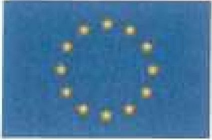
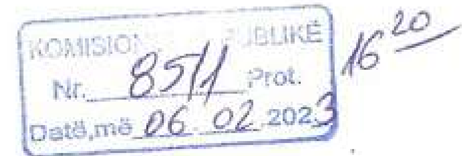


International Monitoring Operation
Project for the Support to the Process of Temporary Re-evaluation of Judges and Prosecutors in Albania

Prot. No. 61/1

Tirana, 06/02/2023



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

Case Number **DC-SHK-1-04**

Assessee **Arbër ÇELA**

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

Mr. Arbër Çela 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.

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.

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

1) There are elements that lead to a belief of the existence of more than a reasonable doubt of a concealment of assets through the co-owner (***) of the apartment of 91.91 m2 in street " *** " and that, hence, IMO believes that the burden of proof was not met by the assessee in dispelling the relevant doubts;

2) it is not possible to conclude that *** had lawful income to provide the loan of 30.000 EURO to the assessee for the purchase of the said apartment.

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

- Case concerning the defendant *** , on which the assessee rendered the decision no. ** dated **.02.2019;
- Complaint filed by *** concerning the case with claimant *** with subject "*Appeal against the decision not to initiate the criminal proceeding no. **/2012 of Shkoder District Prosecution Office*", on which the assessee rendered the decision no. ** (***), dated **.12.2014.

2. Grounds of the recommendation and their analysis

Considering the above, in regard to the asset assessment, IMO believes that there is a:

(i) lack of the legitimate sources of the assessee in the amount of **7.304.299 ALL** to finance the assessee's factual contribution for the apartment of 91.91 m2 in street " *** ", due to the

(ii) lack of the legitimate sources of the co-owner *** (further: " *** ") for the joint investment in the apartment of 91.9 m2 in street " *** ";

(iii) lack of the legitimate source of the lender *** (further: **) to provide the loan in the amount of 30.000 EUR to the assessee - which was used as a source for the purchase of the asset apartment 91.91 m2 in street " *** " by the assessee.

i) *Concerning the asset: apartment 91.91 m2 apartment in Rr. " *** "*

In the vetting declaration, the assessee declared a 91.91 m2 apartment in Rr. " *** " (Panorama). Value EUR 73.528. He declared the value of his share (50%) in EUR 36.764.[1] The same apartment was disclosed in the periodic annual declaration for the year 2013.[2]

Regarding the said assets, it must be noted that:

- According to the commissioning contract dated on **.5.2013, between the commissioning party Arbër Çela and *** for the two-bedroom (2+1) apartment with surface area of 91.91m2, in Rr. " *** ", Tirana, worth total 73.528 EUR, it was specified that the amount should be paid on the date of entry into force of the contract;

- According to the sale contract dated on **.06.2015, it was stated that the total value of the apartment 72.528 EUR was liquidated by the purchaser outside the notary's office as according to the commissioning contract;

- According to the ownership certificate issued on **.6.2015, it results registered in the name of Arbër Çela and *** , the apartment with surface area of 82.44 m2, in Rr. " *** ", with a specified share of ½;

- According to the sale contract dated on **.10.2018, *** sold her share part of the apartment to the assessee's father for 40.000 EUR;

- According to the documentation administered in the file, it has been ascertained that the following payments were executed for the purchase of this property:

  (i) Cash deposit by Arbër Çela in the account of the company *** at the *** Bank in the amount of 57.250 EUR with a description "Çela *Arbër, purchase of an apartment rep 9299 kol 1065 dt. 14.05.2013.* The declared source of funds were: *savings + borrowing;*

[1] Declared Source:
1. Bank Loan Contract in the amount of EUR 30,000.
2. Gift from parents in the amount of EUR 4,000.
3. Personal savings. The assessee co-owns the apartment with the citizen *** Share 50%.
For the financial capacity of the co-owner the assessee provided: Attestation dated **.10.2016 from the *** Chamber of Commercial, Attestation dated **.01.2017 from ** Notarial Loan Affidavit, dated **1.2017.

