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International Monitoring Operation

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



Funded by the European Union

Tirana,

**To the
Institution of the Public Commissioners
Bulevardi "Deshmoret e Kombit", Nr. 6
Tirana
Albania**

Case Number DC/TIR/1/48

Assessee **Marinela OSMANI**

RECOMMENDATION TO FILE AN APPEAL

according to

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

Introduction

The assessee Marinela Osmani, judge of Tirana District Court, holds now the position of Legal Adviser in the Support Unit of the Committees in the High Judicial Council. She is assessed *ex officio* pursuant to Article 179/b, paragraph 3 of the Constitution of the Republic of Albania.

The Re-evaluation process was concluded based on three criteria: assets, background and proficiency. The Independent Qualification Commission (hereafter: IQC) Adjudication Panel, finally closed the investigation on 14.01.2021, notified the assessee the additional findings, and

the assessee remained with the burden to provide evidence or arguments against the preliminary conclusions based on the assets and proficiency assessments.

Following her submissions to rebut the established presumption, the panel decided to summon the assessee to the hearing.

The hearing took place on the 9th of February 2021 and following the deliberation as per Article 55 paragraph 5) Vetting Law, the Adjudication Panel decided to confirm the assessee in duty pursuant to Article 59 Vetting Law, and the decision was announced publicly on the 11th of February 2021.

Summary of the Recommendation

The International Observers recommend to the Public Commissioners to file an appeal against the decision of the Independent Qualification Commission of the 11th of February 2021 in the case of the assessee Marinela Osmani, case number DC/TIR/1/48, by which she was confirmed in duty.

Basis of the Recommendation

1. Under paragraph 3 of Article D of the Annex to the Constitution of the Republic of Albania” *The assessee has to credibly explain the lawful origin of assets, property and income. Income shall only be considered legitimate if it has been declared and taxes have been paid.*”

Whereas, under paragraph 5 of the same article, “*if the assessee takes steps to inaccurately disclose or hide assets in his or her ownership, possession or use, a presumption for the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel.*”

Furthermore, under article 52 paragraph 2 Vetting Law, “*if the Commission or the Appeal Chamber concludes that the evidence has reached the standard of proof under Article 45 of this Law for its report, the assessee shall have the burden to provide evidence or arguments about evidence against that conclusion.*”

2. The Adjudication Panel, upon closing the administrative investigation, found that the assessee on several occasions did not accurately disclose some assets and failed to provide sufficient evidence supporting the legitimacy of some of the sources of financing. The

Panel also requested clarification about some of the judicial proceedings conducted by her. As a consequence, the burden of proof, as per article 52 paragraph 2 Vetting Law, was shifted to the assessee in the asset and proficiency pillars.

3. The assessee, replying to the preliminary conclusions of the IQC, submitted her interpretation of the financial analysis and her explanation on some of the issues raised against her. The assessee also provided her analysis of the factual and legal conclusions of the decision of the Special Appeal Chamber Nr. 20/2019, concerning the re-evaluation of her related person and husband, Mr *** ***. She elaborated about the implications of such decision for her own re-evaluation case.
4. The panel invited the assessee to the hearing, where she exposed and further explained the same arguments previously presented in writing.
5. The adjudication panel, after evaluating all circumstances and accepting several of the assessee's explanation, concluded that the assessee had provided sufficient explanations to rebut all preliminary conclusions on proficiency and most of the preliminary conclusions on asset. The Panel however, concluded that, notwithstanding all clarification provided by the assessee, the latter was still unable to justify financial resources to cover all the registered expenses, namely lacking lawful financial sources to justify her assets, the cash balance, or to cover the expenses incurred in 2011 and 2013, amounting to ALL (-) ~~1,785,365~~. The assessee was nonetheless confirmed in duty.
6. Given the foregoing, the International Observers note as follows:
 - a. The revised financial analysis of the Independent Qualification Commission, following the assessee's replies to the conclusions of the investigation, found that the resources and savings declared by the assessee were insufficient to cover the recorded expenses in the years 2011 and 2013, with an overall exposure of ~~1,785,365~~ ALL.

- b. The International Observers note that the IQC's factual conclusions in the case of Marinela Osmani reveal a slightly higher financial exposure for this assessee, compared to the conclusions reached by the Special Appeal Chamber in its decision nr. 20/2019 against the assessee's husband, Mr **** (where the only shortcoming consisted in the assessee lacking 1.760.497 ALL in the years 2011 and 2013).

Based solely on such conclusions, the Special Appeal Chamber decided to dismiss the assessee's husband.

- c. The International Observers are mindful that it is the IQC's duty to assess each case individually, without the decision rendered by the Special Appeal Chamber against **** having any formal binding force against Marinela Osmani, even on those patrimonial/financial situations which *** and Marinela Osmani have in common (due to their being related persons).
- d. On the other hand, it must be remembered that the decisions of the Special Appeal Chamber set standards for the interpretation of legal provisions of the vetting law, thus providing guidance for the vetting bodies in similar cases. Now, as said, the criticalities in the cases of *** and Marinela Osmani are not only similar, but *de facto* identical, which highlights (at least *prima facie*) the inconsistency of the standards adopted by the IQC in the decision confirming Marinela Osmani versus those applied by the Special Appeal Chamber in decision 20/2019 (and in previous decisions), without the IQC having provided a satisfactory reasoning for such distinguishing.
- e. It appears therefore necessary that the case be brought to the attention of the Special Appeal Chamber, through appeal of the Public Commissioners. The Special Appeal Chamber should properly assess the present case in light of the existing standards and - if eventually the solution of the present case were to be opposite from that of **** - give adequate reasoning for such distinguishing, thus providing guiding principles for similar cases of assessees who are related persons of other assessees.

7. Because of the foregoing, the IMO recommends an appeal against the IQC Decision pronounced on 11 February 2021 in the case of assessee Marinela Osmani.

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