Prot. No. 54/1

Tirana, 28 January 2021

To the

Public Commisioners

Bulevardi "Dëshmorët e Kombit", Nr. 6

Tirana

Albania

Case Number: **ADCA-TIR-1-11**

Assessee: **Rilinda Selimi**

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

Mrs. Rilinda Selimi, serving as a Judge at the Tirana Administrative Court of Appeals, 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.

By decision dated 14 December 2020, the IQC decided to confirm the assessee in duty pursuant to Art. 58 par. 1.a and 59 para. 1 of the Vetting Law.

The International Observers (hereinafter IOs) having reviewed the case file, the results of investigation and the explanations given by the assessee before and during the hearing, deem that a review of the case by the Appeal Chamber is necessary for the reasons explained below.

2. Content of the Recommendation

The IOs recommend the Public Commissioners (further: PCs) to file an appeal against the entire IQC's decision no. 325, dated 14 December 2020, which confirmed into duty the assessee Rilinda Selimi. The IOs' believe that a correct assessment of the evidence of the case, and the correct application of the relevant legal framework, would give grounds to the Special Appeal Chamber (hereinafter AC) to overrule the decision of IQC pursuant to article 66, para. 1.c of the Vetting Law.

The IOs believe that the correct application of the long standing legal and financial standards developed by the Special Appeal Chamber of the Constitutional Court on:

a) issues related to assets and particularly the gas station purchased from *** Bank for 250.000 Euros;

b) background issues related to family connections with inappropriate contacts;

c) ethical/proficiency issues related to tax obligations,

could provide elements that, together with the findings ascertained in analyzing the Decision no. ***, dated***.02.2017 of the Tirana District Court could bring AC to ruling on a different decision from IQC and dismiss the assessee from office based on Art. 61 para. 3 and/or para. 5 of the Vetting Law.

3. Explanation of the Recommendation

A. The IOs seek judicial review on the following topics related to the asset assessment*: (a) the lack of an economic rationale concerning the income received through the leasing contracts of the Retail Gas Station (b) the lack of a comprehensive analysis of the legitimate source of the investment share of the father-in-law***.***in the gas station- qualified as an other related*

*person (c) failure to conduct a complete investigation regarding the purchase price of the apartment (155 m2 inner surface +35 m2 veranda) in Selite commissioned by the assessee and her spouse in 2017 to *** Construction d)lack of investigation related to the assets used by the assessee*

a) Concerning the rent income generated by the Gas Station

In the Vetting Declaration the assessee declared: Retail gas station with surface 432 m2 purchased from *** Bank for the amount of 250.000 Euros. The assessee's spouse owns 50% and the latter's father owns 50%.

Since the assesse is an investor in this asset and the proceeds coming from the renting out of this asset are the main source of creation for the other assets[1] by the assessee and her spouse, and considering the public denunciations revolving around this asset – IQC should have scrutinized more and have had a deeper investigation on this asset.

Specifically, in the following paragraph 44 of the decision the commission is listing the history of leasing contracts between ***.*** and his father as lessors and other companies as lessees.

i. Rent contract with rep. No. *** , col. No. ***, dated ***.07.2013, between ***.*** and ***.**;*and the companies " *** " sh.p.k and ". *** " sh.a, on a two-year term and a monthly rental estimated based on monthly profit. This contract was revoked by the rent revocation contract with rep. No. *** , col. No. *** , dated *** 09.2014.

ii. Rent contract with rep. No. *** , col. No. *** , dated ***.10.2014, between ***.*** ,***.***and ". *** " sh.p.k Company for renting out the building plot and the fuel station building and other equipment on a term from ***.10.2014 until *** .10.2024, at a monthly rent of EUR 10,000. This contract was revoked by the rent contract revocation document with rep. No. *** , col. No. *** dated ***.05.2015, before termination of its term.

iii. Rent contract with rep. No.*** , col. No.*** , dated ***.06.2015, between the lessors ***.*** ,***.***and the tenant " ***.***.*** ", on a term from *** June 2015 until *** May 2020, at a monthly rental of EUR 10,000. The tenant would pay taxes and all liabilities, such as withholding tax, electricity, and water supply.

