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**International Monitoring Operation**

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



**Funded by the European Union**

*Prot. No. 1086*

Tirana, 6 August 2018

To the  
**Public Commissioners**

Bulevardi "Deshmoret e Kombit", Nr. 6  
Tirana  
Albania

Case Number            **HC/TIR/1/01**  
  
Assessee                **Xhezair            ZAGANJORI**

**RECOMMENDATION TO FILE AN APPEAL**

according to

Article B, paragraph 3, littera c of the Constitution of the Republic of Albania, Annex 'Transitional Qualification Assessment', and Article 65, paragraph 2 of Law No. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania".

## **Introduction**

The assessee holds the office of the Chairman of the High Court of Albania. He is an assessee pursuant to Article 179/b, paragraph 3 of the Constitution. Pursuant to Article 4, paragraph 4 of Law 84/2016, in short: Vetting Law (VL), the assessee is subject to priority re-evaluation.

The re-evaluation process was carried out on three criteria: assets, background and proficiency. Upon administering reports of the auxiliary bodies, thorough investigation of the case, administering evidence obtained through the investigation process and submitted by the assessee, the Independent Qualification Commission (IQC) Adjudication Panel closed the ex-officio investigation on June 26, 2018, notified the assessee on the results and shifted the burden of proof on the assessee on several items related to the asset criteria. Following his submissions to rebut the established presumption, the Panel decided to summon the assessee to a hearing.

The hearing took place on July 20, 2018. Following deliberation as per Article 55, paragraph 5 VL, the Adjudication Panel decided to confirm the assessee in duty. The decision was publicly announced on July 24, 2018.

## **Summary of recommendation**

The International Observers (IOs) recommend the Public Commissioners to file an appeal against IQC's 24 July 2018 decision in the case of this assessee, by which the assessee has been confirmed in duty.

## **Basis of Recommendation:**

1. Under paragraph 3 of Article D of the Annex to the Constitution of the Republic of Albania *"The assessee has to credibly explain the lawful origin of assets, property and income. Income shall only be considered legitimate if it has been declared and taxes have been paid."*

Whereas, under paragraph 5 of Article D of the Annex to the Constitution *"...If the assessee takes steps to inaccurately disclose or hide assets in his or her ownership, possession or use, a presumption for the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel."*

Furthermore, under Article 52 paragraph 2 VL *"If the Commission or the Appeal Chamber concludes that the evidence has reached the standard of proof under Article 45 of this Law for its report, the assessee shall have the burden to provide evidence or arguments about evidence against that conclusion"*.

2. Through Adjudication Panel's decision of June 26, 2018 to close the *ex-officio* investigation, which revealed inaccuracy of disclosure and a failure to establish legitimate sources of assets, the burden of proof, as per Article 52, paragraph 2 VL, shifted to the assessee on the following items related to the asset criteria:

2.1 With regard to the residential apartment of \_\_\_\_\_ m<sup>2</sup>, located at Rr. " \_\_\_\_\_ ", hyrja ap. \_\_\_\_\_, as declared in the Vetting declaration for the value of ALL \_\_\_\_\_ the source of creation is based on (i) income from the sale of the former apartment in \_\_\_\_\_ at value ALL \_\_\_\_\_ (ii) personal income and income from the rent, amounting to ALL \_\_\_\_\_

Via Letter with Prot. no. \_\_\_\_\_ dated 08.2017 and Letter with Prot. no. \_\_\_\_\_ Prot. dated 09.2017, LIPRO Tirana has confirmed the asset of \_\_\_\_\_ m<sup>2</sup>, purchased under contract with Rep. no. \_\_\_\_\_ dated 10.2001, in the presence of Public Notary, for the price of ALL \_\_\_\_\_.

