



## **I. Introduction**

The assessee Mirela Mishgjoni, serving as a judge at the Vlora District Court, has undergone the re-evaluation process by the Independent Qualification Commission (hereinafter referred to as “IQC”) in accordance with Article 179/b, par. 3 of the Constitution and the provisions of the Vetting Law.

The IQC conducted its investigation based on three criteria: assets, background, and proficiency. After reviewing reports from auxiliary bodies and considering evidence obtained through the investigation process and submitted by the assessee, the IQC’s Adjudication Panel concluded the investigation. They then notified the assessee of their findings, shifted the burden of proof on certain issues, and requested explanations.

Hearing was held on 03.04.2024, and following deliberation as per Article 55, paragraph 5 of the Vetting Law, the Adjudication Panel, with a majority vote, decided to confirm the assessee in duty pursuant to Article 59 Vetting Law.

The undersigned International Observers (hereinafter the “IOs”), having reviewed the case file and the results of the public hearing, believe that the evidence presented during the investigation justifies a review of the case by the Appeal Chamber.

## **II. Grounds for recommendation**

Several issues were not properly assessed by the IQC. The decision does not appear to be based entirely on the available evidence. It deviates from the standards typically held by the IQC in its current practice, and from the principles and guidelines established by the Special Appeal Chamber (hereinafter “AC”).

It is the IOs’ opinion that the assessee failed to adequately address the burden of proof regarding certain crucial findings resulting from the investigation. Furthermore, it is noted that the assessee’s attempts to rebut these findings were predominantly based on narratives lacking supporting evidence. Despite this, IQC accepted all her explanations and decided to confirm the assessee in duty with a majority vote.

Therefore, the IOs recommend that the Public Commissioners (hereinafter PCs) file an appeal against the IQC’s decision no. 754, dated 05.04.2024 which confirmed Mirela Mishgjoni in duty.

The IOs believe that a proper assessment of the evidence presented in the case, along with correct application of the relevant legal framework, would provide grounds for the AC to modify the IQC’s decision pursuant to article 66, para. 1.c of the Vetting Law.



Thus, the IOs request a judicial review of the entire case, particularly focusing on the following issues:

## 1. Assets assessment

It is our opinion that the assessee did not rebut certain investigative findings and the IQC did not provide clarity as to why, given the insufficient rebuttal, they reached a decision for a confirmation in office. The latter indicates a misinterpretation of the available evidence on crucial matters and insufficient reasoning of the decision.

1. **Apartment<sup>1</sup>** with an area of 111.6 m<sup>2</sup>, (120.7 m<sup>2</sup>), Lagje [Quarter] \*\*\* \*\*\*, Vlore, purchased on 3.5.2006. Price EUR 60.000, share 50%. **Source of creation:** Income from her spouse's activity as a chef, and the activity of the declarant [assessee] as lawyer.

On \*\*05.2006, the assessee signed a down payment contract Col. no. \*\*\*/\*\* for the future purchase of an apartment, measuring 120.7m<sup>2</sup>, located in Lagje \*\*\* \*\*\*, Vlore, with price EUR 60,000.

The above amount was paid in instalments as follows: the first instalment EUR 25,000 was paid through the \*\*\* Bank on \*\*12.2005, the second instalment EUR 10,000 was paid through the \*\*\* Bank on\*\*5.2006, the third instalment EUR 19,000 was paid through the \*\*\* Bank on \*\*8.2006 and the fourth instalment EUR 4,864 was paid to \*\*\* \*\*\*, Ltd. company, with mandate no. \*\* on \*.6.2007. The remaining difference in the amount EUR 1,136 was paid in small instalments for carrying out works.

Regarding the financial capability of the assessee to pay for the apartment, the IQC in the results of the investigation concluded, that the assessee and her spouse lacked a total of ALL 3,626,738.