In paragraph 47 the commission is stating that "*Given the finding on the change of the rental price from the first contract in 2013 with *** and *** companies, compared to the*

[1] Bank deposit at *** Bank of 39.000 Euros.
Bank account at *** bank of 72.000 Euros.
Apartment purchased in 2017 for 85.000 Euros.

*subsequent rent contracts with " *** " sh.p.k and " ***.***.*** " sh.p.k Companies, the Commission addressed also the Vlora Regional Tax Directorate by letter... "* without specifying the difference in price and why there was this suspicion regarding the subsequent contracts.

It was noticed that assessee's spouse entered into two subsequent lease contracts in 2014 and 2015 with two different tenants concerning the renting out of the gas station, in which the stipulated monthly rent was set at the amount of 10,000 Eur. By observing the financial statements of these companies, it was noted that *** company reported losses during 2015; while the other company ***.*** reported losses in 2016. Moreover, in the administrated documentation resulted some lease contracts signed during the period 2012-2015 by the company *** in the capacity of the tenant of several gas stations in different locations (Korce, Divjake, Elbasan, Gjirokaster etc.) where the stipulated rent amount was much less (the range varied 50,000 ALL- 200,000 ALL) compared to the one offered to the assessee's spouse. IQC failed to investigate as to why the economic interest in the rent contracts significantly favours the landlords.

In addition, it was observed that the initial rent contract signed for renting out the gas station on*** 07.2013, with the company *** established that the lessors shall benefit 90 % of the profit generated by the gas station. The average monthly rent income generated as a result of this contract is respectively 297.789 ALL for the year 2013 and 228.290 ALL for the year 2014. These figures indicate the capacity of the gas station to generate income. Under these circumstances, the increase of the rent amount in the forthcoming rent contracts with *** and ***.*** that refer a gross monthly income of 10.000 Eur represent an unjustifiable economic transaction which goes against the logic of the market.

However, IQC did not consider the above-mentioned facts as enough grounds to investigate the companies and check whether these prices made any economic sense. Instead, they limited their investigation only on the replies of the tax authorities, which informed that the taxpayers declare and pay taxes for the entire economic activity they perform at national level and not for every address in particular, by making available the revenues and profits generated by " ***.***.*** " sh.p.k Company in total, over the years. In 2015, this company had a total turnover of ALL 245,361,018 and a net profit of ALL 4,140,084. Meanwhile, the Tirana RTD provided information about the turnover and profits of " *** " sh.p.k Company over the years. In 2014, this company had a total turnover of ALL 254,111,963 and a net profit of ALL 4,251,567, whereas in 2015, it had a turnover of ALL 127,260,247 and a net profit of ALL 148,849, which belong to the entire business activity of this company, but without specifying this data specifically about the fuel station in Vlora.

Following this information, the Commission stated that "*based on the information processed as cited above, the Commission cannot carry out a specific analysis on the fuel station in Vlora,*

as long as the information provided from the respective tax directorates covers the entire activity of the companies. However, a comparison of the total profits of these leasing companies for the periods during which they rented the fuel station, it resulted that the said companies had an economic/commercial activity that generated legal and sufficient income to cover the rent."

It is worth highlighting that even if the books of the companies regarding this specific gas station are reviewed, the replies of the tax authorities do not remove the doubts on these contracts. It seems that there is no economic sense that companies which have a general nationwide annual profit of approx. 34.000 Euros pay only for a gas station 10.000 Euros/month. Thus, comparing to *** shpk – which paid rent based on profit at the approximate level of 2.000 Euros/month – the other two companies "took the risk" to pay 10.000 Euros/month regardless of whether the station performed economically well or not.

Therefore, the companies might have been qualified as "other related persons" and asked for the books on this specific asset under article 3.14 of the Vetting Law that provides *"Other related persons" shall mean any natural or legal person who turns out to have or to have had ties of interest with the assessee, commissioner, public commissioner or judge resulting from any property/asset interest or any business relation."* As a result, we would suggest that on these points the burden of proof should have been shifted to the assessee.

b) *Concerning the analysis of the legitimate source of the investment share of the father-in-law *** in the gas station*

