

KOMISIONERËT PUBLIKË
Nr. 314 Prot.
Datë 9 . 8 .2018

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. 1101

Tirana, 09 August 2018

To the
Public Commissioners

Bulevardi "Dëshmorët e Kombit", Nr. 6
Tirana
Albania

Case Number HPC/TIR/1/10
Assessee **Gentjan 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 Gentjan Osmani holds the office of prosecutor within the Prosecution Office before the Serious Crimes Court of first instance in Tirana, and he is candidate to the High Prosecutorial Council. He is assessed *ex officio* pursuant to Article 179/b, paragraph 3 of the Constitution of the Republic of Albania and, as candidate to the High Prosecutorial Council, his re-evaluation is treated as priority in line with Article 4 paragraph 4 of the Law 84/2016 on the Transitional Evaluation of Judges and Prosecutors (hereafter: Vetting Law).

The Re-evaluation process was carried out based on three criteria: assets, background and proficiency. Upon administering the reports of the auxiliary bodies, thorough investigation of the case, administering evidence obtained through the investigation process and submitted by the assessee, the Independent Qualification Commission (hereafter: IQC) Adjudication Panel closed the investigation on 12th of July 2018, notified the assessee the findings, and shifted to him the burden to provide evidence or arguments against the preliminary conclusions based on the assets assessment. Following his submissions to rebut the established presumption, the panel decided to summon the assessee to the hearing.

The hearing took place on the 31st of July 2018, 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 2nd of August 2018.

Summary of recommendation

The International Observers recommend to the Public Commissioners to file an appeal against the decision of the Independent Qualification Commission of the 2nd of August 2018 in the case of the assessee Gentjan OSMANI, case number HPC/TIR/1/10, by which this assessee has been confirmed in duty.

Basis of 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*

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. Through the Adjudication Panel's decision of the 12th of July 2018 closing the investigation, which revealed inaccuracy of disclosure and the failure of the assessee to provide sufficient evidence supporting the legitimacy of some of the sources of financing, the burden of proof, as per article 52 paragraph 2 Vetting Law, was shifted to the assessee for the following issues related to the revaluation of assets:

- I. Regarding the apartment at _____ with surface area of _____ m², paid in instalments as follows: 1) _____ Euro on _____ January 2009; 2) _____ Euro on _____ March 2009; 3) _____ Euro in 2010; 4) _____ Euro in 2011. Sources of financing: EUR _____ salary of the assessee and his spouse over the years, _____ EUR, loan from _____ - interest rate- _____ million ALL, donation by the _____.

The investigation shows that:

- a. The financial capacity of _____ to provide such loan is not confirmed, it remains not proven the amount of _____ Euro was lent to the assessee and that the lender had the legitimate resources to save and lend the declared amount.
- b. The unilateral declaration of the assessee confirming the donation of _____ million ALL, is not sufficient to proof the donation and its legitimacy.

c. The assessee declared resources were not sufficient to repay the loan as declared:
1) Euro in 2011; 2) Euro in 2012; 3) Euro in 2013; and
euro Interest between 2009- 2013; as the financial analysis shows resources
were insufficient to pay all the three instalments and part of the interests.

d. Even if it is accepted the assessee did receive a loan of EURO, the
financial resources he declared in the relevant years, deducted of the registered
and ordinary living expenses, were insufficient to cover the payment of
instalments n.1, 2 and 3.

II. Regarding the motor vehicle, , plate no. , purchase in 2005,
the financial resources declared by the assessee in the year, including the savings
declared from previous years, deducted of the declared and living expenses, are not
sufficient to cover the cost of the vehicle.

III. Regarding the financial resources declared by the assessee through his tenure, when
compared with the financial records, and deducted of the minimum living expenses,
are not sufficient to cover the registered expenses in the year 2005, 2009, 2011, 2012
and 2013, for an overall minus of ALL.

3. By the evidence and arguments provided only after being notified of the result of the
investigations and of the inversion of the burden of proof, the assessee provided his
interpretation of the financial data, his personal explanation on some of the inconsistencies,
and some additional documents which, however, are not deemed sufficient to rebut any of
the preliminary conclusions. The panel invited the assessee to the hearing when the same
arguments previously presented were exposed and submitted in hard copy, with no
substantive change in the elements available to the panel for its final decision.

4. However, the adjudication panel decided to confirm the assessee in duty.

5. Because no evidence was provided able to rebut the factual circumstances leading to the inversion of the burden of proof, his "confirmation in duty" is not justified.

6. Regarding these findings, the International observers make the following remarks:

a) The purchase of asset number "I", remains unjustified, and the assessee lacked full disclosure during the asset assessment as per article 61 paragraph 3 Vetting Law, as the declared sources of financing were neither proof legitimate nor found sufficient to cover all the declared expenses because:

a-1) The existence of the loan may not be considered proven on the basis of the available evidence. The assessee declaration and the unregistered contract –with uncertain date- tendered into evidence in response to the IQC notification, lacking corroboration, cast doubts on the existence and legitimacy of the declared loan.

Corroboration could have been provided through other means of proof such as documentary evidence showing: the lender had sufficient savings to disburse a Euro loan; that such savings were in fact withdrawn in coincidence with the time the loan was disbursed; that any amount was transferred by the lender to the assessee; and/or that the lender imported a large amount of cash in Albania (i.e. bank records, bank transfer, customs declarations).

Furthermore, documentary evidence produced to support the financial capacity of the lender contradicts he had the financial capacity to disburse such a loan. In fact, old tax revenues to the authorities -as is place of residence-, submitted to IQC, show that the lender income, tailored to the family composition and place of residence, is close to the so called "poverty line" -as defined by the Agency for Statistics in the specific time and place of residence of the assessee-.

a-2) The donation of ALL, is not proven and not sufficiently substantiated as no evidence was provided corroborating the declared amount was owned and transferred to the assessee's – i.e. bank records, lender bank listing, - and this cast doubts on the existence and legitimacy of the declared donation.



b) The assessee lacked full disclosure during the asset assessment, as per article 61 paragraph 3 Vetting Law, because:

The financial analysis of the assessee shows that, even when both: the loan and the donation are considered among the legitimate resources, the resources and savings declared by the assessee in his entry declaration and during his tenure, when compared to the assessee recorded expenses and deducted of the minimum living cost, are not sufficient in the year 2005 – with a minus of _____ in the year 2009 – with a minus of _____ ALL until October, and at the end of the year a minus of _____; in the year 2011 – with a minus of _____ ALL- in the year 2012 – with a minus of _____, in the year 2013 – with a minus of _____, with an overall exposure of _____ ALL.

In practical terms, the assessee standard of living and registered expenses, cannot be justified with his declared and registered incomes, which means the assessee could not effort the purchase of the _____, could not pay back the whole loan as declared, could not cover the whole cost of the apartment in _____ nor he had sufficient financial resources to keep the minimum standard of living in the identified period because of the financial obligation undertaken to purchase assets.

Noted however the assessee does not have any outstanding liability, and that all assets previous liabilities are fully paid, it shall be concluded the assessee did have at his disposal undeclared financial resources or income, by this lacking full disclosure during the asset assessment, as per article 61 paragraph 3 Vetting Law.

7. Because of the foregoing, the IMO recommends an appeal against the IQC Decision of the 2nd of August 2018.

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