[2] In the Annual Declaration for the year 2013, the assessee disclosed the apartment of 91.91 m2 at the street " *** *** " with a total value of 73.528 EUR. Paid 50 % as according to the share. As a source of the apartment, the assessee declared "loan contract plus donation from the parents".

(ii) According to the confirmation of *** Bank provided in the reply of the company " *** " with the date **.05.2013, it was confirmed the description of the transaction of the cash deposit by the assessee: *"Purchase of an apartment, commissioning contract between *** shpk with legal representative Mrs. *** with ID *** and *** ID *** and Arbër Çela ID *** as according to the commissioning contract submitted at the Bank from the depositing of the above-mentioned amount";*

(iii)Cash deposit by *** in the account of the company *** at the *** Bank in the amount of 16.278 EUR at on **.05.2013 with a description " *** *total liquidation of the apartment rep 9299 kol 1065. income savings + borrowing".*

As per the above, it seems that the payment for the purchase of the apartment was not made in equal amounts by the co-owners, and the assessee contributed for the 78 % of the price. In this regard, the assessee was asked to explain[3] his contributions, and he stated the following:

*"My explanation about this question is that the EUR 57.250 deposited for " *** " sh.p.k. is part of the total amount of EUR 73.528 paid to this company for the apartment that I and Ms. *** bought that year.As I declared in the vetting declaration, this apartment was bought in co-ownership by 50% each with Ms. *** , i.e., the EUR 57.250 euro are part of the sum that we both jointly raised".*

In his comments/replies to the results of investigations, the assessee stated:

"I estimate that in the calculation of my possibility/impossibility for the purchase of the apartment, only my investment value in the amount of 36,764 Euro should be considered. As I stated in the periodic annual declarations, to the HIDAACI in 2014, in the Vetting Declaration and in response to the questionnaires, I am a co-owner in this property in ½ part and my contribution is half of the value of the apartment. [...] My co-ownership in this apartment is a co-ownership in parts and not in entirety. [...]"

Regarding the use of the apartment, the assesseee stated that[4]:

"[...] *Due to the delay in the works, we moved into the apartment only sometime from March 2015, i.e., more than 1 year late. According to the agreement, I started living in the apartment together with citizen *** Then in 2016, due to my relationship with the citizen *** our child was born unexpectedly for us (February 2016), two months later I celebrated (**.01.2016) and started cohabitation with my wife. I clarify that my cousin continued to live in the same apartment until the beginning of April 2016. So, my life in the form of sharing an apartment with the citizen *** continued for about 1 year, where each had their own personal finances.*

[3] In questionnaire nr 3 replies- received on 21.07.2022.

[4] In questionnaire replies- received through e-mail on 05.06.2021.

The IOs deem that from the factual situation there are findings concerning the real contribution of the assessee in the creation of this asset and the unusual circumstances under which the asset was created, used and sold, which lead the evaluation in the direction of the reasonable doubts for concealment through the co-owner and, as a result, it should trigger the need of explanations of the legitimate sources of the co-owner.[5]

According to the promise for sale and final sale contract, there were no provisions regarding the share part or contribution of each of the co-owners and the certificate of the ownership specified a ½ share. Art. 199 of the Civil Code of the Republic of Albania states that the co-ownership shares are equal unless the contrary is proven.

In this regard, the assessee explained in his comments/replies to the results of investigations that:

> *"Also, your definition is that according to Article 199 of the Civil Code, it is provided that the co-ownership share is equal until the opposite is proven, but the opposite of the presumption is not applicable to my case. I come to this conclusion because the opposite cannot be proven based only on the fact which person paid the amount to the bank, so such a value cannot be given to this circumstance. In this particular case, my and citizen *** share is expressly defined in the ownership certificate as well as it was declared by me in the DPI of 2013.".*

IMO considers that there's clear evidence from the information obtained by the Bank that the assessee – in reality - paid (or was in charge of) the amount of 57.250 EUR or 78% of the purchase price of the apartment.