A list of circumstances were observed that create the interest relationship between the assessee and her father-in-law, which entails the qualification of the latter as *an other related person*: (i) the co-investment in the gas station in 2013; (ii) a confirmed lending relationship between the spouse of the assessee and his father in the amount of 5,140 Euros, the settling of it was declared in the declaration of private interest of 2014; (iii) another lending relationship between the spouse of the assessee and his father declared in the declaration of private interest of 2017 in the amount of 42,500 Euros; (iv) an apartment of 57.1 m2 in Kruja owned by the assessee's father in law that was pledged as a collateral in 2008, so that the assessee and her spouse could obtain a loan at *** Bank for the purchase of an apartment; (v) in the loan contract signed in 2013 with *** Bank for the purpose of the payment of the purchase price of the gas station, the asssessee's father in law results in the capacity of co-debtor and their co-owned property was placed as a collateral for the loan; (vi) the assessee's spouse and his father entered into lease contracts for the renting out of the gas station and the income generated by the latter gets deposited in their joint bank account; (vii) the assessee declared in the Vetting declaration her father in law as a related person and their private interest, in the section " *Data for physical*

persons or legal entities, including the trusted person, that result related to the assessee who bares the obligation for declaration"

According to the administered documentation, on ***.05.2013 Mr.***.*** paid as a cash deposit the amount of 101,000 Euro to purchase 50% of the gas station from the seller *** Bank.

IQC conducted a financial analysis of the capabilities of the father-in-law and his family to cover with legitimate sources his share of investment in the gas station based on which it was concluded that he and his family justify with legal sources the amount of 101,000 EUR invested in 2013.

However, it seems that this analysis was rather incomplete, and an extension of the investigation should have been carried out on the assets owned by her brother-in-law Mr.***.*** on the grounds:

(i) the brother-in-law***.*** is included in a joint household economy with his parents and his incomes were taken into account in the financial analysis[2] (ii) the main source of the income of the father-in-law is the rent income which according to the administered documentation is transferred by the tenant companies at the bank account of the brother-in-law***.*** of the assessee and the latter withdrew these amounts periodically (iii) there is no direct transaction link between the rent income received and the investment made by the father-in-law in 2013 in the Gas station in Vlora (iv) referring to the brother-in-law's *** Bank statement, it was noted that his bank account was credited by the tenant companies in the total amount of 10.548.000 ALL during October 2007- May 2013. The total amount of 9.073.000 ALL was withdrawn by the brother-in-law during 2007-2013. In addition, it was noticed that the bank account was debited by a currency exchange transaction in the amount of 2.077.500 ALL with the description: "FX Receipt" on *** 08.2012. At the same date, the corresponding Bank account in EUR was credited in the amount of 15.000 Euros, which was invested in a deposit that matured on*** .08.2013. On *** 09.2013 this deposit and the remaining balance of the account were transferred for the purpose of purchasing an immovable asset by the brother-in-law. This indicated that the destination of the amount 2.077.500 ALL, generated by the rent income, was not used for the purpose of the investment in the gas station.[3]

c) *Concerning the legitimate source of the investment of the father-in-law in the three storey building in *** Fushe Kruje, 624 m2, applied for legalization on ***11.2006.*

Considering the above listed ties of interest with the assessee's father-in-law under point b), we think that the financial analysis should have been extended also to the certified asset of the

[2] Please refer to the replies of the assessee to the questionnaire nr. 7

[3] Refer to the *** Bank statements of the accounts of the citizen *** submitted by the assessee as supporting documentation in her objections.

father-in-law: three storey building in *** Fushe Kruje, 624 m2, declared period of construction 2005-2006 with a declared cost of 14.000.000 ALL, on the following grounds:

(i) the assessee assumed office in November 2000 and was married in *** 09.2003; (ii) by observing the income of the father-in-law of the assessee and his family, the source of this investment is unclear, since the documented income results insufficient to cover the value of this object (valued by ALUIZNI in the amount of 17,153,760 ALL); (iii) as per the extent of the analysis of the other related person, the standing of AC suggests that the latter should be limited to the amount of lending/donation, but this reasoning shall not deter IQC to investigate in case there are doubts raised on objective circumstances for a hidden asset[4]

d) Concerning the apartment (155 m2 inner surface, and 35 m2 veranda) located in Selite, commissioned by the assessee and her spouse in 2017.

