



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

Prot. No. 566/1

Tirana, 18 October 2023

To the  
**Public Commissioners**  
Bulevardi "Dëshmorët e Kombit", No. 5  
Tirana  
Albania



Case Number: **DC-P/TIR/1/15**  
Assessee: **Saimir Hysa**

**RECOMMENDATION 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", Article B, paragraph 3, letter b 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 Saimir Hysa holds the office of the prosecutor at the Prosecution Office of Tirana. He is an assessee pursuant to Article 179/b, paragraph 3 of the Constitution.

## **2. Summary of recommendation**

The International Observers (hereafter referred to as IOs) recommend the Public Commissioners to file an appeal against the Independent Qualification Commission's (hereafter referred to as IQC) decision to confirm the assessee in duty.

Several proficiency and asset related shortcomings, in the view of the IOs, are not duly and thoroughly assessed by the IQC.

In the view of the IOs, an adequate assessment and reasoning, based on a full and comprehensive examination of the facts and supporting files, would impact the outcome of the IQC decision.

## **3. The decision of the IQC**

The decision of the IQC to confirm the assessee in duty was based on three pillars.

During the investigation, the panel administered two findings by the International Observer, related to asset and proficiency shortcomings, which are part of the investigation file.

## **4. Reasons for an appeal**

The IOs have doubts whether by confirming the assessee in duty, the IQC has comprehensively and duly evaluated the facts, circumstances, and evidence on the raised issues.

More specifically:

### **4/1 Proficiency related issues**

#### ***4/1.1 The case of the infected with HIV newborn***

##### ***a. Main facts and circumstances of the case***

The IO submitted a finding on this case, by outlining the main relevant issues, as follows:

On June \*\*, 2022, the assessee, registered the criminal report no. \*\*\*, based on the criminal report filed by citizens \*\* and \*. Citizens \*. and \*. claimed that representatives of several health care institutions (the \*\*\* maternity hospital, pediatric hospital, etc.), performed unlawful actions consisting of *abuse of duty* and *negligent medication* towards their newborn baby infected with HIV. The parents attached some medical analysis to their criminal report.

On July \*\*, 2022, the assessee decided not to initiate criminal proceedings. This decision was appealed successfully at the court. In its decision the court lined out the assessee's shortcomings regarding this case and ordered the investigation to be started. The court's decision was upheld in the appeal court.

*b. Stances of the assessee to the results of investigation*

Through updated results of investigation, the assessee was asked by the IQC to provide explanations on several raised issues.

The assessee mainly claimed that:

- This was a pending case, as investigation was ongoing after the appeal court decision upholding the first instance court decision.
- The parents of the newborn did not even bother to write a word about what happened to their baby, and about the concrete unlawful actions they wanted the prosecution office to investigate upon.
- The parents only referred to state bodies, without mentioning any individual responsible for the offences.
- The parents were more specific before the first instance court on the details of the case, than in their criminal report before the prosecution office.
- The non-initiation decision by the prosecutor did not prevent the possibility of investigating the case.
- The assessee advised the parents to draft a full criminal report and file it with the prosecution office. He stated that the parents could hire a professional defendant lawyer to properly write a criminal report.
- The assessee claimed he was overloaded with work.

*c. The IQC reasoning*

The IQC substantially maintained that the case was still under investigation, hence it had no competence to further assess it.

*d. The view of the IOs*

In the view of the IOs, the IQC is constitutionally mandated to assess the proficiency shortcomings and properly address them in the vetting framework.

In the case at hand the assessee did not manage to provide convincing and thorough explanations, as follows:

- The case cannot be considered as a pending one. The non-initiation decision of the prosecutor dates back to July 2022. No other investigation acts were issued by the assessee during June - July 2022. The assessee is not being assessed for the current investigative actions ordered by both first and second instance courts.
- The parents of the newborn submitted the information that they deemed as proper, including their blood tests and of the infected baby. It is the responsibility of the prosecution office to take the needed action to verify the circumstances mentioned in the criminal report or collect any explanation or information from the parents or other involved persons.
- The Albanian legislation recognizes the criminal responsibility of legal persons through law no. 9754/2007. Again, it is up to the prosecutor of the case and the specialized

investigation bodies to find out whether individual persons or legal persons were involved in a reported criminal offence, not the other way around.

- Once the circumstances and presence of elements of the criminal offence were clarified before the first instance court, as claimed by the assessee, he had all the grounds to start investigation. Instead, he appealed the decision, by unjustifiably delaying investigation, especially in a sensitive case of HIV infection involving a specific social category (the newborn).

- As to the claims of the assessee that the non-initiation decision would not hinder further investigation, the IOs note an inconsistent understanding of the impact of the actions of the assessee in the overall criminal proceeding.

