law in Greece was informal. As such this should lead to the conclusion that whatever the father-in-law earned in Greece is unlawful, so it neither can be claimed as lawful income nor as objectively impossible to evidence.

The IOs note that all the above mentioned, along with the lack of a comprehensive and thorough assessment and reasoning by the IQC of all raised issues and compliance with the law, should be subject to review by the AC.

f) Lawful sources for the vehicle Audi

The assessee declared in the VD as sources for the purchase of this vehicle, income of her husband as administrator of ' *** ' JSC, in the amount of 70.000 ALL/monthly, and family income. She also declared in the VD that the Social Security Institute attestation indicated only the paid contributions.

The IQC investigated this asset and found that the paid contributions did not comply with the salary that the assessee declared in the VD. The attestation by the Social Security Institute showed a lower salary of

¹⁷ See Social Security Attestation with Prot. No. **, dated *.01.2017.

the husband, namely 10.000-14.000 ALL monthly, corresponding to the minimal fiscal salary. The IQC found that the assessee did not accurately declare the monthly income of her husband as administrator of " *** " JSC. Following this, the IQC asked the assessee to evidence the financial capacity of her husband to purchase the vehicle.

In her replies to the results of investigation, the assessee substantially argued that:

(i) In her replies to the fourth questionnaire, she explained that paid contributions corresponded to the minimal salary, whereas part of the salary was paid to her husband in cash. Therefore, according to the assessee, her statement in the VD was accurate.

(ii) Family income mentioned by her in the VD amongst the sources, was to be considered the salary of the husband as a police officer in 2001-2002.

(iii) She did not use this vehicle as of 2011.

The IQC substantially concluded that the assessee did not accurately disclose the salary of the husband. On the other hand, according to the IQC, the raised issues would not suffice as to directly charge the assessee with a disciplinary measure.

IQC further reasoned that the said asset was created several years before the assessee's marriage and before she assumed office as a magistrate. The IQC pointed out that the asset considered a personal asset under the Family Code and did not belong to the community marital regime. The IQC noted that although the assessee did not correctly declare the husband's salaries as an administrator of the " *** " JSC company, it concluded that this vehicle asset did not bring any benefit or increase to the assessee's marital property regime.

IQC concluded that the problems concerning the related person's assets that were created before the marriage to the assessee, are not considered sufficient as objective and proportional grounds established in this process to directly impose disciplinary measures on the assessee .

In the IOs' view:

The assessee did not accurately declare her family income in the VD. The assessee stated in her VD that *the attestation by the Social Security Institute reflected only the paid contributions*. She also declared in the VD that *the salary was 70.000 ALL*. Whereas the attestation by the Social Security Institute indicated not only the paid contributions, as the assessee declared in the VD, but also the salary based on which contributions were paid. This turned out to be the minimal fiscal salary.

Furthermore, cash payments of salary are not convincing evidence about the declared received amount of cash, or about the lawfulness of the source. Instead, cash payments could indicate a questionable attitude towards tax obligations, concerning the husband, especially in view of his position as administrator of the company.

Further to this issue, the IOs note several shortcomings resulting from the acts of " *** " JSC, related to the double identity of *** , also referred to as *** and the acknowledgment of the husband of the assessee of this circumstance while acting as the administrator of the company.

This information should be taken into consideration in an overall assessment of the case.

4/2 Background related issues

- a) *Non-disclosure of an inappropriate contact in the background form*

The investigation by the IQC¹⁸ showed that the assessee withdrew on April **, 2015, from the criminal proceeding no. ***/2012¹⁹. This proceeding involved Mr. ***/** and his family members, investigated for money laundering. In her recusal letter the assessee referred to the proceeding against ** and his family members about suspect monetary transactions; to the off-the-plan contract she and her husband signed in 2011 with Mr. **, brother-in-law to Mr. **; and to the selling contract of 2012 for the same asset, signed with Mr. **. The assessee also argued that because of this contractual relationship, any decision-making of hers in the case would appear biased. The administrative investigation also showed that Mr. ** was convicted in Italy since 2004 for organized crime related offences²⁰.

In view of the abovementioned, the IQC found that the assessee could have had an inappropriate contact with a person involved in organized crime, which was not disclosed when she submitted her background form in 2017. The IQC asked the assessee to provide explanations.

In her replies to the results of investigation, the assessee substantially argued that:

(i) She and her husband never knew or met Mr. **. Her husband signed the sales contract where Mr. ** was representing the selling party. Her husband signed the contract before the notary, without meeting Mr. **.

(ii) It was not clear to her in which section of the background form she should declare the inappropriate contact.