A limited investigation was carried out also for the purchase price stipulated in the amount of 500 Euros/m2 for the apartment with surface 155 m2 bought from *** Konstruksion in 2017. Since the State Agency Cadaster could not identify any constructions in the area related to the company *** Konstruksion, IQC decided to accept few other contracts submitted by the assessee rather than asking the company *** Konstruksion pursuant to article 49 and 50 of the Vetting Law to submit the other sale contracts of that building disregarding the standard followed so far.

e) Concerning the assets used by the assessee

According to the administered information, the assessee resulted as a registered user of the vehicle type BMW type 535D with license plate *** valid for the period of time ***.06.2011-***06.2012). According to this insurance policy the name of the brother-in-law ***.*** results in the capacity of owner while according to the GDRTS it results that this car was never registered. This fact should have directed IQC into investigating further about the purchase price, the legitimate source of purchase in order to dispel any possible doubts about the sources.

The assessee stated that during 2014-2016 she used the car owned by the company ***.*** , a Mini Cooper year of production 2013 for trips of the family abroad with the consent of the father-in-law (in the capacity of ordering party of the purchase contract). Based on the explanations of the assessee, the father-in-law entered an ordering contract for the purchase of the car but did not pay the whole price of the car and in 2016 the parties returned to their previous state and the car was returned back to the owner the company ***.*** . IQC should

[4] Refer to Decision (JR) nr. 15 dt. 17.07.2019 paragraph 110.

have requested the contracts to check how much the father-in-law paid for the car, the lawful source, and the possible conflict of interest relationship with the company ***.*** . This inquiry was also needed for the financial analysis of the father-in-law.

B. The approach of the commission regarding the background assessment in this case was to not connect her with her spouse in terms of investigation process. Referring to the Vetting Law in art. 35.2 "*The NSA shall initiate immediately the procedure of background assessment, in compliance with the provisions of Art. 4, para 4, Articles 37 and 38 of this Law*", since there was no information from the agencies according to articles 37 and 38 of the Vetting Law, and considering art. 38 paragraph 4 whereby the conditions that support a finding of inappropriate contact are set out[5] - a related person's involvement with organized crime or exchange of money, favors, etc., is not a far-reaching assumption. It is explicitly a condition that supports a finding of inappropriate contact. This finding, of course, must be analyzed in the light of mitigating factors, if any, provided in paragraph 5 of art. 38.

This approach in not only a legal requirement but is also supported by the evidence and two public decisions of the vetting bodies related to her spouse ***.*** .

In both decisions of IQC and AC the spouse of the assessee refers to his relationship with ***.*** an individual criminally prosecuted several times as close family relationship. Specifically, the decision of IQC provides that he stated the following *"...As I have explained, we have a family friendship which we maintain despite my family change of residence from Vlora since 2011.*

We meet on occasions including family celebrations, birthdays, anniversaries, summer holidays with the person or as families. In some cases, we both travelled abroad, and in one case with our families to Germany in December 2013".

As I have explained during exchange of emails, I have social acquaintances with citizen ***.*** *which started around 2005, when we were residents of the same neighbourhood "* ***.*** *" in the town of Vlora and continued until my family and I moved to Tirana for work related purposes. After that time, as of September 2011, our contacts were reduced, and we have met only in the cases of holidays or birthdays.*

[5] Conditions that support a finding of inappropriate contact with a person involved with the organized crime are in particular:
a. the assessee has been photographed, or a witness describes a meeting with a person involved with organized crime;
b. the assessee or **a member of his or her related persons** has held non-casual communication with a person involved with organized crime;
c. the assessee or **a member of his or her related persons** has exchanged money, favors, gifts or property with a person involved with the organized crime;
c. the assessee is closely related to a person involved with organized crime;
d. the assessee participates in or attends meetings with one or more persons involved with organized crime. The person's alleged membership in organized crime is well known, has been publicized, or is a matter documented in the respective registers.

Further, in the published decision of AC it is stated that *"The analysis of the information provided by law-enforcement agencies during the IQC investigation, and the assessee's replies, indicates that the assessee has a long-lasting friendship with this individual and his family. He himself confirmed in his replies to the questionnaire (by the e-mail dated *** 02.2018) that they have a sound, long-term family friendship, dating 13 years back, when he was appointed as judge in the Vlora Court of First Instance. The assessee considers this person and his family to be role models. In all his replies to the Commission he has stated that he values the style and way of life of this person and his family, and that these were the reasons he was close to him".*

These publicly known circumstances are reinforced also by other evidence such as the insurance policy under the names of the assessee and her spouse was found in the car that the same citizen ***.***was driving when he was detained by the police for illegal possession of weapons[6].