Contradictory data and declarations were submitted by the assessee in relation to this asset, as follows:

- The declared value of the apartment in the Vetting declaration is ALL \_\_\_\_\_ million and surface area \_\_\_\_\_ m<sup>2</sup>;
- The declared value of this asset in the initial declaration for 2003 is ALL \_\_\_\_\_ million and surface area of \_\_\_\_\_ m<sup>2</sup> + balcony of \_\_\_\_\_ m<sup>2</sup>;
- The value of the apartment according to the purchase agreement with Rep. no. \_\_\_\_\_ and Col. no. \_\_\_\_\_ dated 10.2001 and the confirmation from LIPRO, Tirana office is ALL \_\_\_\_\_ ;
- In his replies to the questions asked about this immovable asset, the assessee stated that he has spent a total of ALL \_\_\_\_\_ million until 2001, the year of the purchase of the said asset (Assessee's reply to the IQC Questionnaire dated 1 March 2018, page 4).

During the administrative investigation phase, IQC has shifted the burden of proof to the assessee about these different declarations because it was found that there is an inaccurate declaration of the purchase price of the asset; unsatisfactory (insufficient) and fictitious declaration; lack of legitimate financial sources; as well as has evaded obligations of the state budget since the real value of these asset is not reflected/presented.

Furthermore, it was found by IQC that assessee has not submitted relevant documents at IQC to prove the contrary of the findings.

2.2 With regard to declared assets as per in the Vetting declaration (i) Shop (library) of \_\_\_\_\_ m<sup>2</sup>; (ii) Basement of \_\_\_\_\_ m<sup>2</sup>; (iii) Office of \_\_\_\_\_ m<sup>2</sup>, (three of these assets are located at the same address as the above said apartment of \_\_\_\_\_ m<sup>2</sup>), the assessee has declared in his Vetting declaration the following surface, value and source of creation:



- (i) Shop of m2, purchased at the price of ALL
- (ii) Basement of m2, purchased at the price of ALL
- (iii) Office of. m2 purchased at the price of ALL

Source of creation: Personal income and income from rent.

Meanwhile, in the initial declaration of 2003 these assets are declared as following:

- (i) Library (shop) of m2, for the value ALL ;
- (ii) Basement of m2 + office with surface area of m<sup>2</sup>, for the value of ALL

Source of creation: Income from the lease of the library.

According to the declarations conducted and documents administered in the IQC's file, it is established that the purchase value of these assets is ALL each, based on the sales contracts repertoire no. , dated .10.2001, repertoire no. dated .10.2001 and rep., no. dated .10.2001 concluded in the presence of the Public Notary.

Based on the administrative investigation it is found that none of the declarations on these 3 (three) immovable assets, are in compliance with one another regarding both the value and the surface, as well as the value specified in the sales/purchase contracts concluded in the presence of the Public Notary, in the amount of ALL each.

These contracts were submitted even to the Tirana LIPRO and the tax liability is paid on these assets as per the value of the contract and not the real value for the purchase of the assets. Likewise, during the investigation it is not proved that the source of creation is the income generated by renting out the immovable properties the assessee has had in his ownership.

During the administrative investigation, IQC has shifted the burden of proof to the assessee regarding this difference in declarations and failure to declare the exact value for the purchase of these assets; has made an insufficient, inaccurate and fictitious declaration; does not have sufficient financial sources; as well as has evaded obligations of the state budget since the real value of these assets is not reflected/presented.

Furthermore, it was found by IQC that assessee has not submitted relevant documents at IQC to prove the contrary of the findings.

2.3 With regard to the immovable property namely as the Basement (of m2 + office with surface area of m<sup>2</sup>), declared in the initial declaration of 2003, was purchased for ALL, by income from renting out the library.

This declaration was found to be inaccurate, because the investigation found that these two immovable properties, Basement (sale contract repertoire no. [redacted] dated 10.2001) and Library (sale contract repertoire no. [redacted], dated 10.2001) as per the respective sale contracts signed before a Public Notary, were purchased on the same day in 2001.

During the administrative investigation, IQC has shifted the burden of proof to the assessee regarding these declarations and the failure to accurately declare the price for which these pieces of property were purchased.

