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To the

Public Commissioners

Bulevardi "Dëshmorët e Kombit", No. 5

Tirana

Albania

Case Number: **DC-VLO/1-12**

Assessee: **Laurent Fuçia**

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.

I. Introduction

Mr. Laurent Fuçia (hereinafter the "assessee"), serving as a judge at the Vlora 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.

The investigation of IQC was carried out based on three criteria: assets, background, and proficiency. Upon administering the reports of the auxiliary bodies, administering evidence obtained through the investigation process and submitted by the assessee, the IQC's Adjudication Panel closed the investigation and notified the assessee its findings, shifting the burden of proof on a set of issues and requesting for explanations.

The hearing took place on 2nd of March 2023 and following the deliberation as per Article 55, paragraph 5, Vetting Law, the Adjudication Panel decided to confirm the assessee in duty pursuant to Article 59 para 4 of the Vetting Law by transferring one file to the High Judicial Council for inspection. The decision was announced on 8th of March 2023.

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.

II. Grounds for the recommendation

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

It is the IOs' opinion that the assessee failed to dispel the burden of proof on most of the findings related to the proficiency pillar. Therefore, the IOs recommend the Public Commissioners (hereinafter PCs) to file an appeal against the IQC's decision dated 8th of March 2023, which confirmed in duty the assessee.

The IOs believe that a correct assessment of the evidence of the case, and the correct application of the relevant legal framework, will 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.

Thus, the IOs seek judicial review for the whole proficiency assessment pillar on the following issues listed based on the following categories:

1. **Cases of poor judgement that are deemed with fundamental and serious errors.**

*a) The case of *** *** regarding the decision on removal of the security measure.*

The General Prosecutor filed on ** .7.2014 with HCJ a complaint against two criminal court decisions by the Vlora District Court, about wrongful application of the law, namely the decision on the conviction of Mr. *** *** by judges *** *** , *** *** and the assessee and the decisions given by the assessee on the revocation and termination of custody as security measure. The IOs' recommendation regards only the latter.

(i) First decision of 2012 on the removal of security measure.

It results that Mr. *** *** was declared internationally wanted by Italian justice authorities, based on an international arrest warrant dated * .7.2011, issued by the court of Lecce (Italy), for the criminal acts of "Participating in a criminal organisation" and "Trafficking of narcotics". On ** .4.2012 the judicial police services in the Regional Police Directorate of Vlora arrested Mr. *** *** for extradition purposes. The Prosecutor's Office [PO] of Vlora District Court submitted to the Court a request on the endorsement of the international arrest and application of detention as security measure for Mr. *** *** . The Court, with its decision no. *** , dated * .5.2012, ruled on endorsing the international arrest and detention for a 40-day term against Mr. *** *** . After the submission of the extradition request by the applying State and of the request on the security measure by the PO, the Court with its decision no.*** , dated *.6.2012 applied the security measure of detention against Mr. *** *** .

Regarding the extradition of Mr. *** *** to Italy, the Vlora District Court, with its decision no. *** , dated ** .6.2012, rejected the extradition request. The Vlora Court of Appeals, with its decision no. ***, dated **7.2012, amended decision no. *** , dated ** .06.2012 of the lower court and approved the extradition of Mr. *** *** from Republic of Albania to Republic of Italy. Mr. *** *** filed a recourse against the decision of the Appeal Court, also asking for the suspension of the execution of the criminal decision of the Appeal Court.

The Head of the High Court, by order no. ** , dated ** .7.2012 suspended the execution of criminal decision no. ** , dated *.7.2012, of the Appeal Court of Vlora, concerning applicant *** *** . By decision no. *** , dated ** .11.2012, the Criminal Chamber of High Court decided on rejecting the recourse filed by detainee *** *** against decision no. ** , dated * .7.2012, of the Appeal Court.

Following the suspension of the extradition, issued by the Head of the High Court, with order no.*** dated ** .07.2012, applicant *** *** , by a request dated * .8.2012, asked from the Vlora District Court the revocation of detention as security measure, issued according to

decision no.*** , dated **.5.2012, arguing that more than 3 months had passed since the start of its execution, while the proceedings before the court were not completed.

By decision no. * , dated *.8.2012**, the assessee decided on the revocation of the security measure for extradition purposes on the account of Mr. *** *** , ordering his immediate release. By decision no. *** , dated **.10.2012, the Vlora Court of Appeals, ruled on amending decision no. *** , dated **8.2012 of the lower court, rejecting the motion of Mr. *** *** about the revocation of the "detention for extradition purposes", (*a decision that was executed by judicial police services only on .** 2.2014)*. The Criminal Chamber of the High Court, ruled by decision no. *** , dated **.11.2012, on rejecting the appeal of applicant *** *** .

In decision no. *** , dated **.8.2012, the assessee argued: *".... The terminology used by the lawmaker "the proceeding before court is not complete", refers not only to the proceeding before the first instance court, but also to the proceeding before the Appeal Court, for as long as the decision becomes final, because, from this moment until the completion of the 30-day term, the Minister of Justice has the authority to rule about extradition (article 499 of Criminal Procedure Code)..."*. He then continued arguing that *".....when the decision of the Appeal Court has been suspended by order of the Head of High Court, it cannot, then, be executed.....which means that for purposes of the provision of article 493/4 of Criminal Procedure Code, the proceeding before the court is not completed, at a time when more than three months have elapsed from the time of submission of the proceeding before the court, on **.4.2012, until the time the motion was filed on **.8.2012..."*.

The Vlora Court of Appeals stated in decision no.*** , dated ** .10.2012, *".....based on the court decision that ruled on a sanction against the applicant for purposes of adjudication of an extradition request*[1] *and the time when the proceeding before Appeal Court for the examination of this request*[2] *was finished, it does not result that this deadline passed, set in this provision. Therefore, the cause defined by law, which quashes the revocation of the sanction, is not found. Decision no.*** dated **.7.2012, of the Vlora Court of Appeals, is a final decision, becoming immediately executable. The recourse, according to the provisions of Criminal Procedure Code, article 432, is an extraordinary means of appeal and, in the context of judicial proceeding stages, the proceeding is considered over upon the conclusion of examination by the Appeal Court.....the Appeal Court ascertains that the suspension of execution of decision no. ***, dated **.7.2012, of Vlora Court of Appeals, does not reveal anything about the measure to guarantee this extradition process, because this suspension is related to other grounds, namely, to the existence of another criminal proceeding in Republic of Albania, until its conclusion. In this case, no more reference is made to the special time terms provided by article 493 of Penal Procedure Code, but the reference should be made to provisions about remand order time terms."*

[1] Decision no. *** dated **5.2012, by the First Instance Court of Vlorë.
[2] Decision no ***dated **7.2012, of the Appeal Court of Vlorë.