#### **4/1.2 The case of denouncer \*\*\* \*\***

##### *a. Facts and circumstances of the case*

Mr. \*\*\* . claimed that he purchased a piece of land from Mrs. \*\*\* . in 1995, of approx. 3000 m<sup>2</sup> in \*\*\* , Tirana. \*\*\* registered the asset in his name and moved to France. Some years after, Mr. \*\*\* found out that this asset was sold in 2007 to another person. \*\*\* alleges that the second sale occurred through unlawful and on-purpose cooperation of Mrs. \*\*\* with cadaster office officials, etc. On these grounds, in 2008 Mr. \*\*\* filed a criminal report against \*\*\* and others. \*\*\* claims he never had any information from the prosecution office/assessee on the ongoing procedures. After many requests to the prosecution office, he was notified that his case was dismissed. \*\*\* asked for the official notification of the dismissal. \*\*\* claimed that he was informed that the file was lost and could not be found in the prosecution office archives.

Following the above \*\*\* filed in 2020 a criminal report against the assessee on grounds of *abuse of duty and loss/theft of the investigation file*. SPAK forwarded the claims of Mr. \*\*\* to the GP, and the latter to the prosecution office of Durrës. In April 2020, the prosecution office of Durrës concluded that there were no elements of a criminal offence, hence it was decided to not initiate the criminal proceeding. The main stance in this decision is that prosecutors act independently, that the issue was dealt with by the civil court; and that the claims of \*\*\* against \*\*\* were already dealt with by the assessee in his investigation during 2008-2009.

##### *b. Main shortcomings identified by the IO*

The IO identified the following main proficiency issues:

- Mr. \*\*\* addressed the prosecution office of Tirana in 2008 on grounds of *theft, fraud and forgery of documents*, against Mrs. \*\*\* and others. Mr. \*\*\* . claims that the prosecution office did not investigate and for a long period of time (2008-2010) did not even inform him of the ongoing procedures.

- After many requests to be informed of the proceedings, Mr. \*\*\* learned that the case was dismissed by the assessee. \*\*\* claims he never received a notification on the termination procedure so as to appeal it. After several requests, the prosecution office informed him that his file was lost and could not be found, in the archives of the prosecution office.

- \*\*\* filed a criminal report against the assessee for *abuse of office* and *theft/loss of the investigation file*. The prosecution office of Durrës dismissed the criminal report against the assessee.
- The assessee started a criminal investigation on the claims against \*\*\* and others, on \*.10.2008. On \*.9.2009 the assessee dismissed the proceedings for *forgery of documents* and *abuse of duty*. On \*\*.3.2010 the dismissal decision was communicated to \*\*\* .
  - o It appears, *prima facie*, that the investigation (if any) was conducted for more than 3 months, which is the normal time-limit set in the criminal procedure.
  - o It is not clear whether postponement decisions, comprehensive investigation, or notifications to Mr. \*\*\* were issued/performed during October 2008-September 2009.
  - o The notification of the dismissal decision, dated March \*\*, 2010, appears also very delayed in time.
  - o Allegations about the loss of the file and non-information of the criminally reporting person of the investigative steps, could be assessed only if the complete file is administered.

*c. Stances of the assessee after the updated results of investigation*

The assessee substantially provided the following explanations:

- He completed his job after issuing the dismissal decision of September \*, 2009, on this criminal proceeding (no. \*\*\* /2008).
- The assessee provided a document dated October \*, 2009, allegedly indicating that the dismissal was notified to \*\*\* on this specific day.

*d. The reasoning of the IQC*

The IQC has substantially endorsed the explanations of the assessee.

*e. The view of the IOs*

In the view of the IOs:

- Based on the administered file, the only act of the prosecutor addressing Mr. \*\*\* during investigation was issued on \*\*.9.2008, consisting of questions to \*\*\* in the quality of the person acknowledged of the criminal offence. The next act addressing Mr. \*\*\* , appears to be the notification of the dismissal decision, on March \*\*, 2010. The claims of Mr. \*\*\* of not being notified of the ongoing procedures which started in September 2008, and was concluded through the notification act in March 2010, appear substantiated.
- During January - July 2009 no investigation acts are issued or taken by the assessee. Even after July 2009, only two acts were issued until September \*, 2009, when the investigation was dismissed. The assessee did not evidence or convincingly explain the lack of investigative steps during this period.

- As to the claim of the assessee about having exhausted his task after issuing the dismissal decision, the IOs note that Art. 74 of the status law no. 96/2016, as amended, requires that proficiency assessment about organizational skills, includes *the monitoring by the prosecutor of the necessary notification acts without delays*. In fact, the whole criminal proceeding is the responsibility of the prosecutor of the case.
- The submitted acts by the assessee to prove that notification occurred before March 2010, are not related to criminal proceeding no. \*\*\* .
- The court decision dismissing \*\*\* 's claims about lack of investigation refers to the out-of-time request by Mr. \*\*\* , beyond the standard time limit of 10 days. According to the court, \*\*\* was not able to evidence the exact time when he received notification. In the view of the IOs the procedural consequence of having the claims rejected by the court on grounds of delayed timing is closely linked to the inconsistent and delayed acts issued by the prosecution office in this case.
- The assessee did not issue postponement decisions during 2008 - 2010, by preventing though Mr. \*\*\* from exercising another procedural right, which is the appeal of postponement decisions, meant amongst others, for an effective investigation. The claim of the assessee about non-registration of the name of the person to whom the criminal offence is attributed, as an excuse for not issuing postponement decisions, is not substantiated. The instruction no. 241/2005, as amended, of the GP and the overall time-limit of 3 months provided in the Code of Criminal Procedure for standard investigation, sets reasonable boundaries to the activity of the prosecutor.
- The assessee explains amongst others that he did not investigate the main suspect, who performed the sales through a power of attorney, because this person was living abroad for a long time. The IOs note that having a suspect abroad does not constitute a legal justification for not thoroughly investigating a criminal case.