The IQC argued substantially that it did not find any fact or circumstance confirming the eventual inappropriate contact of the assessee or her husband to Mr. **. Even the eventual contact of her husband with this person while signing the contract would be an isolated case and only to conclude to a casual contractual relation. Mr. ** was appointed as representative of the selling party. The IQC also referred to the definition provided in Art. 3 of the VL on the inappropriate contact, to conclude that it did not find any meeting, electronical or of any other kind of communication including meetings/communications not in compliance with the duty of the assessee.

In the IOs' view the explanations of the assessee are inconsistent with the administered data²¹. More specifically:

(i) The assessee was reminded of her acquaintance to Mr. ** three years after having signed a sale's contract with him²², an acquaintance that made her recuse herself from a criminal case. In her replies to the investigation the assessee mentioned the apparent conflict of interest that she was trying to avoid.

The IOs note that a contact is considered inappropriate for an assessee, even when it is attributed to the

¹⁸ See the reply letter of the prosecution office of Fier no. **, dated **10.2021, and accompanying documents.

¹⁹ As per documents in the administered file, the case was registered in 2012 and was initially assigned to another prosecutor. See decision of the head of the prosecution office dated **3.2015 substituting the prosecutor of the case with the assessee and accompanying documents.

²⁰ See decision no. **-2014- ** (***) of the High Court of Albania.

²¹ See motivation in her recusal request.

²² The sale's contract was signed in 2012, the criminal case was registered in 2012, whereas her assignment to the case and recusal request were submitted in April 2015.

related person. At the time of her recusal the assessee did not appear to see her position as detached from the case as she claimed during her vetting procedure. Her motivation to the head of the prosecution office in 2015 about her recusal is inconsistent with the claims of not knowing or of having nothing to do with Mr. ***. Furthermore, the sale's contract terms do not appear to support her claims about never meeting Mr. ***²³.

(ii) As to the section where the inappropriate contact was to be declared, the IOs note that paragraph "d" of part V of the background form, which is to be submitted by the assesses, instructs assesses on how to fill the form, through the following formulation: *Are you acknowledged that one of your family members has had inappropriate contacts with persons involved in organized crime? If yes, please provide explanations.*

Furthermore, the IO's note that the IQC has not examined the explanations of the assessee as well as the facts and circumstances of the case in the light of Art. 38 "Standards of the background assessment" of the VL, with particular reference to:

- the circumstances to consider for the assessment, as provided in paragraph 4, letter "b" of this article, reading as follows: *the assessee or the related person has had a non-occasional communication with a person involved in organized crime;*
- the eventual presence of mitigating circumstances, as provided in paragraph 5 of the same article, in the case at hand.

The IO's also highlight the need for an accurate assessment of the inconsistencies displayed by the assessee while allegedly dealing with an apparent conflict of interest in this case, versus the standards she claimed and applied in several other cases analyzed in the proficiency part of this recommendation, concerning the Municipality of Fier.

b) Actual inappropriate contact(s) with persons investigated by the Special Prosecution Office Against Corruption and Organized Crime (SPAK) in the framework of the so called "Incinerators' affair"

Administered investigation files showed that the assessee and her husband have family, business-, employment and eventually social relations to ***, **, ***, and *** ***, all investigated by SPAK for organized crime offences in the framework of the incinerators' affair²⁴.

More specifically:

- *** and *** established and exploited companies together since 2004. *** also established, exploited together with or worked for *** and *** during 2003-2010²⁵.

²³ The contract no. *** rep, no. ** kol., dated April *, 2012, reads as follows: *Today, in Fier, on April *, 2012, before me the notary ***, with notary office near the District Court of Fier, the citizens, in the quality of the parties, personally presented asking for the drafting of this selling contract ...*

²⁴ See the Annex to the IMO finding dated July, 2022.

²⁵ See data on " *** " JSC, " *** " JSC, ' *** ' Ltd (*** worked for the latter, during April-December 2007, while the company was managed by ***).

- *** purchased from *** shares of “ *** ” ltd in 2007, which sale was declared by the assessee as one of the sources for the donation from *** in 2011;
- *** worked for *** for the period March 2011 – February 2013;
- *** and *** established and/or ran together “ *** ” ltd and “ *** ” ltd. These companies are investigated by SPAK as of November 2020 in the framework of the incinerator’s affair.
- *** acted as representative of “ *** *** ” ltd (based in Amsterdam), mother company to “ *** *** ” ltd based in Tirana. The mother company applied for and won a concessionary contract in Tirana related to waste management, whereas the daughter company “ *** *** ” ltd is the one signing and implementing the concessionary contract. The administered acts of investigation show that “ *** ” ltd owned 100% by ***, is one of the establishing shareholders of the mother company “ *** *** ” ltd²⁶. Furthermore, according to the statute of the daughter company “ *** *** ” ltd, baring the signature of ***, the mother company is the one running, administering, and benefiting from the activities of the daughter company.^{27,28}
- *** started working for the daughter company “ *** *** ” ltd, in 2018, until August 2022. Data from Social Security Institute document²⁹ indicate a very high salary.

