

KOMISIONERËT PUBLIKË
Nr. 141/3 Prot.
Datë, më 31 3 2021 112/15

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

Prot. No. 204/1

Tirana, 31 March 2021

To the
Public Commissioners

Bulevardi “Dëshmorët e Kombit”, Nr. 6,
Tirana
Albania

Case Number **DC-P/TIR/1/33**
Assessee **Lindita Ziguri**

RECCOMENDATION 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 in the Republic of Albania”, 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 Lindita Ziguri, 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. The decision to confirm the assessee in duty was announced on 12.01.2021.

Based on the reasoning of the Independent Qualification Commission (IQC) for the confirmation in duty of the assessee, the International Observers (IO's) submit a recommendation to appeal the decision for her confirmation in duty.

2. Summary of the recommendation

The IO's recommend the Public Commissioners to file an appeal against IQC's decision to confirm the assessee in duty, based on several asset related shortcomings, that in the view of the IO's are not clearly dealt with in the reasoning of the IQC.

In the assessment of the IO's a different evaluation of the facts and administered documents and reasoning might possibly impact the assessment of the assets of the assessee in such a way that the outcome of the decision of the IQC does not stand.

3. The decision of the IQC

The decision of the IQC to confirm the assessee in duty was based on an assessment of all three pillars. As relates to the assets' assessment, several issues remain unclear as regards the evaluation of the available evidence, notwithstanding the explanations of the assessee and/or the reasoning of the IQC. The 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 reasons for the recommendation to appeal are summarized as follows:

a) The commercial activity of the related person during 2005-2007 and related issues

- (i) The assessee has not disclosed in the Vetting Declaration or the PDs any activity and income from the business activity of "****" ltd, with sole owner the related person of the assessee, during 2005-2007.

The assessee explained that *** ltd entered into a business agreement with another construction company in July 2005, to build an extension to an existing residential building. According to the assessee, "****" ltd did not substantially perform any business activity, due to the lack of financial means (an expected loan from the *** Bank which was not granted), as well as to disagreement with the partner in business. According to the assessee, the only activity performed by "****" ltd as relates to the construction, was the stipulation

of an off-the-plan contract in November 2006, with **** for the purchase of two premises in the building.

As per information from Permet Tax Office Branch after an audit on “*** ” Ltd, on 05.2007, the company exercised its activity since August 2005 and onwards. The audit report refers to a factual not documented construction of 11 floors, as well as to non-disclosure with the tax office of the activity, in relation to which several fiscal obligations would arise on behalf of the company during this period.

Notwithstanding the explanations of the assessee, the situation on the investment, expenses, sources of income and lack of documentation, remains unclear as well as the eventual liabilities of “*** ” Ltd for the purposes of the asset evaluation process. In the view of the IO’s, the impact of such activities in the asset assessment of the assessee should be duly evaluated by the AC.

(ii) Furthermore, as relates to the off-plan contract, based on the administered documents and explanations of the assessee, “*** ” Ltd would receive from **** on the date of the stipulation (November 2006), 40.000 Eur. It was also found out that the related person, in the quality of the sole owner of “*** ” Ltd, received 99.000 Eur through a bank transfer on 1.2007; on the other hand, “*** ” Ltd issued a payment slip of 99.000 Eur on the same date of the bank transfer, 1.2007, in favour of **** allegedly because **** wanted to withdraw from the off-plan contract.

According to the assessee, her related person never received 40.000 Eur as stipulated in the contract. She also explained that **** withdrew from the off-plan contract; hence he received the exact amount he had transferred to her related person.

The abovementioned facts and administered documents, do not appear convincing. The explanations on the 40.000 Eur are not in line with what the off-plan contract stipulated. Whereas the sudden withdrawal from the off-plan contract and the way money was transferred from **** to **** and from “****” Ltd to **** on the same day, are not in line with the legal and economic repercussions that a sudden withdrawal of a counterpart has on the activity of the company.

The assessee failed to provide convincing explanations on the abovementioned issues, as well as the IQC failed in its reasoning. The abovementioned issue could also lead to a suspicion of fictitious legal actions, which in the view of the IO’s should be investigated and duly assessed by the AC.

b) Loans from third parties during 1993-1994

In the VD, the assessee declared several loans borrowed by her related person during 1993 – 1994, which were duly disclosed in the Periodic Annual Declarations, in the amount ALL 17,100,000.

The assessee was asked to explain the use of the funds, how the loans were paid back over the years, if the unsettled lenders have initiated legal proceedings in court against the assessee, and other related issues.

The assessee provided several explanations, amongst which, that the borrowed funds were used for her related person's company activity, not for creating assets and that the loans were morally considered as settled by the parties. In the view of the IO's the explanations of the assessee, not supported by any evidence, are not convincing, and should be further examined and assessed by the AC.

c) Loan from the other related person in the amount of 5.000 Eur

In the view of the IO's the assessee failed to evidence the financial capacities of the other related person to provide her the loan of 5.000 which served as a source for the apartment in Rr. *** ***, Tirana, as declared in the VD.

The IO's are of the opinion that such a circumstance should be evaluated and assessed by the AC as relates to the impact in the asset evaluation process of the assessee.

d) Lack of adequate reasoning

The reasoning of the IQC as relates to the abovementioned issues, is not complete and comprehensive of the reasons that led the IQC to the respective conclusions. In the case of the related person failing to declare his obligations as substituting debtor, the IQC has not addressed the issue at all.

5. Recommendation

The IO's recommend the Public Commissioners to file an appeal against the decision of the IQC to confirm the assessee in duty.

This appeal would enable the Appeal Chamber to:

- evaluate asset related issues and their impact in the re-evaluation process of the assessee;
- perform an accurate financial analysis;
- provide an adequate reasoning for the issues at stake.

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