Furthermore, it was found by IQC that the assessee has not submitted documentation proving the contrary of the IQC's findings.

2.4 With regard to the income before taking office, based on initial declaration of 2003, it results that created income (purchase of assets and possession of monetary value) before taking office are:

- Balance of ALL [redacted] million for the payment of the difference for purchasing the apartment;
- ALL [redacted] million incomes;
- ALL [redacted] million incomes;
- Bank deposit USD [redacted];
- Bank deposit ALL [redacted] million;
- Cash balance ALL [redacted] million.

During the administrative investigation, the assessee has not proved with written documents, according to the Albanian legislation in force, the lawful sources of these incomes as created by him prior to 2003.

Following the above, IQC has shifted the burden of proof to the assessee regarding the justification of financial sources for this period, for which he has not submitted written documentations to justify lawful sources for the creation of assets and liquidities.

2.5 With regard to the rents benefited during the period 1999-2001, as per initial declaration of 2003, but even in the Vetting declaration, the assessee has declared benefits from lease contracts starting from 1999 until 2001.

In the initial declaration of 2003 total income created until that period from the renting of the premises has not been declared, and the leased assets owned by the assessee have not been specified.

For the years 1999-2001, only one contract has been signed by the owner, Ms. who as the sole owner of the property of m<sup>2</sup>, (without providing the number and data of the property), has rented out her premises.

It was found that the assessee did not own any immovable property that he rented out.

The burden of proof was shifted to the assessee during the administrative investigation to prove the lawful sources created from the lease of assets.

Furthermore, it was found from IQC that the assessee did not submit documentation to prove the contrary of IQC's findings.

2.6 With regard to the income from rents obtained during 2001-2003, in the Vetting declaration the assessee has declared income obtained from the lease of assets during the period from 2001 to 2003.

According to the submitted documentation administered in the file of the IQC, it results that the properties leased during this period were rented out by the only owner not by the assessee. It resulted that the assessee did not own any immovable properties that he rented out.

During the administrative investigation, the burden of proof was shifted to the assessee to prove lawful sources created from the rents of assets.

Furthermore, it was found from IQC that the assessee did not submit documentation to prove the contrary of IQC's findings.

2.7 With regard to the rental income from \_\_\_\_\_ and \_\_\_\_\_ ( ), the assessee has declared in the Vetting declaration income from ( ), by renting out the basement and apartment/office, in the (i) amount of USD \_\_\_\_\_ in 2005; (ii) amount of USD \_\_\_\_\_ in 2006; (iii) amount of ALL \_\_\_\_\_ in 2007.

No lease contract and no financial transactions for payment of rent in the name of the assessee are found in the file administered by the IQC and the documentation sent by the assessee.

IQC has shifted the burden of proof to the assessee regarding the submission of the lease contract signed with ( ) for renting out premises during 2005-2007 and documentation on the method of payment of fiscal obligations for the purpose of this lease for this period.

The assessee has declared but he has not submitted certificate for the payment of obligations to the state budget for this period.



Furthermore, it was found from IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.

- 2.8 With regard to the rent benefited in 2007, the assessee has declared in the Vetting declaration income in the amount of EUR [redacted] from the Centre for Energy Efficiency for the declared period June - November 2007.

IQC has shifted the burden of proof to the assessee regarding the submission of the lease contract signed with the Centre for Energy Efficiency for renting out the premises and documentation for the method of payment of fiscal obligations for the purpose of this lease for this period.

The assessee has not submitted a contract and certificate for the payment of obligations to the state budget for this period.

Furthermore, it is found from IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.

- 2.9 With regard to the incomes from rent benefited in 2007-2009, the assessee has declared in the Vetting declaration that he has entered into a lease contract with others three co-owners, with the company [redacted] for a period of 2 (two ) years starting from 10.2007 until 12.2009, for the rent amount of EUR [redacted] per month.

In the file administered by the IQC, it does not result if the rent and obligation for the tax at source were paid by the lessor for the entire period (10.2007 - 12.2009).