Detailed and further data on the relations between the assessee, her husband, in-laws and people investigated by SPAK, are referred to in IMO’s findings and relevant annex.

The investigation further showed the following dates and events:

- In January 2016 the assessee and her husband traveled to Vienna together with ***
- In her replies to the standard questionnaire the assessee declared to have travelled in 2018 to Vienna to visit her brother-in-law for health reasons.
- As of 2018, “ *** ” ltd (100% owned by ***), “ *** ” ltd (owned for 100% by ***), “ *** Fier” ltd (administered by ***) are publicly referred to by media and MPs as involved in the incinerators’ corruptive affair.
- In January 2019 the assessee used a vehicle owned by ***. This vehicle had been also frequently used by ***, ***, ***, *** etc., all investigated by SPAK in the framework of the same affair.
- In June 2020 media reports of a criminal report filed with SPAK, by *** : on the affair and the key people involved in it.
- In November 2020 SPAK initiated criminal proceedings based on the criminal report of *** ***
- In December 2020 the husband of the assessee used a vehicle belonging to ‘ *** ’ ltd.

²⁶ See files from the Ministry of Tourism and Environment.

²⁷ This includes staff recruitment along with management.

²⁸ *** and ***, who served as administrators of the daughter company, are under investigation by SPAK in the framework of the incinerator’s affair.

²⁹ See letter no. ***, dated *.6.2020 from **

- In May 2021 *** was officially under investigation by SPAK in the framework of the incinerators' affair.
- In December 2021 *** was officially investigated for the incinerators' affair.
- In March 2022 *** was officially investigated for the incinerators' affair.
- In November 2022 *** and *** , were officially investigated for the incinerators' affair.
- *** worked for " *** " ltd, until August 22, 2022³⁰.

The assessee was asked to provide her explanations on the eventual inappropriate contact (s) under the abovementioned facts and findings.

(i) In her replies, the assessee substantially declined having any relation (her and her husband) to the investigated persons *** , *** and *** , apart from family relations to *** Her husband had no business relations to any of the investigated persons, apart from the one business relation in 2004 through the investment in " *** " JSC. Her husband administered for some time " *** " JSC and worked for " *** " ltd during April-December 2007 (the latter administered by ***).

She claimed that *** and *** were not her or her husband's business relations or acquaintances.

Her only connection to *** was a family connection, suspended when the assessee came to know of the criminal investigation and security measure in December 2021. The events of December 2021 could not affect her background assessment.

(ii) The assessee rejected the findings on the work relationship of her husband at one of the highest levels of the company, just because of his salary. According to her, her husband worked as director of security, with no managing/administrative or decision-making powers. And her husband was not hired by ***.

(iii) As to the use of two vehicles by the assessee and her husband, in January 2019 and December 2020, belonging respectively to *** and *** the assessee claimed, that in 2019, she did not personally use the vehicle, but just traveled with it to Podgorica. As to the other vehicle registered in the name of " *** ltd, her husband used it while working for " *** *** " ltd. The assessee explained she did not know the owner of the vehicle. According to her, following public information from SPAK, she came to know that *** was registered as a person under investigation by SPAK, for several criminal offences as of December **, 2021. Whereas *** had his name registered as a person under investigation on March **, 2022. It is from the moment of registration, that these people could be considered as inappropriate contacts under the VL. Whereas the use of the vehicles occurred in 2019 and 2020, only once, and a long time before the criminal proceedings against these people started. The assessee claimed that she never personally knew or contacted *** or *** , and that she had no contacts since a long time now with *** and *** .

³⁰ See attestation of employment by ° *** *** " ltd, on the work position of *** no. prot., dated November **, 2022.

The IQC reasoned upon the raised issues as follows:

(i) Based on administered data, *** was registered as a person under investigation on May **, 2021, for organized crime offences. *** was officially registered as under investigation for organized crime offences on November **, 2022. When the assessee submitted the background declaration none of the involved persons were under investigation or convicted for criminal offences. The IQC concluded that it did not find any inappropriate contact of the assessee or her husband to *** and *** after the registration of their criminal cases. The husband was a partner in business with his brother *** in 2004. After this, the husband worked for several companies and institutions. The IQC did not find any business, work relationship or contacts of the assessee and her husband to *** and ***.

