



Funded by the European Union
and the Austrian Development Agency

International Monitoring Operation

Prot. No. 408/1

Tirana, 21, June 2021

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

Case Number **SCC-P/TIR/1/08**
Assessee **Elizabeta Imeraj**

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

Assessee Elizabeta Imeraj holds the office of Prosecutor of the Republic of Albania and is the incumbent Head of the Prosecution Office attached to the First Instance Court of Tirana. She is an assessee pursuant to Article 179/b, paragraph 3 of the Constitution. On 1 April 2021, after a public hearing, the Independent Qualifications Commission decided to confirm assessee Imeraj to continue in office.

The International Observers (IO's) hereby submit this recommendation to appeal the decision of the IQC which confirmed her to continue in office.

2. Summary of the recommendation

The IO's recommend that the Public Commissioners file an appeal against the IQC's decision to confirm the assessee in duty. This recommendation is based on several asset-related shortcomings, background-related concerns, proficiency-related issues, and because an overall assessment of the assessee finds that she has significantly jeopardized public trust in the judicial system.

In the assessment of the IO's, a proper evaluation of the facts and a review of the documentary evidence will lead the Special Appeals Chamber to reverse the IQC decision and dismiss the assessee from continuing in her official capacity.

3. The decision of the IQC

The decision of the IQC, dated 1 April 2021, was based on an assessment of all three pillars. The panel decided to confirm the assessee in duty by a unanimous vote.

4. Reasons for an appeal

The IO's respectfully submit the following reasons as the basis for their recommendation to appeal the IQC decision.

I. Assets-related reasons:

*a) Bank-loan from the *** bank*

The Public Commissioner should appeal the IQC decision because the circumstances of this loan are highly suspicious, the assessee failed to supply adequate documentation or explanation, and the IQC neglected to fully investigate.

Assessee Imeraj secured a 2 million ALL loan from the *** bank, based on a contract dated *** October 2006, for a period of 20 years. Imeraj and her husband, *** ***, repaid the loan, but the financial analysis of the IQC found that they lacked the legitimate funds to repay it, in the amount of ALL 1,239,725. (Note: Imeraj had been married to *** from April 2007 to December 2019; in this report *** *** is hereafter referred to as the "husband" in most instances).

Despite the fact that throughout the whole vetting process the assessee insisted that by virtue of a prenuptial agreement concluded before the marriage, she bears no relation, interest, rights or obligations

towards certain properties owned by her ex-husband and his relatives, it is the opinion of IO's that this claim does not withstand scrutiny.

Namely, the loan to Imeraj was inextricably interwoven with the finances of her then fiancé (***) because the guarantor for the loan was *** he had supplied the collateral to secure the loan. Throughout the entire vetting process, the assessee sought to distance herself from the financial transactions of *** , notwithstanding his status as her fiancé, then husband, then ex-husband. She claimed, quite incorrectly, that certain properties of her ex-husband and his relatives were beyond the review of the IQC because of a prenuptial agreement, even though she never stated in her Annual Periodic Declarations or in the Vetting Declaration that allegedly she and her husband would sign any prenuptial agreement.

This spurious claim that she never benefited from her husband's property is refuted by the fact that she was able to secure the 2 million ALL loan from the *** Bank only because of her fiancé acted as the guarantor, using property belonging to himself and his brother. Moreover, the mortgage agreement that secured the loan clearly states that "Elizabeth Imeraj, in the capacity of fiancé ,*** *** , is present at the signing of this agreement." This is yet another strong indication that she did not secure the loan without *** . The IQC, for whatever reason or reasons, did not fully investigate the finances of *** ; that alone is a sufficient basis for the Public Commissioner to pursue an appeal in this case.

Moreover, there are many suspicious aspects to this loan. First, the stated reason for the loan was the reconstruction of a house and the supply of furnishings, but the loan was repaid well before the end of the term, with no apparent reliance on the funding for the intended purpose. Second, immediately after receiving the loan, the assessee withdrew the money in cash, and never declared retaining that much cash at home (as she was required to so declare). Third, it is well established that at least some of the loan repayment instalments were paid by the husband and, on top, the assessee herself stated in her APD of 2007 that the loan had been repaid in full by her husband. Fourth, there is every indication that the husband himself directly or indirectly used the money from the loan because he purchased land in Mullet just two weeks before securing the loan for a price of 1.75 million ALL. Additionally, four months after receiving the loan he purchased even more land in Mullet for 1.7 million ALL which he paid for in cash. The IQC did not conduct a financial analysis to determine whether Imeraj's husband could afford to make such purchases or what was the source of his funds.

As noted, the limited financial analysis carried out by the IQC revealed that Elizabeta Imeraj and her husband lacked legitimate funds to repay the loan in the amount of ALL 1,239,725; Imeraj herself in her 2006 APD did not declare that she kept any amount of money in cash with her during that year, which is why her explanation regarding the way of repaying the loan was not taken into account by the IQC in their final report. Notwithstanding this highly significant determination, the Commission accepted the assessee's explanations after the public hearing. In the view of the IO's however, such a conclusion is groundless and unsubstantiated.