IQC has shifted the burden of proof to the assessee regarding the submission of certificate for the payment of fiscal obligations for this rent for this entire period.

Furthermore, it results from IQC that the assessee has not submitted complete documentation to prove the contrary of IQC's findings. He has submitted lease contract for this period but not for the payment of obligations to the state budget for the entire period.

- 2.10 With regard to the declaration of investment in 2008, the assessee declared in the Vetting declaration that in 2008, has invested an amount in favor of "[redacted]" company at the value of USD [redacted] and ALL [redacted], but it is not specified by what legal means was made, (meaning how this investment was legally performed and/or used).

The assessee claimed that he did not make an investment in this company, but he purchased an immovable property.

The assessee was requested to submit a signed contract pursuant to the Albanian legislation in force, to prove that the legal action on this property is not an investment but expenses to purchase immovable property.

Furthermore, it results by IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.

- 2.11 With regard to the apartment located in \_\_\_\_\_ purchased in 2006, the assessee has declared in Vetting declaration the purchase date at the beginning of June 2006 in the value of USD \_\_\_\_\_

The assessee was asked to declare the source of funding for this. In his reply, the assessee declared that a part of the amount was paid by withdrawing deposits at the bank in the amount of USD \_\_\_\_\_

According to documentation and evidence administered in the file and the confirmation from \_\_\_\_\_ such a transaction carried out by the assessee as a deposit withdrawal in the amount of USD \_\_\_\_\_ does not appear.

As per above, it results from IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.

- 2.12 With regard to the expenses for the son's tuition in \_\_\_\_\_, assessee has declared in Vetting declaration expenses only for the payment of the university and post-university studies of the \_\_\_\_\_ for the period 2008-2013.

It was found from IQC that the declarations in the periodic declarations of assets over the years by the assessee on tuition expenditure do not match his declarations following questions asked by the IQC.

It resulted that the expenses, like the tuition fee, rent contract and living expenses, are higher than those declared by the assessee in the periodic annual declarations.

Only for 2010-2011 there is a difference of non-declared expenditure carried out for tuition in the amount of \_\_\_\_\_ (around ALL- \_\_\_\_\_). Based on the above, it results from IQC that the amount of expenses for the entire tuition period of assessee's son (from 2008 to 2013) is much higher than stated in his periodic annual declarations for these expenses.

Furthermore, it results from IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.



2.13 With regard to the functions of the assessee's [redacted], from the National Business Centre (NBC) with communication no. [redacted] dated [redacted].12.2017 it was confirmed that the assessee's [redacted] was a member of the Supervisory Council in the company "[redacted]", a company which later appears as de-registered in 2009.

From an extract as retrieved by NBC of this company it appears that the [redacted] of the assessee has exercised the functions of the member of the Supervisory Board of this joint stock company until the company was closed in 2009.

IQC has shifted the burden of proof to the assessee, who has submitted a certificate issued by this company, saying that the assessee's [redacted] left the company in 2003.

But from the retrieved extract of the company at NBC, appears to be no action or decision-making to amend the company's Supervisory Council until the moment the company was closed in 2009.

It results from IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.

2.14 With regard to incomes from the Institute in [redacted], in the Vetting declaration the assessee has declared income from the [redacted] Institute in the value of approximately [redacted] of [redacted], but he has neither declared this income in the Declaration Before Taking Office in 2003 nor in the declaration of assets over the subsequent years.

IQC has shifted the burden of proof to the assessee, who submitted a certificate for this income in the form of a scholarship, but he has not submitted documentation regarding the real value benefitted from this scholarship deducting all expenses, or any transaction of the transfer of the claimed amount to the bank account.

As per above, it results from IQC that the assessee has not submitted documentation to prove entirely the contrary of IQC's findings.

