



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



Prot. No. 36/1

Tirana, 25 January 2022

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

Case Number **DC-P-TIR-1-11**

Assessee **Gjon KODRA**

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 and Scope of the Recommendation

Gjon KODRA 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. With decision dated _____ the IQC decided to confirm the assessee in office.

The International Observers (further: "IOs" or "IMO") recommend the Public Commissioners (further: "PCs") to file an appeal against the entirety of the results reached by the IQC. The IOs believe that a correct assessment of all the issues of the case should result in a dismissal of the assessee, as the assessee does not reach a trustable level of asset assessment pursuant to Art. 59, par. 1, point a of the Vetting Law.

In addition, the IQC failed to properly consider the existence of a conflict of interest situation in the case at stake, as it will be described below in the text of the Recommendation.

Last, but not least, the IQC did not evaluate the background assessment in line with the IO's finding on the case dated 8 November 2021 which should have been taken in consideration, at least, in the framework of the overall assessment of the proceeding in line with Art. 61, par. 5 of the VL.

2. Grounds of the Recommendation

The IOs believe that the PCs should appeal the results of the three pillars in their entirety, to permit – for the assets assessment - the Special Appeal Chamber to undertake the full financial analysis of all the years which will also allow to properly verify the IOs' concerns on the further below issues.

Moreover, a proper evaluation of the background assessment should be undertaken to allow the Special Appeal Chamber to consider, within the framework of the overall assessment of the proceeding, the correct application of art. 61, par. 5 of the Vetting Laws, also in light of the correct identification of a conflict of interest situation in the case involving *** **.

Issues in the asset assessment

A) Apartment with an area of 129 m² at * street, building *** sh.p.k, entrance **Ap. **, Tirana; purchased under the sale-purchase contract dated ***.10.2016¹. Price EUR 50,952. Share 100%.**

With regards to the analysis of the EUR 30,000 paid in 2006 and EUR 5,000 paid in 2007 from the spouse's income, IMO would like to point out that:

- The savings were not declared in the first three annual declarations (from 2003 to 2005);
- There appears to be no evidence of the existence of the aforementioned savings (such as bank deposits); during the hearing, the assessee declared that he did not ask his spouse

¹ Sale-purchase contract with rep. No.*** col. No. *** , dated ***10.2016, ownership certificate No. *** , issued on ***10.2016.

about the savings she had before marriage. Furthermore, he confirmed that the savings were kept in Italy – not in Albania - but it appears that the assessee had no further knowledge of where the savings were kept;

- It appears that there is no traceable evidence of the modalities used to transfer the money to Albania.

Considering the above, IMO would like to point out that there is no evidence whatsoever on the existence of the 35,000 Euro and, as such, they should not be considered as legal sources for the relevant assets.

Moreover, the justifications provided by the assessee do not stand, as his position in the judiciary and his duties to complete the first assets declarations (from 2003 to 2005) imposed some obligations to declare the assets and its sources; obligations which cannot be simply evaded by saying that he did not know the wife's savings prior to the marriage.

B) Existence of a conflict of interest related situation

- It appears that the assessee was in a conflict of interest situation when he investigated the case involving *****, administrator of the *** sh.p.k Company with whom the assessee had a relation of interest - as well as ongoing social relations.

IMO would like to point out that the IQC decision (page 16 - paragraph 2.10.12 - of the Albanian version, as translated by IMO) reads as follows:

*“The Commission notes that the real relation of interest between assessee and the administrator/sole partner of “ *** ” shpk company, Mr. *****, ended in 2008 with the payment of the full purchase price of the apartment EUR 50,952, same price specified in the final apartment sale/purchase contract of 2017. The value of works carried out by assessee, which served to compensate the extra surface area of 11 m2 is an element emerging unexpectedly in 2017 before the conclusion of final sale contract, but which was in fact resolved at the same time with the signing of this contract in 2017. Assessee's claim that he was careful enough to notify the head of institution about the relationship he had with the complainant is of a declarative nature and ungrounded [...]*

*But on the other hand, the Commission takes into account the fact that this relation of interest besides of having ended in 2008 (meanwhile the criminal case belongs to the period 2010-2011) when the purchase price was fully paid by assessee, was not proven to be in itself a preferential treatment, what could have led to the application of a low/preferential price by the company “ *** ” shpk in favor of assessee. On the contrary, by submitting to the Commission the similar contracts on facilities located in the same apartment block assessee did convincingly prove that the price he paid was real, very similar to the respective prices in similar contracts and not a preferential price.”*

IMO would like to point out that, in the replies to the questionnaire No.4 (at p. 5 of the Albanian version, as translated by IMO), the assessee states:

“With reference to specifying the date of payment for the works that were carried out and the purchase of household appliances, which amounted to EUR 4,850, I would like to inform you that the payments were made on different dates, for which no invoices or bills are available to me.