The assessee carried over full responsibility for the justification of the sources of the amount of 57.250 EUR by placing the amount as a cash deposit in the banking system.[6] In the description made for the purpose of the bank transfer of the amount 57.250 EUR, the assessee disclosed his own sources.[7] No sources were mentioned concerning the other co-owner.

The statement of the assessee presented in his comments/replies to the results of investigations, where he affirmed that:

> *"The Commission's presumption that since the bank payment slip in the amount of 57,250 euros bears my name proves that this is my investment value, it is not based on the banking*

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[5] This conclusion is in in line with the jurisprudence of AC on the point (*see, e.g. AC decision No. 34/2019 on* , *** *** *par. 92.7; AC decision No. 20/2020 on* *** *par. 21.4; AC Decision No. 21/2020 on* *** *par. 74*).

[6] It must be noted that, according to Law No. 9917, dated 19.5.2008 for "the prevention of money laundering and financing of terrorism", Art. 12 point 3, all the transactions in cash in a value of or more than 1.000.000 ALL (or equivalent in foreign exchange) as a sole transaction or as connected transactions, should be reported by the subjects (the bank in this case) to the FIU.

[7] "*Çela Arbër, purchase of an apartment rep 9299 kol 1065 dt. 14.05.2013. Declared* source of funds: *savings + borrowing*".

law or any other law" **cannot be accepted**,[8] in consideration of the elements and documents resulting from the investigation.[9]

ii) Concerning the legitimate source of the investment of the co-owner

Considering the above, IMO deems of paramount importance an adequate investigation and the assessment of the legitimate sources of the co-owner to invest in the apartment for the claimed amount.[10]

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[8] Contribution doesn't necessarily equalize with the ownership share part. This stance is supported even by the AC jurisprudence in the AC decision (JR) nr. 33 dated on 03.11.2021 on *** *("[...] In this sense, the claim of the assessee is correct, that the declaration of the share part in 1/3 for the property "apartment with an area of 65 m2", does not mean a priori that even his contribution to its creation has been to the same extent in monetary value."* Par. 54 of the said decision).

[9] It must be further borne in mind that the assessee avoided the declaration of the amount of 57.250 EUR in the annual declaration of the year 2013, which in fact constitutes the amount deposited by him in favour of the company. It is also worth pointing out that:

> (i)the electricity supply billing started on June 2015 while the water supply billing started on July 2015, which shows that the apartment was in use approximately 9 months before the the assessee's daughter was born (i.e, on **.2016);
>
> (ii) the declarations of the assessee that the co-owner left the apartment and moved to a rented apartment and allowed the assessee to use it for free for 2 years until she sold her share part to the assessee's father;
>
> (iii) the purchase of the share part of the citizen *** of the apartment by the assessee's father only in 2018, sourced from the proceeds of the sale of the sole apartment that the father possessed in the city of Lushnja - while he continues to live in this city by renting another apartment and his status as a natural person results active for exercising his private activity in this city even currently.

[10] Available information and documentation confirm the following:

-According to the documentation obtained from the banks: the co-owner *** placed a cash deposit in the account of the company "*** ' at '*** Bank in the amount of 16.278 EUR on **.05.2013. On **.05.2013, the amount of 10.285 EUR was withdrawn by the co-owner *** from her *** Bank account. The origin of this amount came from several cash deposits in the time period between **.09.2012-**.05.2013 which including the interest received from these deposits- comprise the amount of 6.285 EUR while the difference 4.000 EUR came from the accumulated salaries in her account. *As a result of this information, the amount verified to have been sourced by her salaries is 4.000 EUR.*

-The assessee provided an attestation of the Attestation of the Turkish Embassy in Tirana dated on **10.2016 based on which the confirmed income of *** . is for 2009- May 2013 in the amount of 29.350 EUR.