(ii) As related to the employment of the husband, the IQC argued that the assessee accurately declared and evidenced the position of the husband and his work relationship. As of 2018 the husband was employed as director at “ *** ” ltd. The husband was not found to have had managing and decision-making powers in the administration of the company. The IQC did not find contacts of the husband to *** nor any work relationship or business relationship to this citizen.

(iii) As to the use of vehicles, the IQC reasoned that the declarations of the assessee were accurate. Following the attestation from the company “ *** ” ltd, it turned out that the company used the vehicle TR6533U (registered in the name of ***) for the period November **, 2017- March **, 2022. According to the IQC, the assessee and her husband were not found to have used vehicles of people under criminal proceedings or convicted for criminal offences.

The IQC also provided an overall assessment of the background. According to the IQC, the assessee or her husband were not found to have had contact with *** and *** after the registration of the criminal proceedings against them. In not a single case were there found inappropriate contacts to ***,*** or ***. The bodies responsible for the verification of the background did not provide any information on inappropriate contacts. The IQC did not find any contact of the assessee or her husband to persons involved in organized crime.

In the IOs' view, the series of facts and events as documented in the administered acts indicate a continuous link between the assessee, her husband, her brother-in-law, sister-in-law and father-in-law and their business partners/employers through the years (2002-2022), specifically to *** and ***.

*** and *** are investigated by SPAK for their business activities, established since 2011 (“ **,” ltd), 2014 (“ *** ” ltd) and on, as well as for the implementation of the concessionary contracts related to the incinerators, through the years.

In the IOs view:

(i) The husband of the assessee had business relations to his brother, at least until 2010, when “ *** ” JSC generated income claimed as sources for *** and ***. Even as of August 2017 *** appeared as administrator of the company while *** was the main shareholder.

*** and *** are related to her in-laws (brother-in-law, *** and father-in-law) in business/ employment activities as of 2007-2013; as of 2014-2016 when the incinerators' related

companies were established, exploited or administered by these persons; and to her husband after his employment in the daughter company “ *** ” ltd as of 2018, given *** position and involvement with the mother company.

To be also noted that for the purpose of establishing whether there are contacts to organized crime members, the background form, refers to the contacts of the assessee and his/her family members, where the terms *family members* include *in-laws up to the second level or permanent co-habitants to one of the parties*. The effects of the events of December 2021 appear of relevance for the purpose of assessing the inappropriate contact. The IOs also note that events as of 2018, when the case became public, and as of June 2020 when the case was officially criminally reported with SPAK, are also of relevance from a perspective of public trust issues.

(ii) As to the work position covered by her husband with “ *** ” ltd, the IOs find the explanations or evidence of the assessee as not thorough, or credible, to conclude that his employment was disconnected from his family, business, work, or even social connections to the people establishing, running and involved with the company. The assessee failed to credibly justify the positioning and salary of her husband in the structure/hierarchy of the company. Merely declaring that private sector salaries differ from state retributed ones does not yet justify and explain the raised issues. Merely stating that the husband was not hired by ***, does not yet explain his involvement in this company for such a long period, and beyond family and/or business connections of an apparent preferential nature.

(iii) As to the conclusions of the IQC on the use of vehicles by the assessee and her husband during January 2019 and December 2020, they again appear not thorough and comprehensive, or attentive to a possible public trust violation approach, given the high public profile of the affair as of 2018 and on. The same goes for the claims about not knowing the owners of the vehicles, given the business connections of her in laws to the owners, through the years, the employment of her husband with a company closely connected to and established by these group of people, as well as their identity publicly disclosed in the framework of the incinerators’ affair.

The IOs also note that the IQC’s investigation and assessment of the findings is not thorough and comprehensive of all facts and circumstances, of the case.

All the above-mentioned facts, circumstances, as well as lack of investigation or submission of credible and thorough evidence by the assessee, lead to a need of investigation and assessment by the AC, of the existence of inappropriate contact(s) and public trust related issues.

4/3 Proficiency related issues

*a) Criminal proceeding no. ***/2015*

On June **, 2015, two representatives of companies willing to participate in a public auction organized by “ *** ” JSC, filed a criminal report with the prosecution office of Fier. They claimed to not have been allowed to participate in the auction by the guards of ***. The husband of the assessee served as director of *** Patos, one of the centers of “ *** ” JSC. The representatives claimed that they were stopped at the gates by the guards working for “ *** ” JSC. They claimed to have arrived in time. The representatives were not allowed to enter the premises of “ *** ” JSC until the auction was over.

This led to their disqualification from the auction. According to the representatives the guards argued that they were expecting orders from the administration of the company to let people enter its premises. The same day as the auction, June^{**}, 2015, the representatives of the disqualified companies filed a criminal report with their allegations.

