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

Case Number **DC-P-DIB-1-03**

Assessee **Urim BUCI**

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").

1. Introduction

Mr. Urim BUCI 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 IQC decided to confirm the assessee in duty.

The International Observers (further: IOs or IMO) recommend the Public Commissioners to file an appeal against the whole results of the assets assessment.

IMO's views are that the evaluation of evidence, the reasoning and the jurisprudence quoted by the IQC in its support are not correct and, as a result, a different outcome should have been reached by the panel that would have led to the dismissal of the assessee.

2. Grounds of the recommendation and their analysis

For the assets assessment

IMO challenges the conclusions of the panel in regard to the whole assets assessment and, in particular, those related to the original financial inability of 7,514,635 ALL to build the dwelling with the migration income.

The reasoning outlined in the IQC decision in the assets assessment are wrong and incorrect, above all those outlined in paragraphs from 2.19 onwards of the decision, which stated that:

> **"2.19 The assessee had a financial inability of 7,514,635 ALL to build the dwelling with the migration income.**
>
> [...]
>
> **2.23** It was proven that the construction of this dwelling started in 1996 (by the assessee's brother, Mr. *** ***), and it is in the current situation/state since 2015. Thus, there is no evidence to prove the delivery of this investment after assuming office as prosecutor.

2.24 The Commission holds that such situation puts the panel in a difficulty to prove the genuineness of his statements and the lawful sources of the incomes used to create the asset described above, which appears to have been created from 1996 - when he was still a student - to 2015, the time when he was appointed as prosecutor

2.25. The Commission holds that regarding the assets of the assessee, in a general optic and based on the constitutional standard stipulated in Article D, paragraph 3 of the Annex to the Constitution, the explanations of the assessee on the asset are convincing. The Commission in that regard applies the principles of objectivity and proportionality in the meaning of Article 52, paragraph 1, of the Law no. 84/2016, which obligates the re-evaluation bodies to discreetly, but reasonably and explanatorily, review the re-evaluation process of an assessee by considering the implementation of these principles of the applicable administrative law.

[...]

2.27. In addition to the above reasoning, the Commission considered several circumstances integrally and in harmony with each other, such as his statements on being in migration in the de-criminalisation declaration, the coherent declaration in the 2005 PAD and the one before assuming office in terms of the source of incomes of this asset, the fact that this is an asset that was created before he would assume office as prosecutor, and the fact that there is no data to suggest that he created assets or liquidities after assuming such office.

[...]

2.29. In the meaning of the above-mentioned provision, the Commission holds that the inability to prove migration incomes, in light of the circumstances objectively analysed above, even though according to the evaluation of the adjudication panel the assessee is not considered to be in the situation of Article 32, paragraph 2, of the Law no. 84/2016, given that all of the requirements of this provision are not cumulatively proven.

2.30. The absence of any data casts doubts that the assessee - by declaring such incomes - aimed to defraud the re-evaluation bodies, or even intentionally made a different false declaration. Notwithstanding, the adjudication panel holds it to be unfair considering such factual situation as a shortcoming of deficiency that triggers consequences for the

assessee in terms of applying the measure of dismissal from office. Moreover, the asset would appear having been created before the assessee was appointed as prosecutor. Given that this shortcoming is the only one identified in relation to the asset evaluation criterion of the assessee, and placed in the above-mentioned context, it according to the adjudication panel is not deemed proportional to trigger the application of the measure of dismissal from office, as a necessity to achieve the objective stipulated in the law – i.e. reinstating the "public's trust in the justice system."

To support this conclusion, the IQC decision quoted an excerpt from AC Decision no. 6 dated 19.03.2022 related to the appeal decided in the case of *** ***, and the IQC decision affirms that:

"2.31. This stance of the adjudication panel is in compliance with Decision no. 6, of 19.03.2022, which reasons, among other, that: *'The situation described above places the assessee and the re-evaluation bodies in the situation of an inability to check the genuineness of his declarations and of the lawful sources of the incomes [used] to create the asset that was described above, which appears to have been created in the years ..... The negative result defined in the Commission's decision regarding this period, but also according to the analysis made in the Appeal Chamber, ..., is a consequence of the non-inclusion of the income generated in the years ... - ... The Chamber will reason for the importance and the impact that this circumstance will have on the asset assessment criterion, considering all the cases for which the Commission has concluded with its decision-making.... The Chamber takes into consideration the fact that, although the evidence available from state institutions does not confirm the legitimacy of the income claimed by the assessee, ... in the absence of any indication that makes you suspect that the assessee, by declaring such income, intended to deceive the vetting bodies or has deliberately stated otherwise in a false way, assesses that this factual situation is not deemed to be right to be considered as a deficiency or shortcoming which would lead to the consequence of the imposition of the measure of assessee's dismissal from duty. This shortcoming remains the only one found in relation to the asset assessment criterion for the assessee and when put in the above context, it is not considered that it can proportionally produce the imposition of the measure of dismissal from office, as a necessary measure to achieve the goal defined in the law for restoring public confidence*

in the justice system. ... In this assessment, the Chamber also takes into consideration the fact that the property turns out to have been created and existed before the assessee was appointed to the position of prosecutor.'

2.32. In conclusion, on the foregoing, The Commission deems that the lack of lawful sources resulting from the financial analysis carried out, not including income from immigration, should not be considered as a circumstance that places the assessee in the conditions of an insufficient declaration according to the provision of the article 61, paragraph 3 of the law no. 84/2016 [...]".

First and foremost, IMO needs to point out that the case of *** *** (which AC decision 6/2022 refers to) and the current one cannot be considered identical and cannot be compared.

The case of *** *** , indeed, was characterized by the existence of some evidence that could be properly assessed by the vetting bodies to ascertain the existence of an income, such as evidence related to the existence of the practice of the activity as a lawyer (along with the payment of his relevant health and social contributions) in the years 1994-1998. What was at stake, in that case, was the exact proof of the amount of lawful income claimed by the assessee which remained unproven. In that case the tax authorities were unable to give information on the income during the relevant period. Moreover, some additional circumstances – like the uncertainty of the legal framework - were considered by the Special Appeal Chamber to argue along the line of the application of the principle of proportionality - due to the peculiarities of that case - to not issue the administrative sanction of dismissal. [1]

The situation related to the assessee Urim Buci is completely different. IMO opines that the IQC panel drew their conclusions in absence of whatsoever reliable piece of evidence from which it could be inferred the existence of a lawful income as claimed by the assessee, thus going against the basic principle on the assessment of evidence which should be at the basis of the IQC decision and that are established by Art. 81 of the Administrative Procedure Code.[2]

[1] For more information, please refer to paras. 15.6 through 15.9 of AC Decision 6/2022.

[2] Please refer to AC Decision 9/20, par. 8.7, where it is stated that:
"8.7 [...] The fact that the Commission did not maintain the same stance as that claimed by the assessee regarding the probative value of the acts administered in the course of the investigation cannot be understood to be a denial of the right to be heard and bring evidence, but as an exercise of the Commission's attributes to analyse and assess the

IMO is of the opinion that in the case of Urim Buci the assessment of the available evidence, both individually and in its entirety, also in relation to the explanations provided by the assessee to the IQC, must lead to the conclusion that the IQC has not rightfully established the factual situation in accepting the existence of the lawful income claimed by him. Therefore, it is not even possible to talk about the application of the principle of proportionality in a situation where the evidence of the (even sole) existence of an income (let alone lawful) cannot be considered as proved.

Hence, the IQC panel erred in assessing the probative value of certain elements gathered during the investigation and, as a result, there has been an error in assessing the consequence of the probative value of what was gathered regarding legal requirements. The surprising final consequence was that the assessee was considered having reached the required standards to be confirmed under asset assessment aspects, which should not have been the case.[3]

In IMO's view the current decision does not meet the said legal requirements and the proof of a lawful income as claimed by the assessee can only be considered, in the present case, of a declarative nature,[4] let alone be incidentally or implicitly ascertained through the application of

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issues posed for discussion during the re-evaluation administrative procedure, in line with the principle set forth by Article 81 of the Administrative Procedure Code, as follows: Any public body shall, based on its conviction, deem which facts shall be considered to have been proven based on a detailed evaluation of each piece of evidence separately and all the evidence collectively, and also based on the overall result of the administrative investigation."

