

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



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Tirana, 31 March 2021

To the
Public Commissioners

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

Case Number **AC-TIR-1-10**
Assessee **Elbana LLURI**

RECCOMENDATION TO FILE AN APPEAL

According to

Article B, paragraph 3, letter "c" of the Constitution of the Republic of Albania, Annex
"Transitional re-evaluation of judges and prosecutors in the Republic of Albania", and
Article 65, paragraph 2 of the law no. 84/2016 "On the transitional re-evaluation of judges
and prosecutors in the Republic of Albania"

1. Introduction

The Assessee Elbana Lluri holds the office of Judge at Tirana Court of Appeals. She is assessed *ex officio* pursuant to Article 179/b, paragraph 3 of the Constitution of the Republic of Albania.

The Re-evaluation process was carried out based on three criteria: assets, background, and proficiency. Upon administering the 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 (hereafter: IQC) Adjudication Panel closed the investigation on 14.12.2020, and notified the Assessee the findings with some requests for explanations.

The Assessee was informed of the hearing which took place on 7.1.2021. Meanwhile, a media article was published which came to the attention of the IQC and IMO and the hearing planned for 12.1.2021 was postponed so that the IQC could evaluate the submission/media article and decide if the investigation should be re-opened. The Panel retrieved the files indicated in the media article and a report was compiled by the Rapporteur concluding that there was no need to re-open the investigation.

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 Vetting Law, and the decision was announced publicly on 2 of February 2021.

The International Observers, having reviewed the case file and the results of the public hearing, deems that a review of the case by the Special Appeal Chamber (hereinafter: AC) is necessary, for the reasons explained hereinafter.

The International Observers recommend to the Public Commissioners to file an appeal against the decision no. 342, dated 2.2.2021 of the Independent Qualification Commission in the case of the Assessee Elbana Lluri, case number AC-TIR-1-10, by which she was confirmed in duty.

2. Grounds for the recommendation of appeal

- I. **Apartment in Tirana 125 m2 co-owned with the related person (husband) Mr. **** purchased for 6 500 000 ALL. An agreement for the promise to sale (off-plan) was signed on **2.2011 between the assessee and **** as buyers and **** (sister of the assessee) and her husband **** as sellers. The sale agreement was signed on **10.2012.**

According to the asset vetting declaration of the assessee, as sources for the purchase of this asset were a donation by her sister (the half owned by the assessee E. Lluri) and the co-owner **** purchased his part (half) for 6 500 000 ALL:

- a. and 1 500 000 ALL from his savings which were paid in 2011. In the vetting declaration the assessee has stated that the amount of 1 500 000 ALL comes from the savings of her related person through the years without specifying the years. The reduction of cash by the related person **** was declared in the periodical declaration of 2011.
- b. 5 000 000 ALL were from a soft loan taken by the related person/husband on **6.2011 with the assessee E. Ll as a guarantor. The off-plan agreement of **2.2011 was signed with the aim of taking the soft loan and this asset/apartment was placed as guarantee.

Below there is an analysis of the savings by the related person *** and his financial capacity to create those. Given the fact that the source of the amount 1 500 000 ALL paid in 2011 was not clarified regarding the fact if it came from the savings before 2003 or after 2003, we would analyze the savings separately based on the time of their creation and declaration.

Furthermore, this asset was reevaluated in *** of December 2011, just few months after the off-plan agreement, to the amount of 23 750 000 ALL. This re-evaluation had repercussions in relation to the taxes paid by the seller.

The savings of the related person ***

- **From 1995 – 2011**

In 2003*** declares savings to the amount of 2 500 000 ALL, as a source for this savings he declares his income from the Magistrates School and his work in the private sector as of 1995. The assessee was shifted the burden of proof in relation to the income of her related person declared in this year. In her declarations when she was shifted the burden of proof, regarding the source of income for these savings, the assessee stated that they were from the work of the related person *** from 1995 until 2003. To prove the working relations and income for these years the assessee brought notarial declarations from the employers of *** during these years. According to these notarial declarations the jobs held by *** were those of waiter or delivery man and the employers confirmed that he was not registered with the authorities when having these jobs and taxes were not paid on these incomes.