The decision no.***, dated **.07.2012 of the Vlora Court of Appeals, is a final and enforceable decision, which has been upheld also by the High Court with decision no. *** , dated ***.11.2012 to reject the appeal of the detainee *** *** . As it will be further explained in the following paragraph, regarding a second identical decision taken by the assessee on the same case, he wrongly interpreted Art. 493/4 CPC, since the decision of the Court of Appeal no*** cited above, was to be considered final end executable and the time limit of the three months was not passed yet at that time; furthermore, the three months period of time has nothing to do with the time for the issuing of the decision on the extradition request, but with the finalization of the linked but autonomous proceeding for the application of the precautionary measure.

(ii) Second decision in 2014 on removal of the security measure.

- On ** .7.2014[3], applicant *** *** filed at the Vlora District Court a motion to terminate his detention as security measure, arguing that the court did not proceed with the interrogation of the arrestee within the 3-day term provided by article 248/1 of Criminal Procedure Code. It results from the judicial investigation that by decision no. *** , dated ***.11.2012, the Criminal Chamber of High Court decided to reject the recourse filed by the detainee *** *** against decision no.*** , dated **.7.2012, of Vlora Court of Appeals. The Constitutional Court ruled by its decision no. **, dated **.2.2014, on repealing decision no. *** , dated ***.11.2012, of the Criminal Chamber of High Court and sent the case back for re-examination to the High Court.
- The assessee, with his decision no. *** , dated ** .7.2014, ruled on admitting the motion. He revoked (quashed) the security measure issued for Mr. *** **** by decision no. *** , dated **5.2012 of Vlora District Court, upheld by decision no. ****, dated ** .10.2012, of the Vlora Court of Appeals, ordering his release. In the reasoning part of the decision, the assessee repeated once more his stance of decision no. *** , dated **8.2012, adding: *".....upon the repeal of decision no.*** , dated ***.11.2012, of the Criminal Chamber of High Court, by decision no.**, dated **2.2014, of the Constitutional Court, ipso iure, the order dated ** 7.2012 of the Head of High Court on suspending decision no.** , dated **.7.2012, of the Appeal Court of Vlorë, came again into force; therefore, the extradition procedure on Mr. *** *** results to not be over yet, not only because decision no. ** , dated *.7.2012, of the Appeal Court of Vlorë, on a material aspect, is not a final court decision, but also because, ...the extradition procedure will be considered concluded only when judicial appeal by the applicant has run its course at all instances....".* He then argues: *"...at a time when the process on the merit of the extradition of Mr. .*** ***

[3] After the execution of decision no. *** dated ***10.2012, of the Appeal Court of Vlorë, which had ruled on amending decision no.*** , dated * 8.2012, of the Court of Judicial District of Vlorë, rejecting the motion of Mr. *** *** on revoking the remand custody order for extradition purposes.

to Republic of Italy is still registered in High Court and has not yet concluded, and at a time when more than 3 months have already gone by since the time of commencement of execution of the sanction of remand custody on his account (. .4.2012), then, the remand custody sanction executed on his account on **.2.2014, has lost, in the context of article 493 of Penal Procedure Code, its power and shall, therefore, be revoked...."*

- Vlora Court of Appeals, with its decision no.*** , dated ** 8.2014, ruling on amending decision no. *** , dated **.7.2014 of the lower court, rejected the motion of applicant *** *** , arguing that the legal interpretation of article 493/4 of Penal Procedure Code, necessarily required the conclusion of the examination of the extradition request by judicial authorities, including the first instance court and the appeal court. Then, continued with the argument: "*...The repeal of decision no. *** , dated **.11.2012, of the Criminal Chamber of High Court, by decision no. ** dated **2.2014, of the Constitutional Court, sending the case back for re-adjudication to the High Court, does not undermine the effects of the final decision of Appeal Court, because..... the suspension of execution of final decision no.***, dated **.7.2012, by the Head of High Court.... has not influenced the security measure issued to guarantee the extradition of the applicant. At a time when the proceeding ended within the time terms set by the lawmaker, there cannot be in place a termination of the security measure in legal reference to the time terms provided for in article 493/4, of Penal Procedure Code".*

The Appeal Court underlined that the current request under examination was examined by the first instance court and the Vlora Court of Appeals; with the latter ruling with decision no. *** , dated ** .10.2012, on amending the decision of the lower court and rejecting the motion by applicant *** *** , concerning the revocation of the security measure, even though the applicant's legal cause in that process was different, his claim was the same as the current request for examination, and the circumstances of the fact and of law examined by this court were the same as those currently under examination. In this situation, continued the Appeal Court, the case under concern was a final decision and the case was considered closed based on the principle of *res judicata*, provided by article 34 of the Constitution.

The Criminal Chamber of the High Court, in its decision no.*** , dated ** .9.2014 rejected the appeal filed by applicant *** *** against decision no.*** , dated ** .8.2014, of Vlora Court of Appeals.

It is clear, as also stressed by the Appeal Court, that the suspension decision no. ** of the High Court, related to the linked but different proceeding on extradition, could not have a direct impact on the decision imposing the security measure on the person under extradition process. Specifically, such suspension decision referring to the judicial decision granting the extradition, could not turn the "final" decision issued by the Appeal Court on the security measure into a non-final (executable) one; on this regard the arguments elaborated by the assessee in his decision were not logical.