[3] This interpretation pointed out by IMO is in line with the Vetting Law, which determines the discretion of the Commission "[...] to evaluate based on their internal conviction, any indicia in overall related to the circumstances of the case [...]" (Art. 49(4), 2nd sentence of Vetting Law) and to base their decision "[...] only on documents from known sources, or evidence which is reliable, or is strongly consistent with other evidence [...]" (Art.49(4), 1st sentence of the Vetting Law). It is true that Article 49(4) of the Vetting Law stipulates that: "[...] The Commission or the Appeal Chamber shall not base decisions only on documents from unknown sources, or evidence which is not reliable, lacks credibility or is strongly inconsistent with other evidence. It may be taken into account each indicium as a part of the overall evaluation of evidence [...] and that Art. 51 of the Vetting Law stipulates that "If the assessee does not present evidence in accordance with article 85 of the Administrative Procedure Code and in case of incomplete evidence, the Commission and the Appeal Chamber may make factual conclusions based on the given evidence, the general assessment of the cases and their internal conviction [...]". But these principles should be considered of a subsidiary nature. As stated in AC 3/2020 in the case of *** *** :
"25.1. Regarding the administration of evidence in procedural terms [...] the Trial Panel draws the attention on the ECtHR case-law in the case Garcia Ruiz v. Spain or Forange S.A. v. France. [...] According to these judgements, the admissibility and assessment of evidence related to merits in general are powers that rest solely with the national courts which must balance the elements collected by them."

[4] In line with the principles expressed by AC Decision 2/2020 in *** *** , where AC stated that
"23.7. Regarding the source of income used for the construction of this house, the Chamber finds that the assessee refers to sources such as family savings and income from work in immigration during 1993 - 1994, which he was not able to prove. Since he did not submit any documents to prove this income, a fact that was confirmed by the

the principle of proportionality which, in the Jurisprudence of the Special Appeal Chamber, has a different purpose and a different meaning.[5]

In addition, the continuous reference of the IQC decision to the fact that some of the assets was created before taking office should be placed in the right perspective to determine its relevance, in line with the AC jurisprudence, amongst other AC decisions no. 2/2019 (on *** *** , paras. 3.1, 3.1.1, 3.1.2 and 3.24), no. 31/2019 (on *** *** , paras. 18 through 21.2), no. 12/2020 (on *** *** , paras. 32 and 33), no. 13/2020 (on *** *** paras. 34 through 35) and no. 3/2021 (on *** *** , par. 71).

IMO hereby points out that the explanations provided by the assessee during the proceeding were unclear and not linear. Therefore, it must be left to the Public Commissioner to consider whether to request further investigation to the AC. As an example, the periodical annual declaration of 2005 (referred to the year 2004) included the value of 10,000,000 ALL for the 150m2 dwelling built in 1995 and owned in the share of 50% by the assessee. The assessee later explained that the indication of that amount was a material mistake, as expressed in old Leke and not new Leke. The IQC accepted this explanation.

Interesting enough, in the same periodical annual declaration the assessee correctly indicated in new Leke (600,000 ALL) the value of a 1987 vehicle. Even more, the assessee during the administrative investigation had made attempts to justify the original value of the dwelling, almost willing to show a certain availability of funds[6] whose legal origin and source (if not existence) could be considered more than doubtful.

3. Conclusions

IMO deems that the information and documentation gathered through the administrative investigation grounds the believe that the assessee lacks lawful sources to justify his assets. Hence, the IQC should have reached a different conclusion in consideration of the elements and

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assessee during the administrative investigation, all the data on the source of income used for the construction of the house remain of a credible declarative nature, but they cannot create the conviction on their credibility in terms of Article 49, paragraph 4 of Law no.84/2016."

[5] See, inter alia, AC decision no. 26/2019 (paras. 46-48) and AC decision no. 25/2021 (par. 18.2).

[6] See, e.g., paras. 1.8 and 1.10 of the IQC decision.

evidence gathered during it, in line with what has been presented in this Recommendation. The IQC decision is incorrect and inconsistent in arguing on the matter and in accepting the assessee's version which led to his confirmation in office.

Hence, a Recommendation to appeal the IQC decision on the whole assets assessment that confirmed Urim Buci in office is hereby filed, and the Public Commissioner is left with the discretion to include additional grounds to his appeal.

Respectfully submitted,

International Observer **International Observer** **International Observer**