#### **4/1.3 Denouncer \*\*\***

##### *a. Relevant facts and circumstances of the case*

Based on a criminal report of \*\*\*\*\* , the prosecution office of Tirana registered a criminal proceeding against notary \*\*\* for *abuse of office and use of forged documents*, dated October \*\*, 2020. The prosecutor of the case (\*.\* ) performed some investigation steps and decided to request the dismissal of the criminal proceedings, as the reported facts were not, in his view, of a criminal nature.

Prosecutor \*.\* was dismissed from office on July \*, 2021. The case was within a few days, assigned to the assessee.

After the submission on the request for dismissal, the court sent several notifications (starting as of October \*, 2021) to the prosecution office, for the date(s) set for the examination of this request. In July 2022, the court found that the investigation was not complete, and that the prosecution office did not investigate at all, the claims *for forgery of documents*. The court returned the acts to the assessee for further investigation.

Denouncer \*\*\* claimed amongst others that the assessee delayed the proceedings, through his absence in several hearings.

*b. Initial explanations by the assessee*

Initially the assessee explained that the investigation was performed by another prosecutor. As to the delays the assessee replied that the court could have continued with the hearings, in case of unjustified absences, as provided in the criminal procedure provisions.

*c. Main shortcomings identified by the IO*

Following these replies, the IO raised several proficiency issues, amongst which:

- The assessee did not provide convincing explanations about the absence in the court hearings. He only referred to a criminal procedure provision allowing the court to continue the hearings in cases of unjustified absences of the parties.
- The assessee also mentioned the requests of the denouncer to postpone the hearings but did not submit any evidence.
- The assessee should clarify his position, whether absences were justified, and submit supporting documents.
- The assessee should explain whether his actions were in compliance with the criminal procedure provisions.

*d. Stances of the assessee after the updated results of investigation of the IQC*

To the updated results of investigation, the assessee replied as follows:

- This was to be considered a pending case, as it was still under investigation.
- The hearings were mainly postponed due to the requests of the party and of the judge of the case.
- The assessee did not appeal the court decision ordering him to perform the investigation, as this would delay the case for another 2 years.

*e. The IQC stance*

The IQC substantially endorsed the explanations of the assessee.

*f. The view of the IOs*

In the view of the IOs the assessee did not convincingly explain the raised issues. On the contrary, especially as relates to the presence in the hearings, and to the causes of postponements, the assessee has misrepresented the documents he himself submitted as evidence. More specifically:

- The submitted documents show that the assessee was not present in most of the hearings, during \*.10.2021- \*.7.2022, without ever submitting to the court any legal cause for doing so. Whereas as a rule, the code requires the parties to be present at the hearing. According to Art. 329/b "Examination of the request" of the criminal procedure, the court notifies the parties within 5 days form the submission of the request, aboŭ the day and

time of the hearing. Para. 2 of this article provides that the court shall continue with the examination even when the parties are not present, when they have been regularly notified and have not submitted any justification for the absence.

- In the hearing of \*\*4.2022 the judge postponed the hearing based on the request of the assessee to get acquainted with the file (a case that the assessee had assigned since July 2021). The assessee declared before the court that he inherited the file from another prosecutor and that he had not yet retrieved it. Whereas several hearings were postponed to give to the prosecution office the possibility to assign a prosecutor to the case. Once the prosecutor was present, he asked for more time to retrieve the file and then get acquainted with it. None of the above appear to satisfy the principles of effective and timely adjudications, especially in criminal cases.

- The submitted acts of the file indicate lack of action by the prosecutor for a long time, as claimed also by the denouncer.

- As to the stance of the assessee that he did not appeal the court decision, being aware that it would delay the case for another 2 years, the IOs note that the assessee did not use the same approach in even more sensitive cases such as the case with the baby infected with HIV (see above).

- Furthermore, the case at hand should not be considered as *pending*. What is being assessed mainly relates to the omissions by the assessee during the period July 2021 – July 2022. In July 2022 the court ordered the assessee to perform an investigation on the claims for *forgery of documents*, which corresponds to the investigation/pending case claimed by the assessee.