-According to the letter obtained from the SII nr *** prot dated on **10.2022, the income of the citizen ** . was confirmed for the period September 2009-December 2012.

-The assessee in his objections submitted: the attestation from the SII Directory of Central Archive prot *** date **02.2022, in which it was confirmed the gross income of the citizen *** for the period November -December 2009 reported by the entity " **** ".

-Reply to the request filed by the citizen **, received from the Commercial Attachè **, of the Turkish Embassy dated on **.11.2022, in which the latter confirmed that the citizen ***. was employed during the period August 2009-December 2014. During August 2009-February 2012, she was paid in cash and since February 2012-December 2014 the monthly wage was transferred to her bank account. In addition, he confirms that her former income tax payments had been made by their Ministry in Turkey to Turkish Tax Authorities according to the mutual agreement between Albania and Turkey, regarding the tax exemptions applicable for their diplomatic mission.

-Attestation issued by the Turkish Embassy (Office of the Commercial Counsellor) dated on **.11.2014 in which it was confirmed that the citizen *** was working in this Office since August 2009. For the year 2014 her wage is 886 EUR per month (gross).

In order to analyse the legal income of *** for her employment at the Turkish embassy, it is deemed that it is the *"principle of residence"* that guides the tax legislation i.e., income from employment is taxed at source, where the work is performed. The citizen ***. is considered as a resident for tax purposes in the Republic of Albania based on the provisions of the Art. 3 p. 1, 2 of the law Nr. 8438, Dated 28.12.1998 "On income tax", as amended.

As a result, the relevant tax obligations should have been paid in the country where the work is performed. In addition, the assessee didn't submit any documentation that prove that some of the taxes obligation in relation to the income of the citizen *** were paid in Turkey.

Based on the data of SII, banks and attestation of the employer of the citizen *** ., the following information was obtained concerning her income:

Year	(I)Attestation (EUR)	Net income calculated based on the applicable legislation[11] and on the SII attestation (ALL)	(III)Income credited in Banks (converted to ALL)	(IV) Living expenses per capita INSTAT (ALL)
November - December 2008		**49,199.56**		22,770.00
2009	2,200.00	288,799.58	240,000.00	136,620.00
2010	6,600.00	248,400.00		136,620.00
2011	7,700.00	248,400.00		136,620.00
2012	9,100.00	243,300.00	1,172,250.80	141,024.00
May-13	3,750.00	107,230.00	420,349.58	58,760.00
total	**29,350.00**	**1,185,329.14**	**1,832,600.38**	**632,414.00**

For the purpose of this process, the only income that meet the legal income standard, according to the provisions of Article D, point 3 of the Annex to the Constitution, are the income confirmed by SII certifications.

-Attestation issued by the Turkish Embassy (Office of the Commercial Counsellor) dated on **.12.2014 in which it was confirmed that the citizen *** was working in this Office since August 2009. For the year 2014 her wage is 826 EUR per month (net). As a note in this attestation was written: "A part of the tax liabilities are paid in Turkey, based on the mutual agreement between two Countries."

[11] Law Nr.9766, date 9.7.2007 on some additional and changes in law No. 8438, dated on 28.12.1998 "On income tax", Art. 1 amended; DCM Nr.1114, date 30.7.2008, amended "On some issues in implementation of laws no. 7703, dated 11. 5.1993 "on social insurance in the republic of Albania", amended, no. 9136, dated 11.9.2003 "for the collection of mandatory social security and health contributions and in the Republic of Albania", amended.