The Chief Inspector of former HJC stated that *"it resulted that the judge Laurent Fuçia has violated procedural provisions of criminal law, specifically art. 493/4 of the CPC, regarding interpretation of term "proceedings before the court", **while with his second decision no.** ***, **dated** *****07.2014** he adjudicated a request that was "res judicata" with the decision no. ***, dated ***.10.2012 of the Appeal Court, under art. 34 of the Constitution. Thus, the judge Laurent Fuçia **was completely aware** on this decision due to the fact that he himself had issued decision no. *** , dated **.08.2012, later overturned with decision no. *** , dated ** 10.2012 of the Appeal Court, which is included in the file of the case. Hence, he disregarded the fact that interpretation of the term "proceedings before the court" was settled with decision no. *** , dated **.10.2012 of the Appeal Court, instead he continued with the same interpretation despite the fact that the Appeal Court ruled to change it. Therefore, he did not only err in interpretation of the procedural provision but did it also in violation of the principle of "res judicata".*

As per above, the following shortcomings were shifted as burden of proof to the assessee:

a. ***The assessee issued decision no. *** , dated **8.2012, by erroneously interpreting article 493, paragraph 4, of Penal Procedure Code.***

b. ***The assessee issued decision no. ***, dated ** 7.2014:***

- ***by repeating the erroneous interpretation of article 493, paragraph 4, of Penal Procedure Code;***
- ***by violating the principle of "res judicata".***

The assessee in his explanations argued that there was an ambiguity in the interpretation of said article, which was resolved by the legislator with the changes made in this provision with Law No. 35/2017.

According to him, only after the changes of 2017, the literal interpretation of the addition made in point 4 of Article 493 of the CrPrC, it was concluded that the duration of the coercive measure of detention for extradition purposes is 3 (three) months for each level of trial, the term which in the trial on appeal and in the High Court begins to run from the moment of receiving the documents from each court.

Reasoning of IQC:

The Commission found that the decision of the assessee did not fall under the shortcomings as categorized by art. 72 of the law no. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania" (Status Law). According to the Commission, evaluation of professional skills could be carried out without replacing the interpretation or the logic of the judge pursuant to art. 72.4.

- **IOs are of the opinion** that even if we consider that the provision before the changes of 2017 was ambiguous regarding the time limit of 3 months for the revocation of the security measure (therefore he might have wrongly interpreted the aim of the legislator when he issued the decision no. *** , dated **.8.2012), he was completely aware of the interpretation of the higher courts regarding that provision when he issued decision no. *** , dated ** 07.2014. The court of appeals had already overturned his decision and reasoning, and the High Court held the same stance with decision no. *** /2012 upon refusing the appeal of the defendant. Therefore, in 2014 when he decided on his release, he repeated the wrong interpretation of article 493/4. Again, the court of appeals overturned his decision. Thus, if he misinterpreted the provision the first time in 2012, he could not have done that in 2014 when he completely disregarded the decisions of the court of appeals and the refusals of appeal from the High Court. Furthermore, despite the justifications given by the assessee on the unclarity at that time of the provision under Art. 493/4 CPC, it is rather clear that his deliberate wrong interpretation was driven by mixing up the two linked but separate proceedings (the one on the application of the security measure and the one on the decision on extradition). In fact the three-months term is considered elapsed because **a final decision on extradition** was not yet adopted (which has nothing to do with the content on Art 493/4 CPC, irrespective of the amendments brought to it over the time). Thus, the shortcoming becomes quite relevant especially the second time in terms of article 72.2 of the Status Law.

b) *The case of* *** *** (***) *v. AKKP Vlora /* *** *** *v. LIPRO Vlora.*

Vlora District Court examined civil case no. *** , pertaining to the parties: Claimant *** *** (****); Respondent Property Restitution and Compensation Agency Tirana; Claim: cancel paragraph ** of the Decision no. *** , dated ***.6.2009 of the Regional Property Restitution and Compensation Office Vlora (AKKP Vlora), and recognize the pre-emption right also for an area of 93 m2, property no. **/* + -*, vol.** , pg.*** , located in Vlora. The judicial investigation found that AKKP Vlora, with Decision no. *** , dated ** .6.2009, recognized and returned a plot of 403 m2 as well as the pre-emption right of the surface area of 214 m2 in favour of the legal heirs of the late *** *** and rejected the request in relation to the 93 m2 property on the grounds that this property is registered in the name of citizens *** and *** *** . A judicial process was conducted in relation to this property. In the trial it was showed that an additional floor was built by the state bodies in the former owner's building. The Court rendered a Decision no. *** , dated *.7.2012 on invalidity of the Privatization Contract to the citizens *** and *** *** , and deregistered the property from their names and registered it in favour of the State. The decision was upheld by Vlora Court of Appeal with Decision no.*** , dated **.5.2013. After this fact, since there were no more obstacles for which the pre-emption right was not recognized over the 93 m2 property, the claimant, in the capacity of the legal heir of the late *** *** , requested through a

lawsuit addressed to the Court that such right be recognized also for the 93 m2 property no. ** ***.

At the end of the trial, the assessee rendered Decision no. *** , dated ** 7.2013 to accept the claim and cancel in part the Decision no. *** , dated ** .6.2009 of the AKKP Vlora, only in relation to paragraph 2 of the decision, recognizing the pre-emption right in favour of the claimant also over the 93 m2 property no. ** ***, vol. **, pg. ** , CZ *** , Vlora. This decision became final on ** .8.2013 as it was not appealed.

Further, the assessee examined civil case no. *** , pertaining to the parties: Claimant *** *** , *** *** ; Respondent LIPRO Vlora; Claim: oblige the respondent to register the area of 117 m2, **property no.** ** ***** **vol.** *, **pg.** *** and the area of 190 m2, property no. *** ***, vol. *, pg. * , as well as property no. *** ***, vol. * , pg. ** , located on the third floor of the 3-story building , property no. ***/*. The judicial investigation found that the legal heirs of the late *** *** , by means of the Sales Contract dated *.8.2012, had transferred the pre-emption right to the claimant *** and *** *** for an area of 214 m2; by means of Sales Contract dated ***9.2013, concluded between them, the claimants also bought the pre-emption right for the 93 m2 third floor of the building. Afterwards, the claimant addressed LIPRO Vlora for registration of the above areas, but this institution refused the registration, replying that the applicants lacked the legal document for its registration.

At the end of the trial, the assessee rendered Decision no. *** , dated ** .10.2013 *obliging the respondent, LIPRO Vlora to register the area of 117 m2,* ***property no.*** ** ***, ***vol.*** * ***, ***p.*** *** *in favour of the claimants in the real estate registers....., located on the third floor of the 3-story building, called the former prosecution office, property no. 12/5"*, which, not being appealed, became final on ***10.2013.

As per above, the following shortcomings were shifted as burden of proof to the assessee:

The assessee rendered a Decision no. *** , dated * .10.2013 without evaluating the facts:

(i) the property no. ***/*, vol. ** , pg. *** , CZ *** , Vlora is a floor addition made by the State bodies on the building of the former owner and that no legalization procedure has been carried out by state bodies for this property;

(ii) by Contract no. *** rep., no. *** col., dated ** .09.2013, the seller transferred to the claimant the pre-emption right and compensation, and not the right of ownership of the 93 m² property no. ***/*.