#### **4/1.4 The \*\*\* -/\*\*\*\* affair related case**

##### **a. Main facts and circumstances of the case**

This case was reported by media as one of the most prominent money laundering and fraud related criminal cases in Albania. The IMO administered the relevant files from the prosecution office of Tirana. These files indicated the involvement of the assessee in criminal proceeding no. \*\*\* /\*, initiated as part of the initial criminal proceeding no. \*\*\* /2014.

##### **b. Circumstances of the criminal proceeding no. \*\*\* /2014 on the \*\*\*-\*\*\*\* affair**

In 2014, the prosecution office of Tirana registered the criminal proceeding no. \*\*\* for *fraud with serious consequences and laundering of criminal proceeds*, initially against \*\*\* \*\*\* (representative and administrator of \*\*\* l.t.d), and later, also against \*\*\*\*\* and \*\*\*\*\* (respectively General Director and Director of Finance for \*\*\* Distribution Albania).

According to the acts of the file, \*\*\* l.t.d was contracted by \*\*\* Distribution in 2010 - 2011 to collect accumulated debts on behalf of \*\*\* distribution. The Albanian State held at the time 24% of the shares of \*\*\* Distribution company. Investigation showed that \*\*\*\*\* , \*\*\* and \*\*\* , together with other involved people, stole approx. 650 million ALL from \*\*\* Distribution through fictitious transactions and forged documents.



In 2015, the prosecutor of the case, at the time, separated the case of. \*\*\* (no.\*\*\* ) from that of \*\*\* and \*\*\* ( \*\*\* /\*). \*\*\* was reportedly sent to trial and convicted for *fraud with serious consequences* and *laundering of criminal proceeds*, with 11 years in prison. \*\*\* served his sentence.

In 2017 \*\*\* and \*\*\* were, as per administered files, also sent to trial for the same charges. At the time, the prosecutor of the case, separated the criminal proceeding no. \*\*\* /\* for *fraud with serious consequences* and *laundering of criminal proceeds* against them, from the criminal proceeding no. \*\*\* /\* on the *use of forged documents* in this criminal proceeding, based on Art. 186 “Forgery of documents” of the Criminal Code.

*c. The criminal proceeding no. \*\*\* /\**

Criminal proceeding no. \*\*\* /\* was assigned to the assessee. In June 2019 the assessee filed a request to the court to terminate the investigation. In his request for termination of investigations, the assessee referred to both para. 2 and 3 of Art. 186 of the Criminal Code. In his request, the assessee referred to some investigation steps involving four companies which stipulated service contracts in 2010 with \*\*\* l.t.d. for relevant amounts of money. The assessee referred to some questions and answers of the representatives of the investigated companies. Based on the above, the assessee concluded that the four service contracts were not implemented by the contractors, whereas they received payments (or most part of them). The companies did not return the received money to \*\*\* l.t.d., nor did \*\*\*\*\*, in the quality of administrator of \*\*\* take any legal action to have the payments returned.

The assessee concluded that there were serious suspicions that the documents on the financial transactions were fictitious and qualifiable under Art. 186 “Forgery of documents” of the Criminal Code, committed in cooperation. The assessee also reasoned that forgery in cooperation fell under Art. 186/2. The assessee concluded that under the provisions of Art. 66/b on the statutory limits, the investigation could not continue, as the time limit for prosecuting the crime under Art. 186/2, had expired. Hence the proceeding should be dismissed.

*d. Decision of the first instance court on the termination request of the criminal proceeding no. 6381/2 and appeal of the assessee of the first instance court decision*

Through decision no. \*\*\* , Reg. Them, dated November \*\*, 2029, the first instance court found that investigation on the criminal proceeding \*\*\* /\* was not complete, that the request of the prosecutor was not in compliance with the investigation acts submitted to the court, that for almost 2 years no investigation steps were taken, etc.

The court reasoned that the criminal proceeding was registered under Art. 186/3 and not Art. 186/2 of the Criminal Code. Art. 186/3 provides for forged documents by people who have the duty to issue them, as punishable up to 7 years. The statutory limit for para. 3 of this article is 10 years, hence not yet expired.

According to the court, the administered acts indicated the presence of other criminal offences such as *fraud with serious consequences* or *laundering of criminal proceeds*, committed by the

people unlawfully benefiting through the forged documents, as admitted by the prosecutor himself in the termination request.

Following the above, the court returned the acts to the prosecutor by ordering specific investigative steps to be taken within 6 months.

On November \*\*, 2019, the assessee submitted an appeal against the first instance court decision.