Regarding the loans claimed by the assessee in the amount of 8.000 EUR and 10.000 EUR borrowed by the citizen ***, IMO evaluates that the existence of the loan relationship remains questionable but, even if considered, the assesseee did not document the financial sources of the lenders for the said amount. The loan relationship remains at a declarative level.[12]

As a result of the above considerations, the financial analysis of the capacity of the co-owner shows the following:

Description	Amount (ALL)
Legitimate income November 2008-May 2013	1,185,329.14
Living expenses November 2008-May 2013	632,414.00
share of the co-owner	5,154,680.44
difference	-4,601,765.30

Hence, from the above analysis, it seems that there exists a lack of legitimate sources to cover the payment of the claimed contribution in the amount of 36.764 EUR.

iii) Concerning the loan relation with the citizen ****

The following evidence is provided regarding the loan relation between the assessee and the citizen *** ("***"):

-Loan contract dated on ** 06.2013 based on which the citizen *** declared to have in ownership the amount of 30.000 EUR and gave the amount to A.Çela for a 3-month term for family needs. The assessee declared to have received the amount of 30.000 EUR and he was supposed to repay the amount upon the disbursement of the loan from *** Bank;

-Notarial declaration dated on **.10.2013 where the citizen *** declared that concerning the loan given to A. Çela in May 2013 in the amount of 30.000 EUR for the purpose of the purchase of an apartment formalized before the notary (with the notarial act dated on 14.06.2013 where a 3 month term was specified for the repayment) it was fully liquidated and there's no claim for the loan or a penalty for the late payment;

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[12] It goes without saying that the loans were never declared to HIDAACI, as a source of the income for the share part of the co-owner, during the inquiry performed in 2014. The only traces of these transactions in relation to the loan of 8.000 EUR dated after the Vetting Declaration i.e., according to the notarial declaration date of **01.2017 the amount of 8.000 EUR in May 2013 was lent by the citizen ** to ** , and it was stated that *** repaid the amount of 5.000 EUR and has an outstanding obligation of 3.000 EUR. On **.06.2018 ** , transferred the amount of 3.000 EUR from her bank account to the citizen ** . (mother of **.)

Moreover, the notarial declaration dated on **.12.2019 based on which *** received by her cousin the amount of 10.000 EUR was drafted during the administrative investigation and not declared in the Vetting Declaration where the assessee had the possibility to fill a new declaration of the assets.

In addition, concerning the assessee's claim that the borrowing was declared by the co-owner at the moment of the execution of the payments in the bank where in the payment slip of the date **05.2013 (source declared as "savings plus borrowing") it can be noticed that the description of the bank transaction for the sources of this apartment is the same for both co-owners and the claimed loans amount exceed the factual payment of *** (i.e., 18.000 EUR -lending amount VS 16.278 EUR)- therefore this evidence can be deemed as insufficient to establish that existence of the claimed loan relationships.

-According to the *** Bank statement, the loan was disbursed on 27.09.2013 on the account of the assessee. A bank transfer was executed on 30.09.2013 from the bank account of the assessee to the account of *** in the amount of 30.000 EUR with the description "return of debt". He withdrew the amount on the same date;
- It is found that the assessee failed the declare the amount as a source in the declaration of 2013 as an obligation deriving from the Law 9049/2003 and in the Vetting Declaration as according to the Guideline of the Inspector of HIDAACI nr. *** , dated **.10.2016, point 7. In IMO evaluation this is considered a shortcoming as an inaccuracy in declaration - as long as the existence of this relationship is confirmed with other evidence. This stance is corroborated even by the jurisprudence of the AC (see AC Decision (JR) Nr. 9 dated on 18.04.2019 para. 10.1.1., 10.1.2.)

iv) Concerning the legitimate source of the loan 30.000 EUR lent by ***

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."*

Therefore, the various sources of the other related person, as claimed by the assessee, are hereby analysed:

a) <u>Income from the business activity</u>

The citizen *** was registered as a business since 2000 for the "manufacture of construction materials".