---

[6] See para 66-69 of AC Decision on ***.*** *"The BMW vehicle with license plate *** is the vehicle by which ***.*** was travelling at the time when he was apprehended by police forces in 2011 and was found to carry a "bereta" type pistol without permission from the competent authorities. The Prosecutor's Office initiated investigations on this criminal event, by prosecuting this citizen for the criminal offense of "illegal possession of firearms and ammunition" provided by Article 278 of the Criminal Code, and he eventually was found guilty and sentenced for having committed this criminal offense by Decision No. *** dated ***02.2012 of the First Instance Court of Vlora. The Commission investigated to find the name of the individual who was the owner of the BMW vehicle, because in 2011 this vehicle had a TPL insurance policy in the name of the assessee, ***.*** and his spouse, Rilinda Selimi. The Trial Panel found from the analysis of the administered acts that, on the date when the assessee and his spouse made the insurance policy for this vehicle, this vehicle was owned by citizen *** who sold the motor-vehicle to citizen *** on***08.2011, and that the mandatory TPL insurance policy in the name of the assessee and his spouse was in effect even during the time when the owner was *** and the vehicle was seized as evidence on ***1.2011, the day when citizen ***.*** was detained for possession of firearms while driving this vehicle. The fact that the TPL insurance policy was made by the assessee before citizen *** became its new owner, does not distort the significant fact in this process, that at the time when this citizen became the owner of the vehicle, this insurance policy continued to be valid even at the time when the vehicle's owner was ***.*** and when the vehicle was seized for purposes of the above-mentioned criminal proceedings. This fact does not only show the rights of these individuals to use this vehicle, but also the connections that the assessee had with these persons, which were also acknowledged by him in the responses given during the administrative investigation. For these reasons, the Commission analysed the assessee's relation to citizen *** in the Decision, even though *** is not a person involved in organized crime in terms of Article 3, paragraph 15 of Law no. 84/2016. Nevertheless, he is considered as an individual kept under surveillance by agencies that prevent criminal activities for the offences quoted by the Commission.*

*Regarding the assessee's claim on the Adjudication Panel's partiality in qualifying citizens *** and *** as persons involved in organized crime, claiming that these citizens were not prosecuted in a criminal case, the Trial Panel finds that, during the investigation, the Commission obtained data about these citizens from the TIMS, when *** 's name came out as the owner of the BMW vehicle which was being driven by *** at the time of the arrest, whereas citizen *** was found to be another related person to whom the assessee had sold his vehicle, which was then found to have been in a contractual sale-purchase relation with the assessee's father. The Commission's investigation found that citizen *** is a person with criminal records in the area of crimes against human life and was kept under police surveillance for this reason. Whereas citizen *** , being a lawyer by profession, has been prosecuted for the criminal offense of "Fraud". Meanwhile, while replying to the questionnaires of the Commission, the assessee acknowledged his connection with these citizens, made an assessment of their background and reputation and, of course, denied having any relation with any illegal activity they may have, despite being unaware of nothing of this nature.*

Having reviewed IQC Decision no. 52, dated 30.07.2018, the Trial Panel finds that the Commission did not qualify these individuals as persons involved in organized crime in terms of Article 3, paragraph 15 of Law no. 84/2016 and the assessee was not shifted the burden of proof about them. These citizens have been addressed by the Commission as persons who have criminal records

In addition, the connection of the related person with individuals involved in organized crime are proven beyond any doubts by the finding submitted by IMO as provided in paragraph 71 of the AC decision, which states the following *"The name of the citizen ***.*** and his relationship to the assessee, judge ***.*** was established as proven by the "finding" presented by the International Monitoring Operation, in the meaning of Article 49, paragraph 10 of the Law no. 84/2016. It is established that *** was criminally prosecuted by the Italian justice authorities on the criminal charge "Participation in criminal organization for trafficking in narcotics" which is included in the provisions of Article 3, paragraph 1 of Law no. 10192, dated 03.12.2009 "On prevention and combating organized crime, trafficking and corruption through preventive measures against assets"; therefore, pursuant to Article 3, paragraph 15 of Law no. 84/2016, this citizen is considered as a person involved in organized crime. In the meaning of this provision, the probative value of this piece of evidence rests on an expertise act, i.e. a piece of evidence whose probative value can hardly be called into question by any trial panel required to assess it, precisely due to its characteristics and the source it was obtained from which – in the light of the level of reliability, integrity, impartiality and professionalism – is deemed to be of a special nature, combined with the very specific way the information is collected. According to this finding, not only does the assessee have stable relations with the citizen *** but he also used his influence in the justice system – both through his direct decisions and his influence on other officials – so that the extradition of the citizen towards Italy in 2014 fails."*