*e. Main shortcomings identified by the IO*

The IO identified the following main shortcomings:

- The only acts in the file, that were issued by the assessee, appeared to be (i) the termination request and (ii) the appeal of the first instance court decision. It was not clear whether the assessee performed any investigation before submitting the request for termination, as mentioned in his request (questioning the representatives of the companies, collecting documents, contracts, etc.).
- The first instance court decision referred to the lack of investigative steps for almost 2 years (2017-2019).
- The assessee appeared to have inconsistently referred in his termination request, to both Art. 186/2 and Art. 186/3 of the Criminal Code, by concluding then for dismissal under Art. 186/2 because of the statutory limit. The assessee did not mention, neither appears to have investigated whether the conditions provided in Art. 186/3 were met, notwithstanding the voluminous files produced during previous investigation, and the obvious fact that these people were representatives of the involved companies.
- The assessee is inconsistent in recognizing the forgery of documents, their use, the beneficiaries, and lack of actions by both contracted companies and \*\*\*, l.t.d but failing to see or investigate the responsibility of those who have the duty to issue the (forged) documents, as clearly provided in Art. 186/3.
- The above mentioned appears of more relevance in view of the high public profile of the case, involving relevant monetary interests of the Albanian state, which were damaged through the activity of \*\*\* l.t.d and other contracted companies.
- Furthermore, statutory limits for the actions performed during 2010 - 2011, under Art. 186/3 appear applicable as of 2021. The assessee should clarify whether as of today, the investigation was dismissed because of statutory time limits, or else.

*f. Stances of the assessee after the updated results*

The assessee submitted his explanations to the updated results of investigation. He mainly sustained that:

- His request to dismiss the case was based on the investigation performed by the previous prosecutor of the case.
- The case he had assigned, no. \*\*\* / \* about forgery of documents, was completely independent and not connected to the case investigated by the former prosecutor \*\*\* (no. \*\*\* ) for *laundering of criminal proceeds* and *fraud with serious consequence* against

\*\*\* , \*\*\* and \*\*\* . Hence there was no connection to state finances or high public profile cases in this proceeding.

- The appeal court decision accepted the assessee's claims and dismissed the case on grounds of Art. 186/2 of the Criminal Code, because of the statutory time limits.

#### *g. The IQC stance*

The IQC has decided to transfer the case to the competent body for further assessment.

#### *h. The view of the IOs*

In the view of the IOs:

- The assessee did not provide evidence of having performed any investigation during the time he had the case assigned.

- The assessee did not specify how long he had the case assigned. Eventual postponement orders every three months, and/or motivated ones, were never issued by the assessee.

- The case represents a continuation of the investigation performed by the previous prosecutor. In the decision of 2017 to separate the case of laundering of criminal proceeds and fraud with serious consequences, the previous prosecutor refers exactly to the need to continue (not discontinue) investigation for forged documents.

- As to the reference by the assessee to the appeal court decision, the following should be noted:

o When assessed through the proficiency tools provided in the status law, this court decision does not appear to satisfy the requirements of a thorough and reasoned decision. Several inconsistencies appear of relevance, as follows:

▪ The court does not provide reasoning on the main issue, namely, why Art. 186/2 would apply in this case. It just states in one sentence that this was the right decision by the prosecution office. On the other hand, in his dismissal request to the first instance court, the assessee refers to both para. 2 and 3 of Art. 186 of the criminal code. The appeal court does not elaborate on this issue.

• In his replies to the updated results, the assessee maintains that Art. 186/3 of the Criminal Code would not apply, because the concept of *the person in charge of issuing the forged document* is necessarily linked to a state/public function. The IOs instead note that Art. 186 of the criminal code does not limit the application of the criminal provision to state/public bodies officials. The formulation is open to *any person in charge of issuing the (forged) document*, including administrators of private companies.

• The assessee himself acknowledges in his dismissal request the criminal offence of *forgery of documents*. He also mentions persons and companies, that easily fall under the qualification of *persons in charge of issuing the documents*. Hence, the assessee's

inconsistency in choosing to not investigate the case even in the presence of blatant criminal facts and circumstances.

- The appeal court does not elaborate at all on the long time during which the assessee did not perform any investigation, as admitted by the assessee. Hence, the activity of the prosecutor during these this time remains unevidenced and unjustified.
  - The appeal court, likewise, the assessee, are both inconsistent in recognizing *the forgery of documents* offence, and in stating that there is no criminal offence because of the statutory time limits. The statutory time limits may apply to offences that have been identified as such, and not to non-existent ones.
  - The appeal court refers to a criminal report, based on which prosecution started. While the assessee insists that the case was *ex officio* investigated by the prosecution office (reference is made to the time when the former prosecutor investigated the case).
  - In conclusion, whatever the conclusion of the appeal court, the reasoning part is poor, not elaborated, and not exhaustive of the raised issues.
- Even if the appeal court decision would satisfy the requirements of a reasoned and consistent decision, the following still appears of relevance in the proficiency assessment of the assessee:
- the lack of investigation by the prosecutor for a long time;
  - the non-issuing of investigation acts as required by the Criminal Procedure and in time, during the time he had the case assigned;
  - the blatant mistake in referring Art. 186/3 as only applicable to public fonctionnaires, which constitutes the main ground for not exercising the prosecution powers;
  - the blatant negligence in considering the high public interest case with considerable financial damages caused to the Albanian state interests, etc.