2.15 With regard to the Bank accounts of the assessee's [redacted] in 2005 and 2006. In the periodic declaration of 2005 and 2006, the assessee has not declared current accounts in the name of the [redacted] in the amounts of (i) ALL [redacted] and (ii) ALL [redacted], as confirmed by [redacted]

The assessee has not declared the bank account balance of the [redacted] in the periodic declaration of assets for these years, as a legal obligation (pursuant to law no. [redacted] dated [redacted].4.2003 and the periodic annual form for the declaration of assets).

As per above, it results from IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.

2.16 With regard to the Bank account in 2007, in the periodic declaration of 2007, the assessee has not declared the opening of a current account in his name in the value of ALL [redacted] which is confirmed by [redacted]

The assessee has not declared his bank account balance in the periodic declaration of assets for this year, as a legal obligation (pursuant to law no. [redacted] dated [redacted].4.2003 and the periodic annual form for the declaration of assets).

As per above, it results from IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.

2.17 With regard to the income and expenses, pursuant to the verification of income for the years, (2011 - 2012) and (2014), in relation to all expenses made, it results that income related to (expenses + liquidities) for this period, do not justify the assets created, thus there is an absence of lawful financial sources to justify the assets. More specifically as follows:

- For 2011 in the amount of ALL [redacted]
- For 2012 in the amount of ALL [redacted]
- For 2014 in the amount of ALL [redacted]

Thus, for these 3 years, according to calculations made in the financial analysis, it results from IQC that the total expense ratio is higher than income created from lawful sources and the assessee lacks lawful financial sources to justify assets.

As per above, it results by IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.

2.18 With regard to the expenses for assessee's son tuition in [redacted], the assessee has declared annual expenses for his [redacted] for the period 2013-2016, without providing proof with supporting documentation for the university cost, living and rent costs.

It was found that the assessee has not accurately declared tuition expenses of the [redacted] Only for 2014 the assessee declared tuition expenses in the amount of EUR [redacted] whereas according to the data collected and documented from banking transactions carried out by the assessee for 2014, they result in the amount of EUR [redacted].

As per above, it results by IQC that the assessee has not submitted documentation to prove the contrary of IQC's findings.

3. The assessee provided his explanations and evidences to the findings put forward in the Results of Investigation and such explanations and evidences seem to reach satisfactory level to rebut the findings under points (2.4), (2.7), (2.9), (2.10), (2.13) and (2.14) above.
4. However, the Adjudication Panel, with unanimous vote, decided to confirm the assessee in duty.
5. IMO is of the opinion that the explanations and evidences submitted by the assessee following the Results of Investigation were not relevant and/or sufficient to rebut the following points (2.1), (2.2), (2.3), (2.5), (2.6), (2.8), (2.11), (2.12), (2.15), (2.16), (2.17) and (2.18) and a 'confirmation in duty' decision seems not to be duly justified.

Regarding these findings IOs point to the following circumstances based on the abovementioned items:

**2.1:** The assessee has failed to duly declare the real value of the Apartment of 70 m<sup>2</sup>. Is not provided any investment-plan and/or relevant invoices and/or a budget-project to support the exact invested amount as pretended in the questionnaire/explanations by him. Consequently, the information stated on the questionnaire/explanations is only declarative and in contradiction with what is declared in the Vetting-Declaration and in Initial Declaration of 2003, meaning inaccurate declaration of the purchase price of the asset and fictitious declaration.

**2.2:** The surface areas small discrepancies are explained due to informal measurements conducted initially. Furthermore, with regard to the different amounts as declared in Initial Declaration of 2003 and in Vetting-Declaration, the assessee uses the same explanation as per the Apartment of 70 m<sup>2</sup>; the difference of is used for the furniture of this joint property. Is not provided any investment-plan and/or relevant invoices and/or a budget-project to support the exact invested amount as pretended in the questionnaire/explanations by him. Consequently, the information stated on the questionnaire/explanations is only declarative and in contradiction with what is declared in the Vetting-Declaration and in Initial Declaration of 2003.

There are discrepancies of the declared prices of all above mentioned assets between the Vetting declaration and the Initial Declaration (2003) and the contracts submitted to Tirana LIPRO.

