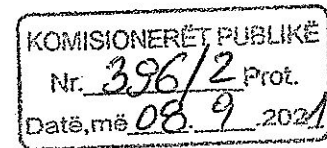


Prot. No. 575/1

Tirana, 08/08 / 2021

To the
Public Commissioners
Bulevardi "Dëshmorët e Kombit", Nr. 6
Tirana
Albania



Case Number **DC-P-LUS-1-05**
Assessee **Natasha Shallapi PRIFTI**

RECOMMENDATION TO FILE AN APPEAL

according to

Article B, par. 3, point c of the Constitution of the Republic of Albania (hereinafter "Constitution"), Annex "Transitional Qualification Assessment", and Article 65, par. 2 of Law No. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania" (hereinafter "Vetting Law" or VL).

1. Introduction and Scope of the Recommendation

Natasha Shallapi PRIFTI 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. With decision dated 28 May 2021 the IQC decided to confirm the assessee in office.

The International Observers (further: IOs) recommend the Public Commissioners (further: PCs) to file an appeal against the entirety of the results reached by the IQC on the asset assessment. The IOs believe that a correct assessment of all the issues of the case should result in a dismissal of the assessee as the assessee does not reach a trustable level of asset assessment pursuant to Art. 59, par. 1, point a of the Vetting Law.

2. Grounds of the Recommendation

The IOs believe that the Public Commissioners should appeal the results of the assets assessment in its entirety, to permit the Special Appeal Chamber to undertake the full financial analysis of all the years which will also allow to properly verify the IOs' concerns on the following issues.

A) *The 4 million ALL cash savings*

Paragraph 7.42 of the decision reads as follows:

*"Another detail that is worth considering is the fact that, the investigation conducted on the assessee and the related person did not show that they used the cash amount of 4,000,000 ALL to invest in other assets, which would lead to lack of lawful financial sources for their creation, except for the purchase of the vehicle with reg. plate ***. The latter, considering the make/model it pertains to¹, and the reflection of this reg. plate in the NBC's extract of the spouse's business activity, seems to have been used for purposes of the commercial activity exercised by the assessee's spouse. Also, as it resulted from the investigation, some of the other vehicles analysed by the Commission, namely vehicle with reg. plate *** and with reg. plate *** , turned out to have been used for purposes of the commercial activity of the assessee's spouse [...]" (emphasis added).*

Contrary to the statement that

*"[...] did not show that they used the cash amount of 4,000,000 ALL to invest in other assets, which would lead to lack of lawful financial sources for their creation, except for the purchase of the vehicle with reg. plate *** ,*

the IOs would like to point out that, based on the reviewed documents of the file, there appear to be four assets created from the spouse's 4 million ALL cash savings over the period 2013-2016, which are listed below - in chronological order - as follows:

¹ Referring to the documents provided by GDRTS, letter no. *** /4, dated **.12.2019, it pertains to a van for transport of goods.

² Referring to the documents provided by GDRTS, letter no. *** /4, dated **.12.2019, it pertains respectively to a van and light truck for private transport of goods.

1. Bank deposit at *** Bank (1.500€, **st April 2015);
2. Purchase of the vehicle with license plate *** (8.400 €, ** October 2015);
3. Bank deposit by the assessee's spouse (1.3 million ALL; ** February 2016);
4. Bank savings by the assessee (around 1.7 million ALL; by the **st of December 2016).

With regards to the aforementioned assets, it must be noted the following:

*1. Bank deposit at *** Bank (1500 €, created on**st April 2015)*

The 1.500€ bank deposit was declared for the first time by the assessee's spouse in the 2016 periodical annual declaration as a correction of the 2015 periodical annual declaration.³ The declared source of creation results to be "income from work".

In 2015, the spouse declared income from work of around 511.000 ALL. According to some calculations, it appears that the business income for the first 3 months of the relevant year amounted to around 1.000 €. When the bank account was created on the **st of April 2015, the spouse could not have saved 1.500 € using income from that year's profit. The cash liquidities for the year 2015 were decreased by 1.9 million ALL with the explanation that the money was used to purchase the Mercedes Benz and to cover life expenses.

Therefore, cash savings from the 4 million ALL (if ever existed as lawfully and legally available to the assessee according to the parameters of the Constitution and of the Vetting Law) must have been used to generate the bank account of 1.500 €.