Article D of the Constitution and the well-established case law of the AC, for an asset to be considered lawful, two conditions are to be met cumulatively: the income used for its creation or acquisition had to originate from a lawful activity and the income ought to have been subject to the payment of applicable taxes or duties.

According to the unilateral notarial declarations mentioned above the required criteria to consider the savings declared by the related person *** in 2003 as lawful are not met and as a result this income cannot be considered in the financial analysis.

Our legal stance is that the income of the related person *** before his marriage to the assessee should be fully investigated in the framework of the reevaluation process of the assessee Elbana Lluri for the following reasons: the assessee co-owns and uses the assets bought with the income of the related person and article D of the Annex of the Constitution requires "the audit of their asset"; it is our legal understanding that the vetting declaration of the assets of the assessee is comprised not only of the declaration of the person being vetted but as well the asset declarations of the related persons, as per article 30 of the Vetting Law¹. The vetting declarations of the related persons to the assessee are an integral part of the vetting declaration of the assessee and their assets should be declared and audited equally as the assets of the assessee herself/himself. This has been the stance of the AC in the case of the assessee ***.

Based on the above, the fact that the related person of the assessee Elbana Lluri, *** is an assessee on his own right, does not preclude his investigation in the framework of the vetting process of Lluri.

¹ "The object of asset assessment is the declaration and audit of assets, the legitimacy of the source of their creation, of meeting the financial obligations, including private interests, for the assessee and persons related to him or her"

These savings were used for the immovable assets purchased by the assessee and her related person/husband. Based on the legal reasoning above since the existence of these savings is not supported by documents and taxes were not paid, this would affect their financial capacity to purchase the assets declared in the assets vetting declaration.

II. The loan from *** Bank.

On^{***4} 2009 the assessee took a loan of 25 000 euro from *** Bank with the aim to reconstruct the apartment in Tirana they had planned to buy from the sister of the assessee^{***.***2}. Her related person^{***.***} was the guarantor in this loan agreement. This legal action qualifies^{***.***} as another related person to the assessee E. Lluri as of 2009. According to this loan agreement, the assessee and her other related person^{***.***} in 2009³ seem to have been in possession of the apartment 125 m2 in Tirana (analyzed above) since 2009 given the fact that they were to conduct reconstruction works in the asset. This fact was not declared in the periodic declaration.

On^{***2} 2011⁴, according to the bank statement, the sister of the assessee/other related person^{***.***} pays back the bank loan, according to the declaration of the assessee, through a loan that was given to her by her parents.

According to the assessee as source for the loan of 25 000 euro she took from her parents (not paid back yet) have served their retirement pensions and a monthly allowance of 40 000 ALL that the sister of the assessee,^{***.***} had given to them from 1995 and onwards. In her second questionnaire the assessee states that the reason for this financial assistance from^{***.***} to her parents has been *"in order to meet their average living needs and cover any other expenses that they may have had since 1995"*.

IQC in their administrative investigation have analyzed the financial capacity of the sister to give these amounts to her parents. It is our view that in analyzing the sources for this loan, it should be considered not only the financial capacity of the sister of the assessee^{***.***} but as well the fact that when donating this monthly allowance to her parents^{***.***} lost ownership of this money and as such the parents of assessee as well should be investigated on their capacity to save and lend.

During the administrative investigation, the assessee has declared that the monthly allowance was given to her parents by^{***.***} (sister of the assessee) with the aim of giving them the possibility to have an average style of live and as such it is only logical that they would have spent this money during the years to have the lifestyle their daughter^{***.***} had aimed for them and not to have saved it. On the other hand,^{***.***} was supporting financially the assessee E. Lluri separately⁵ so they should have felt secure about her financial situation.

² The off-plan agreement between the assessee E. Lluri, her related person^{***.***} and her sister for this asset was signed in 2011 and the sale agreement in 2012.

³ Later in 2012^{***.***} became related person.

⁴ The same day as the off-plan agreement

⁵ Please refer to the 5 000 000 ALL sum declared by the assessee in her initial declaration as donations and financial assistance from the sister^{***.***} to the assessee E. Lluri.