#### **4/1.5 Denunciation from Mr. \*\*\***

##### *a. Main facts and circumstances of the case*

Mr. \*\*\* filed several complaints about the investigation performed in the case of the death of his mother, by the prosecution office. According to the denouncer, his mother died because of an accident with a car, and not because she accidentally fell from the stairs at her place. The case was registered in 2007 by another prosecutor, who closed the investigation in the same year. The General Prosecutor repealed in 2009 the non-initiation decision, and ordered further investigation, to clarify the cause of death of Mrs. \*\*\* .

The assessee re-opened the investigation, and after performing some investigative steps, on October \*\*, 2010, decided to dismiss the criminal proceeding. According to the assessee, the collected declarations and expert act, would not lead to the identification of the death cause. This decision was repealed by the first instance court, on July \*\*, 2011. The court/reasoned that the

prosecutor should question several people of the circumstances of the case, and confront eventual contradictory statements, in order to clarify the death cause.

Further on, the assessee decided to again dismiss the case due to the lack of evidence through decision January 15, 2012.

The IQC addressed the assessee with several issues, namely.

- To document the actions performed during the investigation, postponement of investigation for the first investigation apparently lasting one year, and the second one, lasting 4.5 months.
- To explain the reasons why one of the people who seemed to have directly witnessed the facts of the case, was not questioned by the assessee.
- To explain why the main suspect was not questioned by the assessee.
- To provide explanations on the actual status of the case.

*b. The assessee's stance*

The assessee provided the following explanations:

- He was not obliged to issue postponement decisions during the first year of investigations as he had not registered the name of the person to whom the criminal offence was attributed.
- He provided a chronology of investigation acts that in his view would explain the investigation he undertook in this case.
- He also maintained that he did not question the main suspect as he had been abroad from a long time.

*c. The IQC reasoning*

The IQC substantially endorsed the explanations of the assessee.

*d. The view of the IOs*

In the view of the IOs the following appears of relevance:

- The assessee had the case assigned on \*\*.6.2009. He took the first investigative step on \*.10.2009, after 4 months. He already exhausted the standard 3 months with no motivation.
- From \*\*.12.2009- \*\*.3.2010, meaning another 3 months, there is no investigation, or motivated acts for postponement.
- On \*\*.3.2010 the assessee required the medical expertise to determine the cause of death. This was one of the main tasks ordered by the GP, and the assessee required it only 7 months after he had the case assigned.
- The case was registered for the whole time for the criminal offence of *causing suicide*, when no event, fact or circumstance ever related to this offence.

- As to the lack of postponement decisions, because of not having registered the name of the person to whom the offence is attributed, the IOs refer to instruction 241/2005, as amended, of the GP, and general criminal procedure framework on the standard time limit required for investigations (3 months), as also applicable in this case. To be noted that the name of the person to whom the offence was attributed was clear from a long time. It was a choice of the assessee not to register it. To be noted that having a criminal case attributed and the name registered does not mean that the person is under investigation or accusation.
- Lack of postponement decisions has led to violation, amongst others, of the rights of the family members of the victim to appeal the postponement decisions, for an effective investigation.
- The assessee did not investigate the main suspect, on grounds that he was abroad. Being abroad is not a legal condition for not investigating.

#### **4/1.6 Denunciation from Mr. \*\*\***

##### *a. Main facts and circumstances of the case*

On December \*\*, 2019, the prosecution office of Tirana registered the criminal report no. \*\*\*, based on the report from the Section Against Money Laundering at the Local Police Directory of Tirana, on grounds of *laundering proceeds of criminal offence or criminal activity*, as provided under Art. 287 of the Criminal Code. The police referred information on a donation contract of shares of immovable property, dated October \*, 2018, between \*\*\*\*\* and \*\*\*\*\* in favor of \*\*\*\*\* . According to the police there was no relation amongst the parties to the contract to justify the donation. Whereas during December 2018 - January 2019, the donors had deposited in their accounts several amounts of cash, approx. 75.000 Euro, likewise the alleged price of the donated asset. This information appears confirmed by documents forwarded to the police by the Directory against Money Laundering, after several criminal reports and requests by \*\*\*\*\* . \*\*\* was interested in the transactions on the asset, as a co-owner. \*\*\* claimed through rich correspondence with state bodies, prosecution offices, etc., that the donation occurred based on false information provided by \*\*\*\*\* and \*\*\*\*\* to the notary drafting the donation contract, in cooperation with the notary and an official of the cadaster office, since October 2018. According to the police the real nature of the contract would be that of a sale. The police also provided information on some bank transactions of the donors, information on their immovable assets and information from the TIMS system. Based on the above, the police required the initiation of criminal proceedings against these people for *laundering proceeds of criminal offence or criminal activity*. Along with the submitted request for initiation of the criminal proceeding, the police submitted a request of Mr. \*\*\* , addressing both the prosecution office and the police, in which M. \*\*\* referred the issues related to money laundering and possible fiscal evasion and asked information whether the criminal proceeding was registered.