The assessee argued in his explanations that he correctly interpreted and applied the law. He stated that the plaintiffs *** and *** *** , by means of the sales contract dated ***.09.2013, **purchased also the surface of 93 m2 of the floor third floor of the building.**

Further he stated that the pre-emption right was a real right and as such it could be freely disposed of by the owner through the contract of donation or sale, as it happened in the present case.

He based such a conclusion on the unifying civil decision No. 23, dated 01.2002 of the High Court, according to which: *"Also the right to compensation of former owners, according to Law No. 7698, dated 04.15. 1993 should be considered as a real right established by law. Being such, it can be disposed of by donation from its owner."*

Reasoning of IQC:

The Commission decided to transfer this case to the relevant body for inspection according to art. 59.4 of the Vetting Law, since in their view the shortcomings of the assessee in adjudicating this case could be considered of a fundamental and serious nature as per decision 2/2017 of the Constitution Court (also opinion CDL-AD (2016) 036 of Venice Commission).

- **IOs are of the opinion** that after reviewing the decision no. *** /2013 of the assessee, it is obvious that his goal was to register the ownership in favour of *** 's, and not the pre-emption right like he claimed only in the hearing.[4] Especially this paragraph in the reasoning of the decision shows his intention: "*The Court deems that the complainants are entitled to demand the registration of the disputed property in the public real estate registers, because they proved to the Court not only that* ***they hold ownership title over the property****, but also the origin of creation of this title. Specifically, the complainants acquired ownership over this property (307 m²) under the Sale Contract on real right dated **.08.2012 (2014 m²) as well as the Sale Contract dated **.09.2013 concluded between them and the legal heirs of late *** *** ."*

  Then further: *"In the circumstances where the property registration is made by the registrar in line with Article 45 of the law provided that there is an administrative act or a juridical act conferring ownership over the property and always subject to satisfaction of the conditions in Article 193/a of the Civil Code,* ***the Court holds that the complainants possess the title for registration of ownership.***

  Here he was refering to article 193/a, which deals with the registration of ownership transfer sale contracts, which means again that his goal was to register the ownership title instead of the pre-emption right. Otherwise, he would have used as reference article 193/b that deals with registration of real rights over immovable properies such as usufruct, servitute, emfytheusis, etc.

  Further in his decision*: The complainant party has legitimate interest in filing the lawsuit,* ***because in the capacity of ownership right holder*** *it demands that the property be registered in the public real estate registers, because this fact allows it to calmly exercise its ownership rights including the right to dispose of the thing/property."*

[4] Upon the question made by the IO during the hearing before IQC, he replied that by decision no. *** /2013 he ordered LIPRO to register the real right of pre-emption and not the right of ownership over the surface. The analysis of the decision clearly shows the opposite.

It is worth noting that the clear statements reported above, which are consistent with the content of the enacting clause (namely the Order to LIPRO to register the surface area in the name of the claimants) are conflicting with the first part of the reasoning, where the assessee, based on the collected evidence, reconstructed the history and the passages of the sole pre-emption right over the item, without mentioning any single evidence where the ownership right on the item is considered and recognized. So, the fracture between the first part of the reasoning and the second part of it (and with the final clause) is blatant and inexplicable[5]. In addition, the subject of the lawsuit was "Obligation of the respondent *LIPRO Vlora to register the area of 117 m2,* ***property no.*** ****/***, **vol.*** **, **p.*** **** in favour of the claimants in the real estate registers....., located on the third floor of the 3-story building, called the former prosecution office, property no. **/*",* so his claim during the hearing that he was ordering registration of the pre-emption right cannot stand, since the lawsuit itself was brought for registration of ownership.

Regarding the unified decision of the High Court that the assessee mentioned, said decision (with 6 dissenting judges) is dealing with a dispute over inheritors for a compensation right from the state. In page 5 it provides that: *"Therefore, the question arises as to whether the pre-emption right is considered a real right. We must bear in mind that the pre-emption right can be created by law or by contract. In the case under review, the pre-emption right of the heir of the former owner for the objects on the land of the former owner (her heirs)* ***is a legal pre-emption right.*** *In this case, the pre-emption right recognized by the law can be opposed to third parties and its holder can claim the item from any third party who has acquired it. For this reason, legal pre-emption is considered as a real right (following the thing),* ***while the pre-emption right created by contract has only contractual binding effects.***

We emphasize that this is not related to the issue under consideration at all.

As per above, the IOs conclude that:

- we are dealing with a pre-emption right recognized by law as a real right to the inheritors of the former owner under article 21 of law no. 7968/1993; while the right transferred to Dauti is a contractual right binding only on the parties.
- the difference between legal and contractual pre-emption rights is that in the first case such right follows the object i.e. the holder can claim it against any third party who has acquired the object. Thus, equivalent to a real right. While in the second case, it has binding effects only between the parties of the contract and cannot be claimed against third parties.

[5] This momentous logical shortcoming could, on the contrary, find easy explanation by assuming that the statement (contained in the enacting clause of the decision) to register in favor of the claimant the "property" instead of the right of preemption consists in a willful violation of substantive law by the assessee in order to favor one party.

- in addition to the wrong ruling for the registration of an ownership right in favour of *** , the shortcomings of the assessee are also in the establishment of the trial and participants that are relevant in its progress (under art. 161 of the CPrC). Vlora Municipality was not summoned as a party in the quality of holder of privatization right and State Owner of the property. Neither the inheritors of *** . family are summoned in the quality of holder of real right. Nor the the *** who were possessing the property for years. That is why the decision of the Assessee cannot also affect these other parties. Therefore, the Assessee issued a decision not grounded in law and evidence and ruled for the registration of ownership title in favour of *** , when the transfer of such title is missing in the first place from the owner State to third parties. This decision then affected many parties involved and as can be understood by decision no. **-2018- ** , dated **.01.2018 of the Administrative Court of Appeals, such decision was issued in violation of the law and without considering the facts of the case.[6]
- Further, considering that this particular case has been addressed not only by the relevant public institutions, but has been flagged also by the law enforcement agencies, it seems that the conduct of the Assessee during the whole trial of this case, raises doubts on the Assessee's integrity as per art. 75.3 of the Status Law.[7]
- finally, transferring this case to the inspecting bodies would be futile, since it would fall under the status of limitation as more than 5 years have passed from the decision issued by the Assessee according to art. 117 of the Status Law.