On the contrary, according to the declarations of the assessee, which seem to be contradictory, her parents appear to have been saving during all the years and not actually having the average lifestyle aimed for them by *** **

Therefore, we would suggest that the amount of 25 000 euros seems to be not justified by the parents of the assessee and as such should not be considered in the financial analysis.

III. Apartment in Vlora 128 m2 purchased for 55 452 euro on ***9.2016.

According to the vetting declaration this apartment was purchased with the following sources:

- a. with the amount of 5 000 000 ALL donated to the assessee by her sister/related person *** ** and declared by the assessee in her declaration of 2004.
- b. and the remaining with the savings of her family during the years, without clarifying the savings of which years were used.

According to the financial analysis, the assessee and her related person are in minus in 2012 and 2016.

Based on the reasoning above and taking into consideration the fact that the savings of the related person declared in 2003 (as explained above) to the amount of 2 500 000 ALL are not supported by documents and on them taxes have not been paid, the assessee and her related person could not have had the financial capacity to purchase this immovable asset.

IV. The vehicle Audi in the ownership of *** ** and use of *** **

This vehicle was purchased by *** ** father of *** ** the related person to the assessee E. Lluri on ***4.2011 for 37 000 USD + the custom taxes 932 091 ALL. On ***6.2011 the vehicle entered Albania. The technical control was conducted on ***7.2011 and the circulation permit of the vehicle was issued in the same day.

On ***7.2011 between *** ** as the lender and *** ** as the borrower, was signed a notarial use agreement. In this use agreement is stated that *"the lender authorizes the use of the vehicle which is in a good physical condition to the borrower. This use agreement is signed for an indeterminate time and the vehicle to be used within and outside the Republic of Albania. From this day and onward, the borrower is responsible legally for the vehicle and its physical condition."*

There is no doubt that this agreement was implemented, based this on the insurance policies (green cards) that *** ** held on this vehicle⁶; on the answers of the assessee stating that they used this car in most of their trips abroad from 2011 until 2016; as well as the notarial declaration of *** ** of ***9.2020 who stated that this vehicle was used through the years by the family of *** ** mainly for their foreign trips.

The assessee E. Lluri during the years held three international insurance policies (green cards) on this vehicle for trips conducted abroad.

⁶ According to the letter from the Financial Supervisory Authority of ***.2.2019 to the IQC

The use of this vehicle was not declared in the assets vetting declaration neither by the assessee and nor by her related person^{***} even though based on the use agreement^{***} was a user at the time when the vetting declaration was submitted. The assessee when asked during the administrative investigation on vehicles used by her and her related persons declared the use of it. This vehicle was later sold on^{***} 7.2018 by^{***}.

According to the article D of the Annex of the Constitution and article 30 of the Vetting Law, the assessee and their related persons as per article 13.3 of the Vetting Law⁸ should submit their assets⁹. In the asset vetting declaration, which is part of the Vetting Law is stated that “the declaration includes the assets of the assessee and his/her related persons including the private interests in ownership and use. The scope of the vetting institutions is to audit the declared assets by the assessee and the related persons, their legitimacy of the source of creation, of meeting the financial obligations, including private interests, for the assessee and persons related to him or her.

Based on the evidence above, it appears clear to the International Observers that the legal relation of the assessee and her related person/husband to the Audi car was that of use and as such there was a legal obligation on her and her related person^{***} to declare this fact in the vetting declaration.

The fact that the use agreement took place in 2011 before the marriage of the assessee to^{***} is not in our opinion legally relevant, first because it is clear from the loan agreement with ^{***} Bank in 2009 taken by the assessee and with^{***} as the guarantor that even though they were not related persons as per the definition given in the Vetting Law, they were other related persons who had decided to enter a loan agreement with the aim to reconstruct an apartment they had planned to purchase. As well, on^{***} 6.2011 the related person/husband^{***} took a soft loan, to purchase the apartment in Tirana they co-own in Tirana, in which the assessee E. Lluri results the guarantor, Additionally, in February 2011 (the use agreement took place in July 2011) they signed an off-plan agreement for their apartment in Tirana. Furthermore, notwithstanding the date when the use agreement was signed, the legal effects of it came during their marriage and she together with the family used it during the trips abroad and as such she bears legal responsibilities regarding it.