On \* .1.2020 the assessee decided not to initiate criminal proceedings. In his view there were no legal grounds to do so. According to the assessee the police made no reference to the criminal activity or offence generating the cash in question. Reference by police to *sales contract drafted in the form of donation for unknown reasons*, was according to the assessee, totally insufficient to have the slightest possible doubt of the existence of the criminal offence to initiate a criminal

proceeding. The assessee referred to Art. 293 “*Reporting a criminal offence to the prosecutor*” of the Criminal Procedure Code, according to which *the judicial police shall .... report in writing to the prosecutor the essential elements of the act and the other collected elements up to that moment, by indicating the sources of evidence, the taken actions, and by making available to the prosecutor ... all collected acts and evidence.*

According to the assessee, the police did not comply with this provision, did not submit any element or facts or investigation steps to evidence the criminal activity that generated the cash. According to the assessee, the judicial police should act upon initiative to verify the facts and initiate a criminal proceeding and refer the fact to the prosecutor.

The assessee also referred to another circumstance not allowing the initiation of the criminal proceeding, namely a previous decision of the prosecution office *to not investigate* a criminal report from Mr. \*\*\* of January \*\*, 2019, on an apparently invalid donation contract regulated under the Civil Procedure Code. The prosecution office reasoned at the time (February 2019) that the donation contract, substantially being a sale one, did not constitute a criminal offence, could not be qualified as forged, and could be repealed by a civil court.

Based on the above the assessee reasoned that he could not start a proceeding because it was already decided by the prosecution office on this fact and because the referred fact by the judicial police did not contain the indispensable elements of the criminal offence.

Asked by the IQC to provide explanations, the assessee submitted a not complete copy of his decision and a copy of a court decision related to the case. The court apparently rejected the appeal of Mr. \*\*\* against the non-initiation decision. The court rejected the request, because Mr. \*\*\* withdrew from the appeal, as he intended to file another more specific criminal report on the matter.

*a. Main findings by the IO*

The IO submitted a finding with the IQC, on the main following issues:

- The documents that the assessee submitted on this case were not complete.
- The assessee issued the non-initiation decision on \* .1.2020, whereas the criminal report was registered on \*\*.12.2019. Art. 291 of the Criminal Procedure requires the prosecutor to issue a non-initiation decision within 15 days from the registration of the report.
- Art. 291 of the Criminal Procedure requires the prosecutor to immediately notify the decision to those filing a criminal report or appeal. The letter of the prosecution office notifying Mr. \*\*\* bares the date January 28, meaning not immediate notification, but after 10 days by the time the decision was issued.
- The assessee concentrated his reasoning on the way judicial police performs its duties but neglected the presence of criminal facts or the need for prosecution. Mr. \*\*\* insisted that he addressed every possible institution, in the quality of the co-owner of the alienated asset, keeping in mind also the antilaundersing national strategy in Albania at the time. The police had also apparently provided documents and information on the very suspicious nature of the transaction.

- The main duty of the prosecutor is to exercise prosecution when in the presence of criminal facts, *ex officio* or through the judicial police. The accurate qualification of the offences falls under the competences of the prosecutor. The initiation of a criminal proceeding is in his powers and not those of the police, as sustained by the assessee.

- Having the judicial police not fully document the fact or erroneously qualify the offence as the assessee claims, is no legal ground for non-initiation. Nor does the previous non-initiation of the proceeding by the prosecution office constitute legal grounds. The claims in the first denunciation referred to invalidity of the contract under the provisions of the civil procedure. In the second denunciation reference is made to eventual laundering of criminal proceeds. Non-initiation means that no comprehensive investigation is performed, and no final and binding court decision has been made on the case.

*b. Updated results and assessee's stance*

- The assessee mainly claimed that Mr. \*\*\* did not have the status of the victim or other provided for by the law, so as to be obliged to provide him with a notification within 10 days.

- The assessee admits to having violated the code in issuing his non-initiation decision beyond 15 days.

- The previous decision by the other prosecutor to not initiate the case constituted *res judicata* in his view.

- The police did not provide enough data for him to start criminal proceedings.

- Donations are taxed likewise sales, hence there would be no grounds for tax/fiscal evasion.

*c. The IQC stance*

The IQC decided to transfer the case to the competent body for further assessment.

*d. The view of the IOs*

In the view of the IOs:

- As to the status of the victim or of the person criminally reporting the case, the IOs note that the assessee is inconsistent with his own explanations, where he admits that the case indeed started due to the continues addressing by Mr. \*\*\* of several state bodies. The assessee was aware of this status, as in his own decision and explanations \*\*\* appeared as a person damaged by the actions of his relatives, through the donation of the asset, and the following suspect transactions related to the asset. Moreover, the assessee is inconsistent with the documents he himself submitted, namely the letter of Mr. \*\*\* of November \*\*, 2019, addressing both the police and prosecution office on suspects for laundering of criminal proceeds and/or fiscal evasion. The position of Mr. \*\*\* as the one criminally reporting and addressing the case with several state bodies, is substantiated and clear.