Thus, as the Administrative Court of Appeals reasoned in its decision no. ** -2018- *** , dated ** .01.2018, under the circumstances that the ownership from State has never been transferred to the heirs of *** , and neither the latter have transferred such right, and never had the intention to transfer a right they never had to *** , the ownership over the property remains under the State.

In addition, the first decision with the *** family has been subject to inspection and several shortcomings were identified that are treated herein in the second section of this recommendation as case letter "*e*".

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[6] Decision no.**-2018- ** , dated **.01.2018 of the Administrative Court of Appeals *"Although the object item the trial is currently registered in the name of the defendants *** and *** *** ., the registration carried out by the administrative body was carried out in violation of the law as the high court with the decision no.*** , dated **.11.2013 decided: Suspension of execution of decision no.*** . dated **.07.2012 of the Vlora Judicial District Court, put into effect with decision no.** , dated **.05.2013 of the Vlora Court of Appeal."*

[7] See decision no. 16/2021, para 92 of AC on *** *** *"The violations found in the criminal files examined in the context of the proficiency assessment in this decision, take on a different meaning and weight in light of the information provided from the law enforcement agencies. They seem to provide credibility to the doubts raised in the meaning of this process and have a bearing on the assessee's integrity criterion, as an essential indicator of the proficiency pillar. In the Chamber's view, the analysis of such violations and the information provided by the law enforcement agencies, albeit unconfirmed, leads to important perceptions that the assessee's integrity, under Article 75, paragraph 3 of Law No. 96/2016, must be considered as deficient."*

In conclusion, considering the wrong application of the law, reasoning of the decision to register the ownership in favour of the plaintiffs, and the consequences to the interested parties, the shortcomings are deemed of a serious nature in terms of art. 72 para 2 and 3 of the Status Law and in line with the decision no. 2/2017 of the Constitution Court and Venice Commission's Opinion.

2. Cases that are deemed to constitute a consistent pattern of erroneous judgments.

a. The case of *** ***

Vlora District Court tried the civil case with parties: plaintiff *** *** ; respondents *** *** ***, *** *** *** etc.; with subject matter of changing decision no. ** , dated ** .6.2009, of the former Regional Office of the Property Return Commission [PRC] of the Prefecture of Vlorë, and to deregister the ownership of property of Mr. *** *** and register it in the name of the legal heirs of Mr. *** *** . Initially, the respondents requested in the court hearing the recusal of judge Laurent Fuçia from the adjudication of the case. Vlora District Court, with another adjudication panel, decided to reject the motion. It results, then, that the Assessee ruled with decision act no. *** , dated *.3.2014, on separating the subject matter of the lawsuit, consisting of contesting the LAA given in the name of *** *** , declaring lack of subject matter jurisdiction about this claim, and on sending the documents concerning this claim to the First Instance Administrative Court of Vlora. This decision was given by the Assessee without the presence of the parties, but the decision does not show that the respondents were absent, resulting in the non-communication of the decision to the respondents. After learning this decision, the respondents contested it, but their recourse was not admitted by the district court because the decision had become final. In this situation, the respondents went to court with a motion on reinstatement of deadline for appeal (recourse). Vlora District Court, with its decision no. *** , dated *.6.2014, decided to accept the request.

The plaintiffs filed a complaint with the HCJ claiming that judge Laurent Fuçia did not write in decision act no.*** , dated *.3.2014, that the respondent, *** *** , etc. was absent, which caused the loss of the right to file an appeal and forced the complainant to file a motion in court to reinstate a deadline for filing an appeal.

The Inspectorate of HCJ found: *"...judge Laurent Fuçia acted in violation of the procedural provisions when he conducted the adjudication on *.3.2014 without summoning the litigation parties, because that was a follow-up session and he should have announced a court hearing, notifying the litigation parties. This is in breach of the procedural provisions from articles 172 to 179 of Civil Procedure Code, because no adjudication may take place in the absence of all the litigation parties, without summoning them to a court hearing. The adjudication in absentia is exclusively allowed in situations provided for by article 179 of Civil Procedure Code, when the respondent or the third person have not showed up, without any reasonable cause, despite being duly notified"*. As a result, he suggested to give a written warning to judge Laurent Fuçia

for failure to formally respect the law, being included in the file of ethical and professional assessment of the judge.

As per above, the following shortcomings were shifted as burden of proof to the assessee:

The assessee conducted the hearing of * 3.2014 without notifying the parties, failing to apply articles 175 and 179 of Civil Procedure Code.

The assessee tried to dispel the burden of proof by claiming that it was a legal requirement to separate the civil cases from administrative ones based on the civil unifying decision No. 4 of the High Court, which ruled that "*When there are in the subject matter of adjudication several claims, both of a civil and administrative nature and these claims are found by the court to be in a simple union between them, then, according to article 61 and 159 of Civil Procedure Code and 13 and 23 of Law no. 49/2012, the court shall separate the subjects that are not under its subject-matter jurisdiction, handing them over to the relevant court*".

Under these new procedural circumstances, since in the opinion of the Assessee we would be in front of legal aspects related to the subject-matter jurisdiction for the examination of the counterclaim, he decided in camera to separate the counterclaim and declare lack of subject-matter jurisdiction, forwarding the file to the Vlora Administrative Court of First Instance for jurisdiction.

IQC reasoning:

The Commission found that the assessee showed deficiencies in legal knowledge based on indicators such as overall capacity to interpret the law according to art. 72.2 of the Status Law.

- **The IOs are of the opinion** that the assessee failed to dispel the burden of proof and the shortcoming remains. Since these decisions were subject to appeal, he had the obligation to notify the parties. He failed to do so and conducted the session in violation of articles regulating the civil trials such as art. 17, 172, and 179.

*b. Complaint of "CEZ Shperndarje" related to the case of *** family*

The assessee rendered a Decision no.*** , dated **.7.2013 to accept the lawsuit and oblige the respondent to compensate the claimant in the value of 24,000,000 ALL for pecuniary and non-pecuniary damage relief, including late payment fees. This decision was upheld by the Vlora Court of Appeals with Decision no. *** , dated** .4.2014. The High Court rendered Decision no.** -2014-*** , dated **.7.2014 not to accept the appeal (recourse).