According to the acts administered in the file³¹, the case was assigned to the assessee on June^{**}, 2015. The assessee registered the criminal case three months and a half later, on October^{**}, 2015, for the criminal offence of “Violation of equality of participants to public bids or auctions”, regulated under Art. 258 of the Criminal Code. The assessee performed some investigative steps during July 2015, such as issuing two requests for information to “. *** ” JSC and the Public Procurement Commission. She also performed some investigative steps during January and February 2016, such as collecting information and questioning the persons allegedly involved in the case (the members of the evaluation of offers committee and the guards serving for ‘ *** ’ JSC). In March 2016 the assessee decided to dismiss the case, because according to her, questioning the involved persons did not provide any substantive evidence, whereas the guards, did not appear to be subject to the criminal provision at hand, meant for public officials instead of private guards.

In the results of investigation, the assessee was asked to explain the lack of several substantial and subsequent investigation steps in the case, such as the late registration of the case, the lack of decisions to postpone investigation, lack of investigation in due time so as to collect as true as possible testimonies and information not manipulated by time or other factors, lack of confrontation of declarations of the questioned people, lack of collection of tabulates which might have shed light on communications between the members of the commission or other high officials of the company with the guards, the lack of wiretapping to understand eventual dynamics of the involved people, lack of collection of testimonies of other participants apparently disqualified for the same reasons (out of 10 participant only one economic operator entered the premises in time, who resulted to be the winning one), eventual conflict-of-interest issues given the employment of her husband with “ *** ’ JSC as a director of *** , one of the centers of the company, being therefore at the dependencies of the administrator of the company, etc.

The assessee provided her explanations, in her replies to the results.

(i) The assessee generally referred to her investigation file. She explained that she performed investigative steps on July * and July *, which according to her were issued within one week. She referred to her workload, and to the provisions of Art. 290 of the Criminal Procedure Code of the time, which according to her did not provide time limits for performing verifications on the criminal report.

(ii) As to the lack of postponement decisions, she argued that postponement should be calculated by the time there is a registered name of a person under investigation. Whereas in this case, according to her, the case was registered without an author/name. She referred to Art. 287 of the Criminal Procedure Code, according to which: *The prosecutor notes in the register any notification of the criminal offence he receives, or he is acknowledged of ex officio, and at the same time or by the moment it results so, the name of the person to whom the criminal offence is attributed.* The assessee also argued that under Art. 323 of the Criminal Procedure: *Within 3 months from the date when the person to whom the criminal offence is attributed is noted in the register of notification of criminal offences, the prosecutor decides*

³¹ Criminal file no. *** /2015, as administered by the prosecution office of Fier.

whether to send the case to trial, its dismissal or suspension. Hence, not having a name to investigate prevented her from proceeding with postponement decisions.

(iii) As to the lack of wiretapping, she explained that the criminal case at hand was registered under Art. 258 of the Criminal Code, for violation of the equality of participants in public bids, establishing a maximum sentence of 3 years of prison. Whereas Art. 221 of the Criminal Procedure Code determined that wiretapping was possible, in cases of *criminal offences committed on purpose, with a prison sentence of not less than 7 years.* Under these circumstances, the assessee could not proceed with wiretapping as the registered criminal offence in the case at hand was below the limit set by Art. 221. As to the collection of tabulates, she explained that it would not make sense, unless administered together with wiretapping results.

(iv) As to the testimonies of other participants who were not allowed to enter the premises of the companies, the assessee basically explained that the other participants had submitted requests to withdraw documentation, and not participate in the auction.

(v) As to the non-investigation of other people such as the administrator of the company, the assessee explained that the denouncers never submitted allegations against the administrator, for her to find a legal reason to investigate a person who amongst others, did not participate in the proceedings for organizing the auction.

(vi) As to the rest of the raised findings by the IQC, the assessee generally explained that her decision making was done according to the law.

The IQC's reasoning shortly refers to the explanations of the assessee and lack of any shortcoming in the proficiency pillar, as well as lack of a conflict-of-interest issue.

In the IOs' view the assessee did not credibly explain and evidence the raised issues, whereas the IQC did not assess the inconsistencies in her replies and non-compliance with the criminal procedure rules.

(i) As to her explanations about having performed investigation within one week from the assignment of the case, the IOs note that the information she required during July (on whether the auction occurred, who participated, whether there were claims by participants and how these claims were addressed) was already part of the file as collected by Judicial Police Officers. Hence her investigation was not duly targeted or substantive, at least until October **, 2015, when she decided to register the case. References to workload by the assessee remain declarative, and not substantive. As to her explanations about no legal time limits to verify the criminal report, the IOs note that instruction no. 2/2006 of the General Prosecutor, amending instruction no. 241/2005 "*On the registration and notification of the criminal offence and of the name of the person to whom the criminal offence is attributed*", provided in point 2.2, the time-limit of a maximum of 20 days for verifying the criminal report ..., when the initial 10 days for the initial verification under point 2.1 resulted not sufficient.