Based on the reasoning above, the assessee and her related person were both under the obligation to declare this asset and be investigated regarding it.

In relation to the financial capacity to purchase it, we believe that, based on the evidence and reasoning above, ^{***} should have been qualified as another related person to the assessee and her related person¹⁰ and investigated on his financial capacity to purchase the vehicle. The assessee was shifted the burden of proof in relation to the financial capacity of^{***} to purchase this asset but in the decision of the IQC it was reasoned that the assessee should not bear legal responsibilities regarding this asset.

⁸ Art. 3.13. of the Vetting Law, “Related Persons” shall mean the circle of persons related to the assessee, commissioner, public commissioner or judge, consisting of the spouse, cohabitant, adult children, as well as any other person mentioned in the family certificate as provided by the office for civil registry to assessee, commissioners, public commissioners or judges for the period of re-evaluation.

⁹ Art 3.11 of the Vetting Law, “Asset” means all movable and immovable properties in the Republic of Albania or abroad, under the provisions of Article 4 of the Law no 9049 dated 10/04/2013 “On the declaration and audit of assets, financial obligations of elected persons and certain public officials”, as amended, being in the ownership, possession or use of the assessee”

¹⁰ This was the stance of the AC in a case where a similar situation was found, Decision no. ^{***}, dated^{***} 10.2019, par. 69 and onwards of the AC

The assessee to prove the financial capacity of **** brought the following evidence: notarial declaration of **** that he has worked as a mining engineer from 1973 – 1997 and in a company, which produced furniture; in notarial declaration of **** stating that from 1998 – 2005 he has worked as a taxi driver with a circulation of 2 500 ALL – 3 500 ALL. Additionally, **** declared that his wife had worked as a general physician and as of 2009 was retired. None of these declarations is supported by evidence. In his notarial declaration of ****9.2020, **** indicated the incomes of his three children but states that during their life together even when his children were working, he supported financially their living hood to allow them to save as much as possible for when they created their families. As such, the incomes of the children should not be considered when calculating the financial capacity of ****.

As a conclusion, taking into consideration, the evidence and facts stated above, that just one week after the circulation permit of the vehicle was issued **** signed a use agreement with **** to pass the use of the car within and outside Albania to the borrower for an indefinite time. The borrower, according to the notarial use agreement, from the day of the agreement would bear all legal responsibility on the car and would be responsible for the physical maintenance of it, leads us to believe that he was the de facto owner of car and that this was in fact a hidden asset of **** used by the entire family comprising the assessee.

The International Observers are of the opinion that the financial analysis on the capacity of **** to purchase this vehicle would further indicate the fact that it was a hidden asset of ****. The outcome of this investigation would eventually affect the financial capacity of **** to purchase the assets he co-owns with the assessee E. Lluri.

V. The vehicle Citroen C4 purchased in year 2012.

The vehicle Citroen C4, with the car plate AA****, was purchased by the assessee and the related person on **** 08.2012, based on the contract with **** for 16 500 EUR, whereby, the first lease equivalent to 54.5 % of the final value has been paid already while the following lease payments will be paid on monthly basis.

According to the financial analysis, the assessee and her related person, as identified in the IQC Results of Investigation, results with lack of financial source to purchase the car. The assessee explained that “[...] the non-disclosure of the cash balance increase by the amount of ALL 1,200,000 for the year 2011[...]” from her spouse is the reason of the lack of financial sources in year 2012.

The International Observers are of the opinion that, this explanation seems not to be sufficient, and assessee seems to remain in a situation of lack of financial sources in year 2012.

3. General conclusion

The International Observers recommend the Public Commissioner to file an appeal against the Independent Qualification Commission decision confirming the assessee in office.

The appeal would enable the Special Appeal Chamber to conduct a thorough investigation of the assessee, her related and other related persons, their financial analysis, their assets, and private interests which would ensure that indeed she has the public trust, the restoring of which is the main aim of the vetting process and the institutions implementing it.

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