The HCJ Inspectorate found that the respondent was notified of the lawsuit and the preparatory session on** .7.2013, by means of the summons of 8.7.2013, i.e. in 4 days, and this short term constitutes a civil procedural violation since Article 155 of the Civil Procedure Code provides

that: *"A period of no less than 10 days must be provided between the date of notification of the lawsuit and the date of its submission with the court".*

Also, the HCJ Inspectorate found that the assessee, in the preparatory session of** .7.2013, rendered an interim decision to review the case in the absence of the respondent and that such a preparatory action, was not supported by Article 158/a of the Civil Procedure Code. The Inspectorate then reasoned that, regarding the legal consequences from failure of the parties to appear in the session, the second paragraph of Article 179 of the Civil Procedure Code provides that: *"Should the respondent fail to appear in* ***the first session*** *and the claimant does not request that the trial be conducted in absentia, the Court shall schedule another court session".* Also, the Court, contrary to the requirements of Article 179 of the Civil Procedure Code, failed to notify the respondent Çez Shpërndarje sh.a about the conduct of the court hearings on **.7.2013 and **.7.2013, but was satisfied with his notification only for the preparatory session of** .7.2013, a session in which the Court decided to review the case in absence of this party. Under these conditions, the Inspectorate concluded that failure to notify the respondent about the conduct of two court hearings constitutes formal non-compliance with the law.

In addition, the HCJ Inspectorate found that the assessee decided in the court session of **.7.2013 to assign two specific experts, at the request of the claimant. The HJI found that the approval of experts and their summons in the absence of the respondent constituted a violation of Article 225 of the Civil Procedure Code, which provides that: *"The expert shall be appointed by the court, while also taking the opinion of the parties and the participants in the trial...",* similarly to Article 227, which provides that: *"The court, after receiving the opinion of the parties, shall assign cases to the expert on which his opinion has to be taken".*

The above complaint and findings were forwarded to the High Inspector of Justice. This body, with Decision no. *** prot. dated ** .9.2022 decided to archive the complaint of "Cez Shpërndarje" sh.a company on the grounds that the disciplinary proceedings against the judge fell under the statute of limitations according to Article 34, paragraph 2 of the law no. 9877/2008 "On the organization of judicial power in the Republic of Albania", as well as Article 117 of the law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania".

As per above, the following shortcomings were shifted as burden of proof to the assessee:

(i) Assessee's interim decision to examine the case in absence of the respondent in the preparatory session of** .7.2013 is not supported by Article 158/a of the Civil Procedure Code, as such a decision, according to Article 179 of the Civil Procedure Code, is made in a court session.

(ii) The assessee didn't notify the respondent for court sessions of **.7.2013 and **.7.2013, failing to comply with Article 130 of the Civil Procedure Code;

(iii) The assessee decided to assign two experts in absence of the respondent and without receiving the respondent's opinion, failing to comply with Articles 225 and 227 of the Civil Procedure Code.

The assessee argued in his explanations that he was not obliged to notify the parties based on the practice and the law, and in addition the decision he issued became final with the decision no. No.*** , dated ** .04.2014 of Court of Appeals.

IQC's reasoning

The Commission found that the assessee showed deficiencies in legal knowledge based on indicators such as overall capacity to interpret the law according to art. 72.2 of the Status Law.

- **It is the IOs' opinion** that the procedural violations remain. The assessee failed to take the interim decision on continuing the trial with the respondent being present in a hearing session. This then spiraled into failure to notify the party in other procedural steps such as appointment of experts, etc.

In the preparatory session of 12.7.2013, he issued an interim decision to review the case in the absence of the respondent, a preparatory action that is not supported by Article 158/a[8] of the CPrC, since the decision to proceed in absence according to art. 179 of the CPrC is made in a court session. Following this procedural violation, the Court did not notify the respondent Çez Shpërndarje sh.a about the conduct of the court hearings on **.7.2013 and **.7.2013, but was satisfied with notification only for the preparatory session of ** .7.2013, in which the Court decided to review the case in absence of this party, failing to comply with Article 130 of the CPrC.

In addition, the Assessee issued the decision to assign two experts in absence of the respondent and without receiving the respondent's opinion, contrary to Articles 225 and 227 of the Civil Procedure Code.

Further, regarding the request of "Cez Shpërndarje" sh.a company on recusal of the judge *** ***** from examination of the civil case, completed with Decision no.*** , dated **.10.2013,

[8] Article 158/a: *"The judge shall schedule, for each case, the preparatory session, where the parties or the third person are invited, in order to determine the nature of the dispute and shall ask them to give the necessary explanations, as well as to determine the evidence proving their claims and objections. The judge, by decision, shall perform the following actions:*
Request from the claimant to supplement the lawsuit with all the necessary elements provided by Articles 154 and 156 of this Code.
Exempt the claimant from payment of the fee in the instances provided for by law... Decides the witnesses who will be summoned to the court session and requests from the respondent or other persons to submit documents they have...
If necessary, decide on seizure or imposing any other measure to secure the lawsuit.
If necessary, decide to secure the evidence.....". Decide to suspend the trial for cases provided for in Article 297 of this Code.
Decide to terminate the trial for cases provided by letters "b" and "c" of Article 299 of this Code.

the Assessee failed to notify the entity in writing under art. 130 of the CPrC, but (as acknowledged by him as well) telephone was deemed as sufficient means of notification.

c. *Complaint of the citizen* *** *** *(***)*

The civil case no. 364 was examined at Vlora District Court, pertaining to the parties: Claimant *** *** (. ***); Respondent *** *** ; Claim: Oblige the respondent to recognize her as heir of *** *** , and establish invalidity of the will.. The claimant filed a lawsuit, claiming that the will is invalid because the late person transferred an asset that she did not own at the time of drafting the will, as well as due to the fact that the will was drafted in the presence of a person who could not be a trustee due to the status of legal heir of the late person.

With Decision no. *** , dated ** .2.2014, the Assessee decided to dismiss the claim. Vlora Court of Appeals rendered a Decision *** /**-2015- *** , dated **.7.2015 to overturn the Decision no.*** , dated ** .2.2014 of Vlora District Court and send the case for retrial to the same court by another trial panel. The Court of Appeal reasoned that the case was examined in the first instance in absence of the respondent and the decision to proceed with the trial in absentia was made in the preparatory session, contrary to Article 179 of the Civil Procedure Code.