Therefore, in IOs' opinion there are enough evidence and indicia to evaluate the assessee's background pursuant to article 38 paragraph 4.b of the Vetting Law.

C. Referring to the IQC decision, some issues are identified concerning the tax obligations such as rent and income from sale of cars. This income has been treated by the commission only for the purpose of financial analysis, while it seems there are also ethical implications.

Whilst for the rent income from the apartment in Vlora, she is claiming that she was not aware that the lessee did not pay the tax obligations for the period Jan-May 2013 (even though the tax law requires the lessor to pay for the rent when the contract is entered between two individuals), for the income generated from the sale of cars at a higher price from the purchase she completely ignores the law and claims that she is not obliged for such payment.

---

despite not having records that include them in organized crime, but still they are individuals who, in terms of guaranteeing the image of a senior judge, should not be part of the judge's social group precisely because of their illegal activity. The Trial Panel finds that the Commission has rightly considered them to part of the group of persons who, because of the close relation they have created with the assessee, in some way affect his image. Although this indication does not constitute a real ground for dismissal, it served the Commission as an argument to conclude, inter alia, that the assessee may be easily put under the pressure of criminal organizations, as long as individuals who are part of these organizations are found to have social relations with him in an intentional and steady manner. Regarding what's argued above, the Trial Panel finds this ground of appeal to be ungrounded."

According to paragraphs 58 and 65 related to the sale of two cars, the assessee replied that she has no tax liability to pay on the income generated from the difference between the purchase and sale prices, while the tax principle is that income generated in Albania is taxable, except for the ones that the tax law specifically provides exemptions[7]. Even if she was not aware of the obligation, unawareness of a legal obligation is not justifiable for any citizen, let alone to a citizen with special knowledge such as a judge in the Administrative Court of Appeals *(Ignorantia juris* ***non*** *excusat)*.

- Regarding Decision no. *** , dated ***.02.2017 of the Tirana District Court issued by judge ***.*** against *** and in favor of Rilinda Selimi and others, we believe that - considering the position of the assessee as a judge and the public denunciation on this decision – IQC should have evaluated and assessed this court practice from a different perspective rather than disregard it.

Below are listed some of the main possible issues that this proceeding might have had if to be evaluated from a preferential treatment perspective.

a. Procedural.

i. It seems that the amount of damage relief was not specified by the claimant in the lawsuit (even though a legal requirement).

ii. The legitimacy of the parties seems flawed since boarding was denied only for the three children, while it seems as if the judge took it for granted that the five travelers were eligible to file suit[8].

iii. Appointment of experts.

- There was a request by the defendants to appoint IT expert for the assessment of General Terms and Conditions on the website of *** . It was not considered by the judge and it seems there is no decision or reasoning on this refusal[9].

---

[7] Article 7.1 provides that *"residents are obliged to pay tax on personal income during the taxable period for all sources of income as provided in this chapter". In addition, article 8.g provided at the time that "For purposes of taxation of personal income are deemed as taxable income ... g) other income that are not identified in the categories of this article, that are made from residents or non-residents with source in the Republic of Albania".*

[8] The Court of Appeal finds the first-instance proceedings lacking also for another reason, i.e. the fact that the court *a priori* established that the respondent did refuse transport to Italy for the complainants, while it did not administer any evidence sustaining such fact.

The Court of Appeal deems that the Court must administer in re-trial evidence related to the claim of appellants Rilinda Selimi and ***.*** that they were rejected the fulfilment of the air transport contract, i.e. the respondent refused to transport them to Italy.

[9] The Court of Appeal holds that the first-instance court wrongly decided not to order an IT electronic expert report to check the claims of the respondent, specifically, to check whether on the respondent's website is posted the fact that a pasanger cannot travel if the validity of his/her travel document is less than 3 months, in which case, the complainants should not have booked the travel tickets for the reason that the respondent was unable to transport them. The IT electronic expert report would have proven whether the respondent acted in guilt or not.