Moreover, it is indisputable that *** *** is a person related to Elizabeta Imeraj, within the meaning of Article 3 paragraph 13 of the Law No. 84/2016, On the Transitional Re-Evaluation of Judges and Prosecutors in the Republic of Albania ("vetting law"). As noted, Imeraj had been married to *** from April 2007 to December 2019. They shared the same household during that period (and possibly after, as well). Also, she used property belonging to her ex-husband, and they served as guarantors of each other before and during their marriage (see supra and infra). Accordingly, notwithstanding her claims

about the application of the prenuptial agreement, their assets were well within the scope of Article 30 of the vetting law; the IQC should have thoroughly investigated their intermingled assets and financial connections.

b) *Immovable property in Rruga "**** *". Legalization of apartment extension and Immovable property at: 'Rruga "**** *", Tirana'.*

The Public Commissioners should appeal the IQC decision because the assessee failed to fully explain and document, and the IQC failed to fully investigate, the sale, transfer, and legalization of certain real estate. Multiple questions abound regarding the following transactions:

- i) The assessee's husband purchased an apartment on **** * , Tirana, on January **2008. The purchase price is unclear because the sales contract states the price as ALL 4 million (approximately EUR 33.000), but the APD states that EUR 45.000 was paid for the apartment. The assessee claims that the extra funding included an extension in front of the apartment.
- ii) Per the contract, the seller was **** * , but other documentation shows that the husband took out a loan for EUR 100.000 on January ***2008, and then transferred EUR 90.000 to **** * on the next day for the "purchase of an apartment." The assessee later claimed that **** * had requested that the money be transferred to **** * and **** * , noting that the husband's brother (**** * had previously borrowed money (45.000 euro) from **** * . The assessee never provided any evidence about any loan of her ex-brother-in-law. Again, the sales contract nowhere mentions any payments to any **** *
- iii) The contract for the apartment lists the buyer as **** * (the husband) but the assessee states that the apartment was purchased by the husband and a brother. There is no explanation how much that brother contributed to the purchase price, nor the source of his funding. Fact is that the purchased apartment was exclusively registered in the name of the husband of the assessee.
- iv) Documentation indicates that the husband of assessee during 2006 illegally built construction - non-residential building of 50 m2 in front of the building in Rruga "**** *" **** * which he never reported, nor the commission ever determined how much money he spent on the construction of that building and the legality of the sources from which that money originated.
- v) Documentation also indicates that on **January 2008, the husband took out a loan from **** Bank for EUR 100.000. He secured that loan with an apartment on **** * Street. The guarantor of the loan was the assessee who had co-signed the mortgage agreement on the **** * property. Yet, the assessee maintained that the prenuptial agreement strictly divided the property of her and her husband. Moreover, the **** * property was

registered in the name of the husband, while the assessee later maintained that the apartment actually was owned by the husband's brother, *** **

- vi) Two weeks before purchasing the apartment, on ***January 2008, the husband signed a notarial agreement with *** ** in the presence of the assessee. This signed agreement stated that the purchase price was EUR 150,000, that he had already paid EUR 5.000, and that the remaining balance would be paid when the purchase contract was signed. This notarial document clearly contradicted the content of the sale/purchase contract signed on ***January 2008 in which the price was set at 4 million ALL.

- vii) According to documentation it seems that on **.02.2008 the husband of the assessee took a loan of 55.000 euro from *** **. This loan was never declared in any APD or Vetting declaration and never was any evidence provided by the assessee about the real transfer of the money.

These issues noted above are just some of the issues that have remained unsolved by the IQC investigation.

In addition, there are multiple questions regarding the apartment in *** Street:

- i) *** ** (a brother of the husband) purchased the apartment in December 1996 for ALL 1.750.000. He sold the *** Street apartment to his brother (the husband of assessee) on *** January 2008 for ALL 500.000, for a loss of ALL 1.25 million. A cash sale was made according to the contract. Yet in their APD for 2007, neither the assessee nor the husband declared that they had any cash kept at home in that large amount or otherwise.

- ii) In her 2008 APD, the assessee states that also this apartment was purchased with a loan of EUR 100.000 from *** Bank. However, the apartment was purchased on ***January 2008 while the loan agreement was only concluded later – on *** January 2008. Thus, the purchase funds could not have originated from the *** Bank loan.

- iii) In her 2008 APD, the assessee states that the apartment was purchased for ALL 3.900.000, and, she later explained to the IQC, that it was bought to be used as collateral to obtain a loan from *** Bank. However, elsewhere she claimed that the apartment was purchased with a loan from *** Bank, and thus could not have served as collateral for the same bank.

- iv) Moreover, an independent assessment was done by an expert in determining the value of the property; this was done as part of the *** Bank loan approval process. This expert concluded that it was not an apartment but a business space, that the area of the property was actually over twenty square meters larger than had been stated, and that the value of the property was approximately EUR 146.000 (about ALL 18 million), quite far from the ALL 500.000 that was supposedly paid by the husband. This discrepancy in the value of the apartment (which is also reflected in the purchase price originally paid by the husband's brother), shows an illegitimate gain in financial value of ALL 496.272.

c) *House on the 3rd floor in Rruga " *** ** ", Tirana.*

In addition to the financial questions noted above, additional questions are raised regarding land and construction on property in Selit, Tirana. The assessee's husband purchased the land in April 2006 for ALL 3.300.000. Per the assessee and her husband, a five-storey house was constructed on the land beginning in March 2006. Per the vetting declaration, the funds for the purchase of the land and the construction of the house came from income of the husband and family members generated over the years. The assessee never provided clear evidence about financial contribution from the family members of her husband.