In view of the above the undersigned IO-s are of the opinion that the investigation of the IQC and the methodology of the financial analysis need to be subjected to the review of the SAC with respect to the issues identified below:

- a) The assessment should be conducted by taking into consideration that the assessee had worked as a judge from 1995 to 2002. On \*\*.07.2002 she had been dismissed by decision of the HCJ – a decision she legally challenged. On \*\*.02.2009, as a result of her litigation, the HCJ decision was repealed, and she was reinstated as judge.
- b) The payments made for the apartment in Vlora in December 2005 in advance of the conclusion of the off-plan contract were not verified by the IQC. **Although the assessee married her spouse in 2008 the IQC should have considered that the assessee herself signed the off-plan contract in December 2005 and she made all related payments.**

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<sup>1</sup> The assessee attached to the declaration: Certificate of Ownership and property card dated \*.11.2013; Sale/Purchase Contract rep. no. \*\*\*, col. no. \*\*\*/\*, dated \*.10.2013; Down Payment Agreement rep.no. \*\*, col. no. \*\*, dated \*.5.2006.



- c) The IQC wrongfully considers the spouse's income from sale of the business in Italy as a source for the purchase of the apartment in Vlora even though in the vetting declaration the assessee had declared as source only "*income from salary in Italy*".

Apart from the fact that this income was never declared as a source for the creation of the asset, taxes for the income gained from the sale were paid only starting from \*\*11.2023 – belated and only for vetting purposes.

Even if one would be inclined to consider the respective income as a source, there is no evidence for any of the claimed financial transactions actually having occurred, and only the first instalment of the promissory notes claimed to have been paid in 2006 could be considered as timely available financial source for the apartment.

The IQC's calculation of the spouse's income from work in Italy is inconsistent and not based on available evidence.

The IQC has not in detail explained its way of calculating the saving capacity of the spouse. In para. 30.1. the Commission wrongfully mentions that: "*...the lawful income according to the Italian social insurance institute (INSP) for the period 1996 - 2005, amounts to EUR 67,319 in total.*" It refers to table no. 5 of the Investigation Results. However, in this table the calculation of the INSP data (1<sup>st</sup> row) results in a sum of only EUR 36,822.

- d) The IQC then calculates the spouse's savings capacity for the period of 1996 to May 2005 with EUR 36,185. According to the above-mentioned table no. 5, the IQC reached this result by selecting the largest amount from two unrelated and distinct sets of data: from the INSP and from the Italian Tax Authority. The last-mentioned set of data provided a gross income, without deduction for mandatory social contributions and should not have been considered for calculating a net income. The IQC's calculation method is wrongful. If the calculation is based consistently on the INSP data, the result is a total minus, and no income can be considered as source for the purchase of the apartment in 2005.
- e) **The IQC reasons that the assessee and her spouse had divided family income and living expenses because they were married only on \*.09.2008. This is contradicted by the assessee's answer in the standard questionnaire where she stated: "*From 2005 onwards I lived with my husband \*\*\* \*\* Living expenses were a joint contribution.*" and by notarial declaration of \* 11.2014 of Notary \*\*\* \*\* , in which both stated and signed that "*they were married in 2008 but began to co-habit in 2005*".**



The IOs consider that neither the income from the spouse's sale of the ' \*\*\* ' company in Italy nor any salary income from his employment there should be considered in the financial analysis.

2. Agricultural land of total 15,560 m<sup>2</sup>, at \*\*\* Vlorë purchased by the spouse of the assessee in the years 2010 and 2012 where the sellers are all represented by Mr. \*\*\* \*\*\* (the husband of assessee's sister). The total value of the land **as per minimum fiscal price** was evaluated before the selling with **ALL 6,367,356** but the husband of the assessee purchased them for only **ALL 1,061,600**.