Upon completion of the inspection, and after obtaining the Assessee's explanations, the Ministry of Justice concluded that: i) In the civil case completed with Decision no.***, dated **.7.2013, the Judge Laurent Fuçia: a) did not comply with the legal obligation provided for by Article 79/a of the Civil Procedure Code and Article 5, paragraph "b" of the law no. 10018, dated 13.11.2008 "On the State Advocate's Office", as it failed to notify the State Advocate to participate in the trial of a civil case, where a state administration body was a party; and b) did not comply with the legal obligation provided by Article 18 of the law no. 9235, dated 29.7.2004 "On the restitution and compensation of properties", as amended, since this case was tried in the District Court of Vlora, while the competent Court with territorial jurisdiction is the District Court of Tirana; ii) In the civil case completed with Decision no. *** , dated * .10.2013, the Judge Laurent Fuçia did not respect the legal obligation provided by Article 155, first paragraph of the Civil Procedure Code, as the assesee scheduled the preparatory session after seven days.

As per above, the following shortcomings were shifted as burden of proof to the assessee:

In the trial of civil case no. .*, the assessee decided in the preparatory session to proceed with the trial of case in absence of the respondent, contrary to the provisions of Article 179 of the Civil Procedure Code, which stipulates that this decision is made in a court session.**

The assessee, in his explanations regarding the intermediate decision for the trial in the absence of the defendant in the session of preparatory actions, confirmed the very same explanations already given regarding other similar cases for which he was shifted the burden of proof.

IQC's reasoning:

The Commission found that the assessee showed deficiencies in legal knowledge based on indicators such as overall capacity to interpret the law according to art. 72.2 of the Status Law.

- **In the IOs' opinion**, as in the aforementioned cases, he failed to rebut the findings shifted to him in this case. Thus, he issued the decision in the preparatory session to proceed with the trial in the absence of the respondent, contrary to the provisions of Articles 158/a, and 179 of the Civil Procedure Code.

d. *Complaint of OSHEE against the Vlora Court of Appeals panel composed of* *** ***, *** *** *and the assessee*

Vlora District Court tried the civil dispute of "OSHEE sh.a" with subject of time limit reinstatement of the appeal against the decision no.*** , dated **.12.2019, of Vlora District Court. By decision no.*** , dated ** .12.1019, Vlora District Court decided the obligation of the respondent OSHEE sh.a Vlora to compensate the claimant *** *** in the amount EUR 291,723 for the damage caused due to power outage". Notification of the final decision to the respondent party was carried out through the delivery of the decision to its branch in the city of Vlora. The company "OSHEE" sh.a. claimed that such notification of decision no. *** -, dated ** .12.2019, was made in violation of the Civil Procedure Code provisions as it was served to the branch in Vlora, which branch has no separate legal personality.

At the end of the trial, by decision no. **, dated **3.2021 the Vlora District Court decided to accept the request of the company 'OSHEE sh.a' and reinstate it within the deadline to file an appeal to the Appeal Court against decision no. *** , dated** .12.2019.

Vlora Court of Appeals, with a panel of judges: *** *** (Presiding Judge), *** *** and the assessee, by decision no. *** , (**-2021- **) dated * .12.2021, decided: " Amendment of decision no. ** , dated ** .3.2021, of Vlora District Court and dismissal of the request as ungrounded in law and evidence, on the grounds that: "... *In the case subject to trial, referring to the extract issued by the NBC, for the requesting party, the company "OSHEE" sh.a., it is established that its headquarters, in addition to the place where the governing bodies of this company are located, are also reflected the other places its commercial activity, among others one of these places is located in the city of Vlora, at the corresponding address. Moreover, from the content of civil decision no. *** ., dated **.12.2019 of Vlora District Court, it is established that "OSHEE" sh.a., branch of Vlora was as the respondent in this trial,*

and as a result, the notification of the final court decision was made exactly in the place of commercial activity of this branch of the company "OSHEE" sh.a. ".

Article 130[9] of the CPrC clearly defines that the notification of a public or private legal entity is submitted to its headquarters, which in this case the headquarters of the respondent/applicant is in Tirana. Failure to notify the reasoned decision to the entity 'OSHEE sh.a' according to articles 130, 444[10], of the CPrC put the legal entity in the conditions provided for by Article 458 of the CPrC to rightly request the reinstatement of the right to appeal within the deadline.

In conclusion, it seems that the panel, of which the assessee is a member, failed to serve notice to the party as required by the provisions of CPrC.

As per above, the following shortcomings were shifted as burden of proof to the Assessee:

When issuing decision no. , dated *.12.2021, the panel failed to evaluate the application of the provisions of articles 130, 444 of the CPrC by the Judicial District Court of Vlora regarding the notification of decision no. *** , dated **.12.2019, to entity 'OSHEE sh.a'***

The Assessee stated in his explanations that *"regarding the notion "center of a private legal entity" which is equivalent to the residence or place of residence of the individual, I am of the opinion that Article 130 of the Civil Code should be systematically interpreted with Article 28 of the Civil Code, where it is provided that: "The legal entity has its seat where its governing body is located, unless otherwise provided in the statute or in the act of creation."*

From the systematic interpretation of the above-mentioned provisions, it is concluded that, in the case of a private legal entity, the notification of procedural acts will be made at its headquarters, which is usually the place where its governing body is located, except for the case when, in the statute or in the act of establishment it is provided that the center of the legal entity is located in another place, different from the place where its governing body is located.

In the present case, referring to the extract issued by the National Business Center (NCB), it is proven that, for the requesting party, the company "OSHEE" sh.a., as its headquarters, in addition to the place where the management bodies of this company are located, are also reflected the other places of exercising its commercial activity, where among others one of these places is located in the city of Vlora, at the corresponding address.

In these circumstances, the Court of Appeal has assessed that we are before the exception from the rule provided by Article 28 of the Civil Code, according to which a place other than the one where its governing body is located is considered as the center of the legal entity. Which is expressly provided for in the statute or foundation act, in the present case, expressly provided for in the commercial extract of the company "OSHEE" sh.a. regular."

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[9]Article 130: " *In the case of public legal entities, the notification is made at its headquarters and delivered to the head or persons in charge of accepting acts* ".