(ii) As to the lack of postponement decisions, because of not having a registered name for a person under investigation, the IOs note that Art. 287 of the Criminal Procedure referred by the assessee, requires the registration of the name of the person to whom the offence is *attributed*, and not the registration of a *person under investigation*. In the case at hand, the person to whom the criminal offence

was attributed was clear from the very start, meaning the guards of “ *** ” JSC in service at the day of the auction, to start with.

(iii) As to the legal obstacle to proceed with wiretapping, the IOs note that in the criminal file there was administered a complaint³² from one of the representatives of the companies, addressing the head of the procurement entity of the company, about the way the documents of the auction was drafted, several technical specifications shortcomings, so as to raise doubts of a clientelist, discriminating and corruptive procedure, predetermining the winner of the auction. This document, along with other facts, circumstances and administered documents if carefully assessed by the prosecutor of the case, could have led to investigation of corruption allegations, the latter sanctionable up to 8 years, therefore within the limit set by Art. 221 of the Criminal Procedure.

(iv) As to the explanations about not investigating the administrator of “ *** ” JSC, the IOs note that prosecution must be *ex officio* exercised in the first place, as soon as it is acknowledged of the criminal facts. A prosecutor is professionally prepared and legally required to comprehensively investigate allegations, unlike common people who have no professional knowledge or means to define or detect criminal behavior.

(v) The rest of her explanations are not grounded or substantiated, and in the IOs view not enough to exhaust the raised proficiency issues.

The above raised issues should be carefully examined and assessed, including conflict-of-interest raised issues.

*b) Criminal report no. *** /2020*

Denouncer *** submitted a criminal report with SPAK, involving several judges and prosecutors dismissed from duty through vetting procedures, including against judge **, on grounds of *non-disclosure of assets and false declarations*. On May **2020, through letter prot. no. **, SPAK forwarded the criminal report to the prosecution office of Tirana, on grounds of competence. On May **, 2020, the prosecution office of Tirana registered the criminal report no. **. The case of judge *** was assigned to the assessee.

On May **, 2020, the assessee decided to not initiate criminal proceedings. The assessee referred in her reasoning to the IQC decision dismissing judge ** from duty, namely to *the conclusive part* of the decision where there were referred several asset related shortcomings of judge **, in terms of *insufficient disclosure, false declarations*, etc. The assessee argued amongst others that there were no concrete elements or evidence of *non-disclosure of assets or false declaration* actions by judge **, so as to initiate criminal investigation. The assessee argued that the IQC investigation was of an administrative nature, and that the IQC did not file any criminal report deriving from the administrative asset related shortcomings. Furthermore, the assessee argued that the case was pending with the AC, and that the criminally reported facts were not subject to criminal prosecution but rather to administrative review by the AC.

Following the above, the assessee was asked to explain and evidence the lack of investigation, which could have shed light on the validity of the allegations of denouncer ** against judge ** at least for the

³² Pg. 39-45 of the document 1501 (vol. 1) (3).

criminal offence of *non-disclosure or concealment of assets* ..., also in view of the statutory limits of 5 years for prosecuting this criminal offence. The IQC decision provided detailed data and information on *non-disclosure or concealment of assets*' shortcomings, not to mention the available administrative file on the issue. The assessee was asked to explain her stances about the right of citizens to file criminal reports, under Art. 283 of the Criminal Procedure, given her reasoning for dismissing the case, due to a lack of a criminal report by the IQC.

In her replies to these findings, the assessee substantially repeated the reasoning she provided in the non-initiation decision. She also argued that the claims of the denouncer were to be submitted before a court, whereas the denouncer did not appeal her decision.

The IQC reasoned substantially that the case is related to the independent decision making of the assessee, free from any direct or indirect influence.

In the IOs' view the assessee failed to rebut the burden of proof and to provide convincing explanations on the raised issues, including the disqualification by the assessee of criminal reports by citizens, as not sufficient to start an investigation; the nonperformance of the necessary investigative steps and the lack of proper reasoning for not initiating the proceedings by the assessee. The IQC failed to provide a clear stance and analysis on the case.

c) Criminal report no./*/2013*

This proceeding was registered on April */2013, after the criminal report by the Sector against Financial Crime of Fier, on:

- (i) alleged unlawful acts by officials of the Municipality of Fier in the framework of the project for the construction of the Sports' Palace during 2011-2012; and
- (ii) on the allegedly unlawful use of funds by the Municipality during 2011-2012. A previous audit on these issues resulted in several procedural shortcomings such as lack of documentation related to the permit for the construction of the Sports Palace and demolishing of the old building, lack of the urban study as approved by the by Council for the Regulation of Territory of Fier, etc., as well as lack of decisions by the Municipality on expenses it incurred during 2001-2012.