**2.3:** The findings of the IQC stands. Legally speaking the assessee has purchased the basement and the library on the same date ( 7/10/2001) therefore the assessee was not the



legal owner of the library before October 2001 to justify rent incomes. This stands as well for the other related persons (co-owners) regarding the acquisition of the legal title of the property.

As the assessee explained he was de facto the owner of these real estates since 1997. The assessee and the co-owners made their ownership legitimate with fictitious contracts only in 2001 for administrative reasons to register their ownership in the Tirana LIPRO. Therefore, the assessee cannot justify any legal income before 2001 from these real estates.

**2.5:** The assessee was not the legal owner of the immovable property (library) before October 2001, therefore the rent incomes before 2001 cannot be legally justified. Furthermore, the assessee was never the party in the rent agreements.

**2.6:** The assessee and [redacted] and other six co-owners became legal owners of the library from October 2001. However, the rent contract was signed only by [redacted] and the rent incomes received only in her bank account. There are no transactions evidencing the transfer of the assessee's share from [redacted]. The assessee has not submitted any pieces of evidence to prove his statements.

**2.8:** The assessee confirms in his explanations that the IQC finding is true about that Mr. [redacted] was not co-owner, nor legally entitled by a Power of Attorney to represent to sign a contract on behalf of all the owners.

**2.11:** The assessee in his explanations did not provide any evidence to prove the withdrawal of the above mentioned USD [redacted], as stated in his answers to the IQC Questionnaire, dated 1 March 2018.

**2.12:** The assessee has changed the declared expenses for the [redacted] from GBP [redacted] (as declared the HIDAACI yearly declaration 2010) to GBP [redacted] for the year 2010 (the answer of the IQC Questionnaire 1 March 2018).

The assessee has changed the declared expenses for the [redacted] from GBP [redacted] (as declared the HIDAACI yearly declaration 2011 and answers to the IQC Questionnaire 25 December 2017) to GBP [redacted] for the year 2011 (the answer of the IQC Questionnaire 1 March 2018).

The assessee has never provided any supporting documents (such as bank statements) with regards to the university tuition fee invoices, rental costs, living expenses although he was specifically asked.

Please note that the assessee had the obligation to declare any expenses above ALL under HIDAACI law. Moreover, under IQC Questionnaire dated 25 December 2017 the assessee was specifically asked to incorporate living expenses related to education.

The assessee failed to provide any new evidence or supporting document to prove otherwise in the reply to the results of the investigation.

**2.15:** The assessee has not submitted documentation to prove the contrary of IQC's findings.

**2.16:** The assessee has not submitted documentation to prove the contrary of IQC's findings.

**2.17:** IQC data and findings are correct since IQC has provided a detailed methodology which incorporates start of year balance, incomes, expenses and end of year balance. On the other hand, the assessee is simply stating that he does not understand the methodology used by IQC, furthermore he is just stating that according to his calculations his balance is positive for every year. However, he fails to provide a detailed methodology which also includes start and end of the year balance, so as to challenge the IQC findings.

**2.18:** The assessee provided only evidence about the tuition fees of the (starting from the semester 2013/14 until the semester 2018/19) furthermore a rental contract (starting on September 2013) as well as payment slips of the university of the tuition fee (September 2017) and pay slips of the landlord (February 2018).

The evidence provided by the assessee in the form bank statement reconfirms the finding of the IQC according to which the assessee the the amount of euros on January 2014 and euros on September 2014, all together euros.

The finding of IQC stands as the amount transferred to . ( euros) and the amount declared euros) are different.

6. As the Chairman of the High Court and one of the highest ranking judicial officials in the Republic of Albania, the assessee should be expected to scrupulously observe all applicable rules and regulations. Regarding the topics above, he failed to meet the legal obligation imposed by Article D of the Constitution.
7. In view of the above, the IMO recommends an appeal against IQC's decision of July 24, 2018.

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