The payments of this amount were made during 2010 and as it is known from all the citizens (well-known facts) the companies did not issue invoices for the sales to the end consumers (individuals). The companies have started to issue invoices to end consumers (individuals) only during these last 4-5 years, following an extensive awareness campaign that was launched.

I have provided clarifications regarding the legitimate source of the amount of EUR 4,850 even in the replies to the previous questionnaire; also, in order to provide clarifications, which were requested from the Commission, I would like to inform you that I paid for the works, which were carried out and included in the contract certificate dated .02.2017, with the loans I received from the citizens and in 2010. Since it was noted in the Title Deed that the apartment measured 129 m², thus, 11 m² more than the order I placed initially for an apartment measuring 118 m², and since I had started to live in that apartment when the final sales contract was drafted, which served as a document for conveyance of property from “ Company to the new owner, , despite the surface area of the apartment was 11 m² more than I had ordered when we signed the contract, the administrator of the construction company and I had not finalized the mutual liabilities, thus, the liability of the construction company to me regarding the cost of works I carried out, which amounted to EUR 4.850 and the relevant cost of works I carried out in the additional surface area measuring 11 m², which amounted to EUR 4.752, pursuant to the factual measurements that were taken. Due to this reason, we formalized our mutual liabilities in a specific document, the contract certificate that we concluded on .02.2017. The works, which I, the Assessee, carried out in the apartment and which amounted to EUR 4.752, were itemized in the Contract Certificate.”

IQC concludes (at p. 16 of the Albanian version of the decision, as translated by IMO) that

‘the real relation of interest between assessee and the administrator/sole partner of “ ” shpk company, Mr. , ended in 2008 with the payment of the full purchase price of the apartment’.

However, from the information provided during the investigation process, it was possible to ascertain that:

- The apartment was paid in the years 2006-2008;
- The assessee has made construction works in the apartment in 2010. The assessee had refurbishing costs in 2009 – indicating that the house was made livable in 2009. These construction works consisted of putting 7 doors, a layer in the floor, windows

("vetrata"), and bathroom equipment. There is no indication in the off-plan contract and in the sales contract that the assessee purchased the apartment without these elements and, therefore, it is possible to conclude that the assessee changed the existing ones;

- In the replies to the 4th questionnaire the assessee stated (at p. 5 of the Albanian version of the replies, as translated by IMO) that

"the administrator of the construction company and I had not finalized the mutual liabilities",

And this leads to the belief that the amount of 4.850 EURO which was paid in 2010 were a liability by the construction company;

- In 2017 the assessee gets 11 m2 additional ownership on the apartment, for which he paid no money due to the construction works done in 2010.

Contrary to IQC's conclusion, it seems that the relation of interest between the assessee's and **** had not ended in 2008, but it rather continued in 2010, and further on in 2016 when the purchase contract was finalised.

Therefore, the conclusion in p. 16 of the Albanian version of the IQC decision (as translated by IMO) stands. More precisely, although IMO disagrees on the IQC's conclusion according to which the relation of interest ended in 2008 (because it continued until 2010), it is possible to agree with the IQC's statement according to which

"Assessee's claim that he was careful enough to notify the head of institution about the relationship he had with the complainant is of a declarative nature and ungrounded".

C) As to the background assessment

The IMO would like to refer to the finding dated 8 November 2021 and relevant Annex filed by the International Observer of the case which had to be considered by the IQC in the final decision and which was not properly addressed in it, including in the framework of the overall assessment of the proceeding.

3. Conclusions

One of the purposes of the re-evaluation process is to restore the public trust in the institutions of the justice system. In IMO's view it is impossible to confirm an assessee in duty when several issues have not been correctly assessed.

As demonstrated in this Recommendation, these issues revolve around the assets, background, proficiency (ethic in connection with a conflict of interest situation) and overall assessment of the proceeding.

IOs believe that a proper consideration of all elements should result in a dismissal of the assessee due and, in view of the above, the IMO recommends an appeal against IQC's decision in this case.

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