On May**, 2013, the assessee decided to not initiate criminal proceedings. The assessee referred in her non initiation decision general data on the case according to which substantially (i) the Municipality approved the construction of the Sports Place, while encountering civil conflicts by owners of private assets; and (ii) the inherited income of the Municipality (from previous years) could autonomously be disposed by the Municipality, under the Law on the organization and functioning of the local government. Meaning that the prosecution office found no elements of any criminal offence.

The assessee's investigation consisted in a single request to the Municipality, dated **.4.2013, for information and submission of documents which was missing in the file for the project of the Sports' Palace. In reply to this request, the Municipality submitted, and the prosecution office administered a decision by the Municipality issued on May**2013. This decision was indicated as a missing document by the audit in 2012.

In the results of investigation, the IQC asked the assessee to explain the lack of a reasoning for not initiating an investigation, with a special remark on the lack of investigation on the use of funds of 2011-2012, which was dismissed by the assessee through a general reference to the Law on the local government. The IQC also referred to conflict-of-interest issues.

The assessee substantially provided general references to the acts of the case; to the fact that her decision was not appealed by the party; and to the fact that her acts were subject to review by the higher prosecutor.

The IQC referred cumulatively to the case/file ***/2013; ***/2014; ***/2015; ***/2015. In substance, the IQC reasoned that the assessee was not found in a conflict-of-interest position for the examined criminal cases. The soft loan was granted to the assessee through a collegial decision of the Municipality council, whereas the assessee was not found to have had any criminal cases with any member of the Municipality of Fier.

In the IOs' view the assessee did not manage to rebut the proficiency findings. The non-initiation decision lacks substantial reasoning and no justification on the lack of investigation or how non-initiation was justified, including lack of investigation on allegations about unlawful use of inherited funds without official acts justifying these actions. No investigation or proper reasoning was given by the assessee, not even on the very late decision of the Municipality of May 2013, for a procedure occurred during 2011-2012.

d) *Criminal report no. ***/2014*

This proceeding was registered after a criminal report by *** ***, dated **/5/2014 on allegations of "Abuse of duty" and "Forgery of documents". The allegations were against the Municipality of Fier, on an alleged unlawful construction procedure and permits issued by the Council for the Regulation of the Territory of the Municipality of Fier. According to Mr. *** the Council unlawfully favored a construction company and violated his property rights. Mr. *** also filed lawsuits on the same case with the administrative courts in 2009 and 2011. On December **, 2011 the Appeals court ordered the repeal of two construction permits issued by the Council for the Regulation of the Territory and the obligation for the Council to amend them in compliance with the ruling of the court. Mr. *** reported that certain acts submitted to him by the Municipality in 2014 on the same construction affecting his property, presented shortcomings when compared to other acts of the Municipality sent to *** by the mayor in 2009. According to Mr. ***, these shortcomings raised suspicions on possible abuse of office or forgery of acts offenses³³.

On May **, 2014, five days after the criminal report was filed with the prosecution office, the assessee decided to not initiate criminal proceedings, by arguing that there were no elements of a criminal offence. The assessee instructed the denouncer to address the case with an administrative/civil court for eventual damage compensation.

³³ See file on the criminal report no. ***/2014.

The assessee explained in her replies to the results, that the allegations of *** on eventual abuse of office or forgery of documents were not part of the criminal report. She also generally referred to the content of her non-initiation decision; to the fact that her decision was not appealed by the denouncer; and that her acts were subjects to review by the higher prosecutor.

The IQC's reasoning is the same as for case ** /2013.

In the IOs' view the assessee did not credibly explain the raised issues. The IOs note that the allegations of Mr. *** as administered in the file, do refer to suspects on abuse of duty or forgery of documents offences. The non-initiation decision was taken without taking into consideration the allegations of the denouncer who sustained to have suffered damage as a result of the violation of his property rights. The assessee did not provide a reasoning for not comprehensively investigating the allegations, or conflict-of-interest related issues.

e) *Criminal report no. *** 2015*

Based on a criminal report by Mr. ***, the Police Directory of the District of Fier, filed allegations on unlawful acts of the Inspectorate for the Protection of Territory at the Municipality of Fier, on Mr. *** property. Mr. *** reported that on October *, 2015, the Inspectorate demolished a surrounding wall and some trees situated on a piece of land of 1.627 m2 registered in his name. Mr.*** claimed he did not receive any notice about the demolition. The demolition order no.**, dated September *, 2015 of the Inspectorate "On the liberation of public spaces, roads and sidewalks" was based on another order of March **, 2014, no.***, for the reconstruction of the street " *** '.