• *Agricultural land, etc. 4,560 m<sup>2</sup>, in \*\*\* Vlorë, purchased with contract no.\*\*\* / \*\*\* dated \*\*4.2012. Value 273,600 ALL,*

• *Agricultural land, etc. 4,300 m<sup>2</sup>, in \*\*\* Vlorë, purchased with contract no.\*\*\* / \*\*\* dated \*\*4.2012. Value 258,000 ALL.*

• *Agricultural land etc. 1,000 m<sup>2</sup>, in \*\*\* Vlorë, purchased with contract no. \*\*\* / \*\*\* dated \*\*3.2010. Value 60,000 ALL,*

• *Agricultural land etc. 2,500 m<sup>2</sup>, in \*\*\* Vlorë, purchased with contract no.\*\*\* / \*\*\* dated \*\*3.2010. The value is 150,000 ALL, the declared taxable portion is 100% and the source of creation for these real estates is savings. "*

The IQC did not investigate the real price for which the previous owners have sold the agricultural land to Mr. \*\*\* \*\*\* who latter on sold it to the spouse of the assessee Mishgjoni.

The power of attorney issued to Mr. \*\*\* specifies that the parties have received the payment, but the value of the latter is not referred in the document.

It is unclear how these transactions were performed since there is no prove of payment provided.

IQC neither addressed the ASHK, nor received any documents from ASHK for these properties, to verify what is the value of these properties after the purchase.

IQC only relied upon the declaration of the assessee with respect to the destination of the asset. In the answers to questionnaire no.3 the assessee declared that the property is currently given to a friend of the spouse of the assessee without remuneration however, she accepted that the friend is cultivating grapes and giving to the spouse 10% of the annual produce.

The IQC did not take any steps to further investigate if any written business agreements have been drafted or that any winery is in fact developed on the land purchased by the husband of Mishgjoni.



Had the IQC calculated the price of the asset at the value provided for the fiscal purposes the assessee would have been in a negative balance for the year 2012 of ALL (-)3,001,912 and year 2010 of ALL (-)235,435, therefore the conclusions regarding these assets would have been different.

3. Regarding the financial capability of the assessee to provide EUR 17,000 to \*\*\* \*\* (sister of the assessee) there was no proper consideration given. The return of this loan was to demonstrate that the assessee had sufficient lawful income to purchase the vehicle in the total value of 12,592 EUR (9,100 EUR + 479,000 ALL) on \* .06.2009. Instead of assessment and consideration the IQC provided a vague theoretical elaboration on the effect of the financial capacity of a related person: *[...The Commission considers that, in its evaluation, regarding the consequences of the negative difference in the creation of this asset, it takes into consideration the fact that the source of its creation is the income of the related person, which, although it does not pass the test of the article D point 3 of the Constitution, cannot be penalized in the process of revaluation of the subject, since they were created long before they started married life, they are proven income through notarial acts, they are not the product of an illegal activity as well as the subject was not aware of the use of untaxed income. Consequently, this possibility will be assessed in the overall assessment of the property...]*. It should be mentioned that during the investigation and for the period 1995-2008 it was established that the assessee had a negative result of ALL 11,900,000 and this comes to say that she was not able to provide this loan in the first place.
4. Regarding the purchase of the apartment 134.5 sqm in 2020 in Tirana for a total of EUR 161,401. The assessee provided documents (contract and payments slip) with the replies of the 3rd questionnaire in which she explained that the first and second instalments were paid in \*\*.06.2020 of EUR 110,000, \*\*.12.2020 of 20,000 and EUR 16,400 through 2022 in small instalments, so total EUR 146,400 was paid. However, the source of these amounts was not investigated at all. It is mentioned en passant.
5. According to the documents on file, the assessee's spouse appears to be in the capacity of one of the founders of a non-profit organization named " \*\*\* ". No issues were established in these findings with regard to the re-evaluation process. According to the Articles of Association of the organization, Mr. \*\*\* \*\* is also a member of the Bord of directors of the organization. As per Article 19 and 23 of the Articles of Association, these are both governing bodies of \*\*\* .  
The IQC did not take steps to investigate and assess the activity of this organization.

### III. Conclusions

In light of these considerations, a proper evaluation of all the elements listed above would likely lead to a conclusion different from the one reached by the IQC majority which confirmed the assessee in office.

Therefore, the IOs recommend that the Public Commissioners file an appeal against the decision of the IQC to confirm the assessee in office.

Respectfully submitted,



International Observer

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