- The expert appointed for the calculation of the damages is an injury claim assessor for insurance claims[10].

b. Circumstances of the case.

The court ruled that the respondent has the obligation to compensate the pecuniary damage resulting from the pre-paid service by the complainant on *** 03.2016 under the contract with reservation code *** for payment of transport services according to 5 air transport return tickets of the complainants in the amount **913.26 Euro** (even though boarding was denied only to three children due to their expiring passports).

Also, the respondent shall pay compensation for non-pecuniary damage caused to each complainant due to the deeply negative impact of this occurrence on the psychological condition and memory of each of them. Thus, in total **30.000 Euros**.

Such amount, if considered as a reward for the inconvenience (i.e., if *** was to be found fully responsible), is unreasonably high economically and not grounded in evidence and the law. However, the decision and the award *per se* is not part of this recommendation in terms of proficiency of the judge who issued it, as that should be part of evaluation in other proceedings and undergo review in the High Court, since the assessee appealed the decision of the Court of Appeal to repeal the decision of first instance court. Review of this decision from the vetting bodies should have been made purely from the perspective of preferential treatment and whether if by reviewing it *prima facie*, would give the impression of an unreasonable judgment that might give rise to a case of inequality before the law.

This court practice might have procedural as well as material flaws in rendering this decision (such as wrong application of the Unifying Decision no. 12 dated 14.09.2007 of the High Court) that could have resulted in violation of Art. 18/2 of the Constitution on equality before the law.

Therefore, if this case were properly investigated (comparing her other decisions in non-pecuniary damage relief cases) could result that judge failed to consider the national/international court practice and economic/social reality in Albania by issuing this decision that unreasonably favours the plaintiff Rilinda Selimi and others.

As per above, it seems that there might be a pattern of preferential treatment that shows the influence of the assessees in the civil circulation compared to other citizens. The gas station

[10] Besides the above, this Court holds that the first-instance court wrongly decided to assign a health claim assessor to assess the non-pecuniary damage, and it did not consider to establish through a psychologist expert whether the complainants sustained damage and, if yes, what such damage consisted of.

and its leasing contracts, the sale price of cars higher than the purchase price, renting out an apartment in Vlora for more than the double of the price of the rent they paid to live in the center of Tirana, failure to pay taxes, court decisions unreasonably in her favor that was even appealed when the Court of Appealed returned the case in the first instance.

The extrajudicial activity of the assessee should have been reviewed following the Bangalores Principles under the test of conduct scrutiny from the perspective of a reasonable, impartial, and informed individual from the public; does this perception affect the perception for the judge or the judiciary as a whole[11]?

D. Conclusions

The scope of the re-evaluation process is to restore the public trust in the institutions of the justice system[12].

There is the need to conduct a proper investigation and proper assessment with legal and financial standards acknowledged by the Special Appeal Chamber on the issues highlighted in this Recommendation.

In view of the above, the IMO recommends an appeal on three pillars against IQC's decision confirming the assessee Rilinda Selimi in office.

Respectfully submitted,

International Observer International Observer International Observer

IMO ALBANIA

[11] See point 102 of the Explanatory Note of the Bangalores Principles "*... this should be kept in mind in considering how certain conduct might be perceived by reasonable, fair-minded and informed members of the community, and whether such perception is likely to diminish the community's respect for the judge or the judiciary as a whole. Conduct that is likely to diminish respect in the minds of such persons should be avoided.*"
See point 4.9 of Bangalores Principles "*A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties*". The commentary provides in paragraph 144 that "*A judge who takes advantage of the judicial office for personal gain or retaliation abuses power. A judge must avoid all activity that suggests that his or her decisions are affected by self-interest or favoritism, since such abuse of power profoundly violates the public's trust in the judiciary.*"
Further see chapter 3 on Integrity and point 106 of the Explanatory Note on "an alternative test".

[12] See Art. 179/b para 1 of the Constitution of the Republic of Albania "The re-evaluation system shall be established in order to guarantee the proper functioning of the rule of law, the independence of the judicial system, as well as to re-establish the public trust and confidence in these institutions. See *idem* Art. 1 of the Vetting Law.