Mr. *** claimed that he addressed the Municipality by arguing that the land where the wall was constructed a long time ago was his property and could not qualify as public space. The Municipality did not reply to these claims.

As per administered acts³⁴ and content of the non-initiation decision, on July **, 2015, the Municipality Council authorized the mayor to initiate proceedings to draft a project of rehabilitation of street " *** *** " in Fier. On September **, 2015, the Council approved amongst others the expropriation and demolition of some private buildings (not including Mr. ***) and authorized the mayor to continue procedures for the project, including for the issuing of the relevant Decision of Council of Ministers for the expropriation. Through the same decision of September **, 2015, the Council authorized the Municipality to demolish the listed objects and ordered the payment of 15.000 ALL/month for *** rent, for a period of 3 years, due to the demolition of the object he used as a living place. The decision of the Council was proclaimed on September **, 2015.

After administering these acts, on November **, 2015, the assessee decided to not initiate a criminal proceeding. She argued that there were no elements of "Abuse of duty" as alleged in the criminal report. According to the assessee, the demolition of the wall occurred in order to implement the decision of the Municipality for a project of public interest, and not to favor anyone.

³⁴ See file on the criminal report no. *** /2015.

As per data from the administered files, it appeared that the order of the inspectorate to demolish the wall was issued on September^{*}, 2015, in lack of a decision by the Municipality Council on demolitions for public interest. The legal basis of this order refers to another order of 2014 for the liberation of the public spaces, in the framework of the reconstruction of another street. Under these circumstances, the reasoning of the assessee that demolition occurred based on the decision by the Council is not substantiated. Furthermore, the denouncer claimed that he was not notified of the demolition decision and that the land of 1.627 m² was in his property (property certificate of September^{**}, 2015), whereas his claims with the Municipality on this issue, were not addressed. None of the abovementioned issues were investigated, clarified, or reasoned upon by the assessee, to especially, verify whether the inspectorate acted in compliance with the law, as relates to the notification of the party, the legal cause for the demolition, whether it complied with the Law on the functioning of the inspectorate, etc.

The assessee did not provide any analysis of the actions of the inspectorate and of the Municipality *vis a vis* the compliance with the Law on the expropriation or on the development of the territory, which provide amongst others for lengthy expropriation procedures, including negotiations with the relevant private owners.

The assessee was asked in the results of the investigation to explain the lack of investigation and reasoning as per raised issues, as well as conflict-of-interest related issues. The assessee provided general explanations mainly referring to the content of her decision at the time.

The IQC's reasoning is the same as for case^{***}/2013.

In the IOs' view the assessee did not credibly explain the raised issues, which must be carefully assessed for the purpose of her proficiency evaluation.

*f) Criminal report no.***/2015*

The assessee investigated a criminal case after a report of the Municipality of Fier on allegations of "Forgery of documents" and "Abuse of office", related to assets which the Municipality was aiming to include in a project for the construction of the Sports Palace in Fier in 2011. No recusal request was filed by the assessee in this case.

The assessee substantially explained that her relation to the Municipality Council was over, after the soft loan was granted.

The IQC's reasoning is substantially the same as for case^{***}/2013.

In the IOs view, the conflict-of-interest issue should be examined along with the other ones raised in this recommendation.

*g) Criminal report no.***/2012*

The assessee investigated another case against the mayor of the Municipality^{***} and some construction inspectors on grounds of abuse of duty and destruction of property. She issued a non-initiation decision on June^{*}, 2012. No recusal request was filed by the assessee in this case.

The assessee provided the same arguments about her relation to the Municipality Council of Fier, which was over as soon as the soft loan was granted.

Furthermore, she argued about the other cases involving the Municipality of Fier, where she did not recuse herself. She explained that the mayor represented one vote, as well as a separate body from the Municipality Council. She also referred to the circumstances justifying her non recusal, namely the 2 years that had passed since she benefitted the soft loan and the changes in the composition of the Municipality Council after the local elections,

The IQC's reasoning is substantially the same as for case ^{***}/2013.

In the IOs view the assessee's explanations, as well as reasoning the IQC are not thorough or convincing. The shortcomings are not substantially explained or evidenced.

5. Recommendation

The IOs recommend the Public Commissioners to file an appeal against the decision of the IQC to confirm the assessee in duty. The appeal would enable the AC to:

- perform an accurate financial analysis where all issues at stake are clearly and duly evaluated;
- investigate and assess asset, proficiency and background related raised issues;
- take into consideration any possible unresolved issues that might impact an overall assessment of the assessee

International Observer

International Observer



International Observer