Regional Directory of Taxes through official letter nr *** prot. dated on **.06.2022 and other open sources of information (NBC) provides the following data of the latter as follows:

Year	Net profit DRT	Net profit according to the financial statements as of 2010	Retained earnings +reserves + net profit/loss of the current year according to the financial statements as of 2010	Cash balance at the end of the year	Inventory balance
2008	302,100.00				
2009	312,000.00				
2010	2,184,059.00	1,868,499.00	2,037,695.00	183,114.00	4,143,982.00
2011	1,722,378.00	1,449,732.00	3,487,427.00	81,160.00	6,201,677.00
2012	146,287.00	130,641.00	3,618,068.00	46,888.00	6,328,899.00
2013	(418,015.00)	(559,247.00)	3,058,821.00	36,773.00	6,754,114.00

From the analysis of the financial statement of the natural person *** , it seems that the profit was accumulated in the retained earnings as part of the equity since 2010 and therefore no amounts were available for the owner. The amount accumulated is not in cash, but it is reflected in an increase of the stock/inventory of the business.

Therefore, it can be reasonably concluded that there's no cash amount available according to the balance sheet of the company and the profit was accumulated in the retained earnings of the company and reflected in an increase of the stock; as a result, there are no sources that could have been used to provide the loan of 30.000 EUR to the assessee.

b) *Income from the promise for sale contract dated on 25.01.2013 between the lender *** and the citizen ****

According to the contract promise for sale dated on **.01.2013, *** results as the promissory part for the sale party concerning the sale of two plots in his ownership (i.e., land with a surface 3750 m2 and 60 m2 building and plot with a surface 1900 m2).

In these plots, it is located the business activity of the citizen **. and a stock of materials was placed in this property. It was provided in the contract that the stock had to be transferred at the date of entry into force of the contract, so that the purchasing party would enter in its possession to, then, undertake the selling of the stock to 3rd parties. It was specified that the price of the plots was 100.000 EUR. The promise for the purchase party declared that the amount of 4.500.00 ALL was paid to the citizen *** as a prepayment for the purchase, in cash outside of the notary's office. Upon selling all the stock materials the parties were supposed to sign the final sale contract of the sale of the immovable property.

Based on the financial statement analysis of the inventory/balance sheet account, it is observed that the difference between the balance of 2012 and 2013 is only 425, 215 ALL and, therefore, it seems that the stock was not sold within the year 2013.

In the assessee's comments/replies to the results of the investigations, the assessee stated as follows:

> *"Regarding the fulfilment of the above contractual relationship *** has informed me that the final contract with the citizen *** has not been implemented [...] since the citizen *** had not sold any material to third parties, they had agreed that *** would return the guaranteed amount, thus resolving the contractual relationship between them. Under these conditions, according to him, the amount that I returned served as a source for returning the amount of 4,500,000 lek to the citizen *** [...]"*

Regarding this source claimed by the assessee the following findings stand:

(i) There is no evidence that the amount was used as a source for the loan, this contract was not declared by the assessee in the replies to the first questionnaire, but it was provided by the latter only later during the investigation;

(ii) According to the reply of MoJ Nr. *** Prot. dated on **.08.2022, related to this notarial act-promise for sale contract, it was seen that it doesn't result as registered in the notary's register and there is lack of a revocation act which casts doubts on the truthfulness of this relationship;

(iii) From the analysis of the contract, it appears that the parties involved signed as individuals and not as business entities. According to the reply from the Tax Authority Nr. *** Prot. dated on **.10.2022 it was confirmed that: *"from the verification of the documentation of the subject ** tax number *** it doesn't result that the transactions mentioned in the promise for sale contract were reflected in the financial statements of the year 2013, cash flow statement or sale books of the subject deposited by the latter in the informatic system"*.

Hence, the income claimed from this contract does not reach the threshold to be considered as legitimate according to the vetting law and the relevant constitutional provisions.

(c) Withdrawals from personal bank accounts

In his replies/comments to the results of investigation, the assessee submitted additional evidence in support of the argument of the capacity of *** to lend the amount of 30.000 EUR.[13]

According to the examination of the bank statement of the citizen *** it appears that the citizen *** . has withdrawn during 02.2012-02.2013 from his account at *** Bank (*** ****) the amount of approximately 3.7 mil ALL sourced by the withdrawal of a deposit and his overdraft account, while he had 5 mil ALL balance of Treasury Bills. The sources of the savings in his accounts at *** Banks over the years, are:

(i) the carried forward balance since 2004,
(ii) cash deposits over the years,
(iii) interest income,
(iv) some transfers from his company's account in 2010.