[10]Article 444, " *The deadlines specified in Article 443 are fixed and start from the day after the service of the reasoned decision."*

IQC's reasoning:

The Commission concluded that there were no shortcomings identified regarding this case. In their reasoning, the Commission went even beyond the defense and interpretation of the assessee. According to the interpretation derived by the material law no. 9901/2008 "On Companies and Entrepreneurs", they reasoned that the branch enjoys a separate legal personality as the parent company and can represent the latter in court proceedings.

- **In IOs' opinion**, the reference made by the assessee to Art. 28 of the Civil Code is clearly erroneous, as long as we are dealing with the rules on notifications of procedural acts to legal entities, according to Art. 130 of the Civil Procedure Code. So, the notification should be made to the place where the legal entity has its legal seat. In the case at hand, we are dealing with the procedural rules of notification to the legal entity OSHEE, and the registration of its legal seat (headquarters) is in Tirana; hence, the place of notification. Therefore, the findings still remain, most of all if one considers the large amount of damages awarded (291,723 euro) and the explicit legal provisions on notifications to companies. The seriousness of the mistake is further confirmed by the following elements:
    - The Court rejected the reinstatement and right of appeal;
    - the reasoning according to which the existence of several company branches (according to the extract of the National Business Center) would mean that there would be other headquarters. On this regard, it is worth stressing that according to Art. 28 of the Civil Code only the statute or the act of creation of the company may establish the seat in a place different from the place where the governing body is located. Regarding the additional argument spent by the Commission in its reasoning, going beyond the explanation given by the assessee, it is worth stressing that the cited Law no 9901/2008, has a substantial and not procedural nature, and aims at establishing that a branch of a company acts in the name of the latter and the legal effects of those acts have to be referred to the company as a whole (since it is the company - and not its branches - which owns the patrimony constituting the guarantee for the creditors of the company). Such Law, on the contrary, has nothing to do with the regime of notification of the procedural acts, which is exclusively outlined in the Civil Procedure Code.
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e. *Complaint of State Advocate and Prime Minister Office regarding the case* *** *family mentioned above in page 11 of this Recommendation.*

The State Advocate General filed an inspection request on***.1.2014 with the Ministry of Justice, claiming that Judge Laurent Fuçia examined a civil case involving: Claimant *** *** ; Respondent Property Restitution and Compensation Agency Tirana; Claim: cancel

paragraph** of Decision no.*** , dated **.6.2009 of Regional Property Compensation and Restitution Office of Vlora, recognizing the pre-emption right also for an area of 93 m2, property no.** /*+*-*, vol.** , pg.** ., located in Vlora, completed with Decision no.*** , dated 8.7.2013, which was completed in a record time of 2 court sessions, where the State Advocate was not summoned in the trial, contrary to Article 79 /a of the Civil Procedure Code, the unifying decision no. 13, dated 24.3.2004 of the United Chambers of the High Court and Decision no. 42, dated 29.9.2011 of the Constitutional Court.

In addition, the Prime Minister's Office, after exercising a control regarding the privatization procedures of the former prosecution office building in Vlora (which was the subject of the above trial), filed a complaint with the Ministry of Justice and HCJ against the Judge Laurent Fuçia of Vlora District Court, regarding the court Decisions no. *** , dated* .7.2013 and no. ***, dated* .10.2013, claiming that these cases were examined in violation of the procedures, failing to summon the State Advocate in the trial.

After the inspection, the HCJ Inspectorate found that the Decision no. *** , dated * 7.2013 became final on***.8.2013 and the Decision no.*** , dated**.10.2013 became final on ** .10.2013, as no appeal was filed against them. Under the conditions where the property Restitution and Compensation Agency Tirana and LIPRO Vlora were parties in these trials, which are under the Ministry of Justice, the HCJ forwarded the above complaints to the Ministry of Justice for competence.

Upon completion of the inspection, after obtaining the assessee's explanations, the Ministry of Justice concluded for specific cases that: i) In the civil case completed with Decision no.*** , dated* .7.2013, the Judge Laurent Fuçia: a) did not comply with the legal obligation provided for by Article 79/a of the Civil Procedure Code and Article 5, paragraph "b" of the law no. 10018, dated 13.11.2008 "On the State Advocate's Office", as it failed to notify the State Advocate to participate in the trial of a civil case, where a state administration body was a party; and b) did not comply with the legal obligation provided by Article 18 of the law no. 9235, dated 29.7.2004 "On the restitution and compensation of properties", as amended, since this case was tried in the District Court of Vlora, while the competent Court with territorial jurisdiction is the District Court of Tirana; ii) In the civil case completed with decision no. 2199, dated 7.10.2013, the Judge Laurent Fuçia did not respect the legal obligation provided by Article 155, first paragraph of the Civil Procedure Code, as the assesee scheduled the preparatory session after seven days.

The Assessee tried to explain that the procedural position of the State Advocate was not clear, but nonetheless these procedural mistakes could be resolved by the higher courts.

IQC's reasoning:

The Commission found that the failure to summon the State Advocate jeopardized the due process, also according to the Unified Decision no. 13/2004 of the High Court.

- **In the opinion of the IOs** the findings from the Ministry of Justice remain. Especially with regards to the obligation to notify the State Advocate, the IOs find that this obligation is provided clearly by the Procedural Law and the special law on the State Advocate.

Other shortcomings.

For the sake of completeness, the IQC decision on the case identified other 3 cases where shortcomings were identified, namely:

a. *Criminal case no.**** *reg, dated* **.*05.2015, pertaining to the defendant* .*** *** *accused of the criminal offense of "Driving vehicles inappropriately".*

b. *Complaint of Mr.* *** ***

c. *Complaint from citizen* *** ***

Despite the fact that those shortcomings, *per se*, are not deemed as sufficient to find the Assessee inadequate on proficiency assessment, nonetheless they contribute to complete the picture on proficiency pillar in the present case.

III. Conclusion

The IOs, after analyzing all the facts and evidence provided during the investigation and considering all the shortcomings identified during the proficiency assessment, recommend the Public Commissioners to file an appeal against the decision of the IQC to confirm the Assessee in office.

The IOs are of the opinion that the Independent Qualification Commission failed to apply the correct standards for proficiency assessment (as laid out in the Constitution Annex, in the Vetting Law and in decision no. 2/2017 of the Constitution) and made a selective and incomplete reference to prior standards[11].

A review by the Appeal Chamber is therefore necessary in order to assess whether the assessee reached the minimum qualifying threshold under art. 59.c of the Vetting Law.

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[11] Decisions no. 17/2004 and 11/2008 of the Constitution Court