*2. Mercedes Benz, license plate no. *** (8.400 €; Purchased on ** October 2015 by ***.***)*

It must be noted that the assessee's spouse declares (in the periodical annual declaration related to the year 2015 which was submitted to HIDAACI in March 2016) the decrease of cash savings to the value of 1.9 million ALL in 2015 which was used to purchase the vehicle and to cover life expenses. This is the only asset that IQC links with the 4 million ALL cash savings of the spouse.

*3. Deposit by the spouse at *** Bank (1.3 Million ALL, created on ** February 2016 by ***.***)*

IOs would like to point out that the assessee made two declarations before HIDAACI in relation to the cash savings of her spouse.

³ This asset is declared for the first time in the Periodical Annual Declaration of 2016 (submitted to HIDAACI in March 2017). The assessee's spouse made a clarification stating that he forgot to declare this asset in the periodical annual declaration for the year 2015 (submitted to HIDAACI in March 2016).

We duplicate below the excerpts from the procès-verbal/minutes before HIDAACI of 29 January 2016:

“Question no. 6: In the 2013 PAD, you declared cash-balance from spouse's work from 1998 in the amount 4,000,000 ALL.

- *Please submit documentation on income earned by your spouse. Specifically the cash balance at-home until 31.12.2014; if this amount exceeds 1.5 million ALL, deposit it in the bank.*

Reply no. 6: The cash balance 4,000,000 ALL continues to be at home. I will deposit it in the bank and submit to you the bank attestation. This amount was accumulated from spouse's income, private business, retail sale (shop) with parents and later on in his name, and various private jobs [...]” (emphasis added)

We also duplicate below, the excerpts from the procès-verbal/minutes before HIDAACI of 23 February 2016:

“Regarding question no. 6: I explain that cash balance declared by me is reduced over the years. The balance was 3,200,000 ALL as of 31.12.2014. During 2015, the cash balance was reduced again, which I will declare in the next declaration. Currently, the cash balance in the bank is 1,300,000 ALL and please find the bank attestation [...]” (emphasis added).

With the second declaration the assessee submits an attestation from the bank stating that ***
*** has a bank account at *** Bank with a balance of 1.3 million ALL. The bank statements show that ***.*** deposited this amount on ** February 2016.

One month later, on ** March 2016, it appears that ***.*** withdraws the entire amount and closes the account. This asset – although short-lived and not reaching the vetting declaration - is directly related to the claimed existence of the 4 million ALL cash savings of assessee’s spouse and it should be considered as an asset generated by the cash savings.

4. Assessee’s bank savings (around 1.7 million ALL, as a balance on 31 December 2016)

In the periodical annual declaration for the year 2015 (submitted to HIDAACI in March 2016), the assessee declares an increase in the bank savings in the amount of around 736.000 ALL.

By way of deduction, the IOs observe that this saving is made possible by decreasing the spouse’s cash savings to cover life expenses. In the periodical annual declaration for 2015 (submitted before HIDAACI in March 2016) the assessee’s spouse declares that cash savings for the year 2015 were decreased by 1.9 million ALL, with the explanation that the money was used also to cover life expenses.

It seems that assessee's ability to save money in 2015 relates directly to the decrease of cash savings of the spouse to cover life expenses.

5. *Other considerations related to the 4 million ALL cash savings*

The IOs would like to further point out that, according to the available documentation it appears that:

- The spouse's income analysis over the years seem to show a lack of financial capacity to generate savings to the amount of 4 million at the end of 2013;
- There is no proof that the money ever existed earlier than 2016, when the amount of 1.3 million ALL was deposited to a bank;
- There are discrepancies in cash declarations between the periodical annual declarations and the data resulting from the vetting declaration. In 2013, the assessee and her spouse have declared a cash balance of 4.600.000 ALL. They declared decrease of the balance over the years to the value of 1.9 M in 2015, and 1.3 M in 2016. This means that at the beginning of 2017, the cash balance would have been 1.4 M. However, in the vetting declaration, no cash was declared by the assessee and her spouse;
- There are conflicting declarations before HIDAACI in 2016 as to the amount of the balance of cash savings at home. The assessee was asked twice to declare before HIDAACI on some issues identified by the inspectors. Within a one-month period, she made two conflicting declarations by initially stating that the 4 million is still available at home and later changed the statement confirming that they only have 1.3 million leke which was deposited at the bank.
- In 2016, the assessee declares before HIDAACI that they have 1.3 million ALL available at home, which would be deposited at the bank and the deposit slip submitted to HIDAACI. The spouse of the assessee did so, but the money remained deposited only for 1 month, after which it was withdrawn.