IMO deems that the fact that the citizen *** had balance in the banks and withdrawals from his account doesn't necessarily explain the legitimate source of these amounts and the *legality of these amounts remains questionable*.

In addition, it is does not appear very convincing the circumstance that the lender had withdrawn small amounts from his overdraft several times during the year 2012-2013, in order to provide a loan to the assessee in the amount of 30.000 EUR.

[13] I.e. the lender performed the following withdrawals from his bank accounts: (i) from his personal bank account at *** Bank nr *** he withdrew the amount of 4.487.789 ALL for the period **.02.2012-**.02.2013 (ii) in his bank account at ** Bank nr *** up to May 2013 the cash withdrawals were in the amount of 7.171,658 ALL (iii) from his *** Bank account he withdrew the amount of 431.000 ALL during May 2008 – June 2008 (iv) from his bank account at ** Bank from June 2010- December 2011 he withdrew the amount of 807.700 ALL.

Regarding the other withdrawals from his other bank accounts quoted by the assessee, the latter occurred years before the lending took place and, as such, it is difficult to believe that they served as a source for the loan.

As a result of the above analysis, IMO deems that the assesseee couldn't overturn the burden of proof in relation to the legitimate source of the loan in the amount of 30.000 EUR which was used as a source by the assessee for the payment of the purchase price of the apartment 91.91 m2.

v) Concerns related to the proficiency assessment

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

- Case concerning the defendant *** , on which the assessee rendered the decision no. ** dated **.02.2019;
- Complaint filed by *** , concerning the case with claimant *** with subject "*Appeal against the decision not to initiate the criminal proceeding no. **/2012 of Shkoder District Prosecution Office*", on which the assessee rendered the decision no. ** (**), dated **.12.2014

Even after administering the explanations and the documents provided by the asseesse, it is our assessment that, the findings remained unrebutted by the assessee and, therefore, those can be used either to assess the legal knowledge of the assessee in the meaning of Article 72 of Law no. 96/2016, as a sub-indicator in the proficiency evaluation of the assessee or may be considered in the overall assessment of the case under art. 4, para 2 of the Vetting Law.

3. Conclusions

IMO deems that the information and documentation gathered through the administrative investigation grounds the believe of a concealment of assets through the co-owner of the apartment (***) of 91.91 m2 in street " *** ". Hence, the IQC should have reached a different conclusion in consideration of the elements and evidence gathered during the administrative investigation, in line with what has been presented in this Recommendation. The IQC decision is deficient in arguing on the matter and in accepting the assessee's version which led to his confirmation in office.

As shown in this Recommendation, a financial analysis focused on *** for the part that should be, instead, really accounted to the assessee for the purchase of the apartment, shows a lack of legitimate source in the amount of **7.304.299 ALL.**

Moreover, it is not possible to conclude that *** had lawful income to provide the loan of 30.000 EURO to the assessee (the availability of the sum is not contested, what is at stake is the lawfulness/legality of it) for the purchase of the said apartment.

IMO believe that the scope of the Recommendation should also include the appeal against the IQC's findings on the proficiency assessment, for the Special Appeal Chamber to be enabled to

carry out a thorough and comprehensive assessment of the casefiles handled by the assessee, and received based on the indications provided by law enforcement agencies and the public denunciations, in considerations – *inter alia* - of the provisions of art. 41(3)(4) and art. 4(2) of the Vetting Law.

Hence, a Recommendation to appeal the IQC decision on the assets and proficiency assessment that confirmed Arbër Çela in office is hereby filed.

Respectfully submitted,

International Observer **International Observer** **International Observer**