- The assessee claims to have had a *res judicata* decision on the issue of the nature of the donation contract. Whereas the case he had assigned and for which the Criminal



proceeding as registered was about laundering of criminal proceeds and possible fiscal evasion related issues.

- The police provided the assessee with information on the suspect transactions and the dubious nature of the source. This information and indicia could not be dismissed just because the work done by the police was not satisfactory. On the contrary it would normally constitute grounds for verifications, during the whole period (November 2019 - January 2020) that the file stayed with the assessee.

- The IOs reiterate that the accurate qualification of the offences falls under the competences of the prosecutor. The initiation of a criminal proceeding is also in his powers and not those of the police, as sustained by the assessee.

- Having the judicial police not fully document the fact or erroneously qualify the offence as the assessee claims, is no legal ground for non-initiation.

- As to the taxes on donation and sales referred to by the assessee, the IOs refer to the claims of the denouncer, on the applicable reference price (approx. 6.3 million All in this case) versus the real price (approx. 75.000 Euro/9.3 million All). The result would be that, in case of application of reference prices (because of donation), an approx. 3 million All would evade taxation.

#### **4/2 Asset related issues**

As to the asset related issues, the following appear of relevance:

##### ***4/2.1 Not sufficiently evidenced income of the wife during 1999-2004***

As relates to the income of the wife to be of the assessee during 1999-2004, from her employment with \*\*\* Ltd and the Institute for \*\*\* \*\*\* \*\*\*, the assessee filed an attestation by each entity, and an employment booklet. These documents were considered as sufficient by the IQC to include this income in the Financial Analysis, notwithstanding other information by the tax office and Archive office, sustaining that there was no data on this income.

##### ***The view of the IOs***

In the view of the IOs the documents submitted by the assessee, do not suffice to justify the employment relationship, or the claimed amounts. The IOs refer, amongst others, to the discrepancy in the administered documents. More specifically, according to the information in the booklet employment with \*\*\* started as of March 1999, whereas according to the historical extract of \*\*\* Ltd, this company was registered only in September 1999.

##### ***4/2.2 Fictitious actions related to the sales contract of 2005***

As relates to the apartment in \*\*\* , Kavajë, purchased by the brother and the assessee, the assessee admitted that the brother did not in fact pay the seller for his part, as stated in the sales contract. According to the assessee the brother was receiving retribution for some services he offered to the seller some time ago. On the other hand,

the assessee did not submit any evidence of such a previous relationship amongst the parties.

*The view of the IOs*

The abovementioned appear like fictitious actions undertaken by the brother, and endorsed by the assessee, which do not put the assessee in a positive light. The more, in consideration of the fact that the sellers of this asset, appear to be the same people who established the company \*\*\* ltd in September 1999, and attesting that the wife worked for them since March 1999.

***4/2.3 Non-disclosure of the source for the vehicle purchased in 2015***

As relates to the vehicle Renault Megane purchased by the assessee in 2015, the IQC has found the assessee in a minus of 706.720 All. The IQC also found that the assessee did not declare in the Periodic Declarations, in the Vetting Declaration, and for part of the investigation, an individual loan from his brother to purchase this vehicle.

*The view of the IOs*

This counts not only for the financial minus but also for the non-disclosure of a source in the VD.

***4/2.4 Unevidenced monetary transactions with the brother***

As relates to the sources coming from the brother of the assessee, for the several disclosed assets, investigation showed that the assessee did not provide evidence of the monetary transactions for the loans. The individual loans that the assessee received through the years, are covered through contracts, or notarial acts, or explanations, which turned out to not reflect the real content of the submitted document (the sale contract), or were drafted months after the loan was allegedly given, or not evidencable because the bank (\*\*\* Bank) would not keep records for more than 7 years (reference is made to the purchase of the vehicle Renault Megane in 2015, with an individual loan by the brother)<sup>1</sup>.

*The view of the IOs*

The abovementioned raise suspicions about the truthfulness of the monetary transactions, which turned out to be invisible for the re-evaluation procedure.

In conclusion, the IOs note that the above-mentioned circumstances need to be duly assessed by the AC, also in the light of an overall assessment.

---

<sup>1</sup> Normal deadlines applicable by banks for storage of monetary transactions are up to 10 years, whereas this loan, transaction and relevant bank, were never disclosed in due time by the assessee.

## 5. Recommendation

The IOs recommend the Public Commissioners to file an appeal against the decision of the IQC to confirm the assessee in duty. The appeal would enable the AC to:

- investigate and thoroughly assess proficiency related raised issues, which appear to indicate a pattern of negligence, inaction, delays and violations of the rights of the parties, even in cases of a specific sensitivity to the public opinion;
- duly assess asset related issues and their impact in the re-evaluation procedure, along with proficiency related shortcomings;
- take into consideration any possible upcoming issues that might impact an overall assessment of the assessee.

\_\_\_\_\_  
International Observer

\_\_\_\_\_  
International Observer

\_\_\_\_\_  
International Observer