Considering the above, it appears – therefore - that the IQC decision confirming in office the assessee contains some untrue (or, at least incorrect) conclusions, because it cannot be said that the 4 million ALL were used only for the purchase of the vehicle (license plate *** - concluding that they should not be put as a liability to the assessee). The IOs believe that, in regards to the 4 million ALL:

- a) For as long as they are declared in the assessee's periodical annual declaration, they have to be examined, with a detailed financial analysis covering all the relevant years;
- b) For as long as they have been used in generating assets after the marriage, the availability of the source, its legality and lawfulness should be analyzed.

B) The minus of 1.6 million ALL

The IOs believe that the minus of 1.6 million ALL should also be approached under the angle of the contradictory statements done by the assessee in her different declarations to HIDAACI and during the re-evaluation process.

The IQC panel concludes in paragraph 7.43 of its decision that

“[...] In conclusion of the above, the Commission considers that the lack of financial income supported by legal justifying documentation by the related person/assessee’s spouse, in the amount of ALL 1.648.646, to create not only the assets disclosed in the PAD of 2013, (before legal marriage), but also the purchase of other assets and the expenses incurred before 2013, all these spread over a period of 13 years (2001 – 2013), the facts and circumstantial evidence, based on the principle of proportionality, create the conviction that such lack cannot be qualified under any of the situations provided for in Article 61, paragraphs 1 and 3 of Law no. 84/2016, which would consequently constitute grounds to determine the disciplinary measure of dismissal from office.” (emphasis added).

In essence, the panel - based on its reading of the principle of proportionality - does not appear to properly consider the minus of 1.6 million ALL.

First and foremost, there appears to be a contradiction in the reasoning of the IQC, because - one paragraph above, in 7.42 – the IQC claims that according to the

*“[...] the investigation conducted on the assessee and the related person did not show that they used the cash amount of 4,000,000 ALL to invest in other assets, which would lead to lack of lawful financial sources for their creation, except for the purchase of the vehicle with reg. plate *** [...]”*

So, either the assessee and her spouse used, or they did not use them, after the marriage. Paragraphs 7.42 and 7.43 of the decisions shows an unsolvable contradiction that affect the conclusion of the whole analysis made by the IQC.

Secondly the IOs are of the opinion that the reference to the concept and principle of “proportionality” to condone the *minus* does not stand in this case, also considering the consolidated jurisprudence of the Special Appeal Chamber.⁴

More specifically the Special Appeal Chamber has affirmed, in one of its cases, that:

“22.7 After the analysis and interpretation of the provisions referred to above regarding the principle of proportionality, the Chamber reasons that in the process of the transitional re-evaluation of judges and prosecutors in the Republic of Albania, the principle of proportionality is one of the set of principles by which the institutions of re-evaluation are guided, and it cannot be taken as a separate principle to cover the inaccuracies and inefficiency of the declarations by the assesses [...].⁵

⁴ See, e.g., AC Decision No. 8/2019 in *** (par. 53), AC Decision No. 26/2019 in *** (par. 46), AC Decision No. 2/2020 in *** (paras. 22 through 22.4), AC Decision No. 6/2020 in *** (par. 26), AC Decision No. 20/2020 in *** (ref. to footnote no. 3, below), AC Decision No. 36/2020 in *** (par. 15 through 15.2).

⁵ See, specifically AC Decision No. 20/2020 in *** (paras. 22 through 22.7).

Overall, the IOs believes that the issues at stake could be approached in two different ways:

- a) The IQC legal reasoning is erroneous - the fact that the 4 million ALL was used by the assessee and her spouse during the years leads to the fact that it should be duly and correctly considered in the financial analysis; or
- b) There are doubts on the existence of the said resources at all and, in this situation it might be possible to conclude that the assessee made a false declaration.

Either option should have guided the IQC to a different conclusion whereby the assessee should have been dismissed from Office as she does not reach a trustable level in the asset assessment.

3. Conclusions

In IOs' view the IQC decision confirming in Office the assessee Natasha Shallapi PRIFTI has serious logical shortcomings in the reasoning part, being the result of an inadequate and inaccurate re-evaluation process in the assets component.

IOs believe that a proper consideration of the asset component in its entirety should result in a dismissal of the assessee as she fails to reach a trustable level of asset assessment as per Art. 59, par.1, point a as read in conjunction with Art. 61, par. 3 of the Vetting Law.

In view of the above, the IMO recommends an appeal against IQC's decision – in the asset component, in its entirety - in this case.

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