Also, the assessee initially stated that the construction costs were ALL 4.000.000. However, the national housing entity finds the construction costs to be far higher, at ALL 19.194.068. The assessee's first explanation for this discrepancy was that family members had worked on the house for free, as they were bricklayers by profession. When this explanation proved unsatisfactory, the assessee claimed that the initial estimate related only to the third floor where her husband had an apartment, not on the whole house. However, this explanation makes no sense, especially in light of the fact that the husband had applied for legalization of the entire house on his own behalf. When legalization was completed in 2011, he was registered as the owner until 2017 (when the vetting process began on the assessee). The husband entered into donation agreements with his three brothers only after the vetting began, retaining the third floor for himself and his family. Thus, during the vetting, the assessee should have provided evidence of the legality of the income used to build the entire house. Most significantly, in the IQC financial analysis, the Commission found that the husband was in a deficit of over ALL 20.000.000 on the purchase of the land and the construction of the house, considering his valid legal income between 2004 to April 2007. Thus, this too provides a basis for the Public Commissioners to appeal the IQC decision which affirmed the assessee to remain in office.

d) *Immovable property: Plot of land of 2500 m2, at: ' *** ** ', Tirana.*

According to the documentation in the file, the assessee's husband purchased the following real estate in Mullet in the period 2006-2007:

- **.10.2006 agricultural land of 532 m2 at a price of 1,750,000 ALL,
- **.02.2007 agricultural land of 532 m2 at a price of 1,700,000 ALL,
- **.06.2007 agricultural land of 400 m2 at a price of 1,000,000 ALL

In relation to the purchase of the above-mentioned real estate, the assessee has stated that the first two plots of lands were purchased before she married . *** ** . She further states that all three plots of lands, including also the third one purchased after she married *** ** , were bought jointly by . *** ** and his brother *** ** and that all these properties were in factual co-ownership by the two of them. It is important to note that *** ** has always been registered as the sole owner of these properties.

Regarding the sources from which these properties were purchased, the assessee has stated that they were purchased with income generated by *** ** during his work abroad and the income of her husband. She states that her husband paid 50% of the value of these properties from his incomes, while the other 50% was paid by his brother, . *** ** . This is not confirmed by any documentation.

The Commission conducted a financial analysis only in relation to the financial possibilities of the husband to buy the last plot of land (purchased on *** June.2007). This analysis established that the husband lacked legitimate financial sources for purchase of that land in the amount of ALL 803,830. However, the Commission also had to conduct a financial analysis in relation to the husband's ability to purchase the first two plots of land, notwithstanding that these properties were purchased before Elizabeta Imeraj and the husband (*** **) were married. These two properties were purchased at the time when *** ** was Elizabeta Imeraj's fiancé; at that time, he was also her guarantor for the loan she took out in *** Bank in the amount of ALL 2 million, for which he mortgaged two real estates owned by him and his brother. So, from these facts it is logical to conclude that Elizabeta Imeraj and . *** ** , in the period when *** ** has bought the first two lands in Millet, already actually lived in an economic community, and jointly contributed to the acquisition of the assets which formally was registered in the husband's name. Also, during that period they have not signed any prenuptial agreement.

Furthermore, in the period when Elizabeta Imeraj and . *** ** were formally married, during 2012, all these three properties were swapped without any compensation for the property located in *** ** , owned by Mr. *** ** . This property was worth ALL 71.737.500. The difference in the value of these swapped lands is approximately EUR 80.000. Therefore, with this exchange of lands, the assessee's husband acquired land which is EUR 80.000 more valuable than the land he gave in exchange.

Asked to explain this, Elizabeta Imeraj stated that her husband had provided certain legal services to *** ** and both of them has foreseen that the fee for those services would be EUR 80.000; if *** ** does not pay that fee directly to the husband, then he would exchange the said lands with him as compensation. In its final report, the Commission stated that such explanation by the assessee was unconvincing, due to the large difference in the value of these properties.

The documentation in the file shows that on June*** 2007, the assessee's husband had signed a contract with *** ** . Regarding that, Elizabeta Imeraj stated that according to that contract, her husband represented *** ** in one criminal case, and that he had provided those services to him until January 2013. During the period of those five and one-half years, . *** ** did not pay any compensation to her ex-husband, nor did her husband issue a single invoice to) *** ** during that period.

Furthermore, the documentation in the file shows that the husband and *** ** entered into a loan agreement in front of a public notary on **August 2012, stating that the husband lent ... *** and Ms. ***** the amount of EUR 80.000, which loan) *** ** (and *** **) must return to him by*** December 2012. If they do not return the stated amount by then,

they will hand over to him an apartment in [redacted] Street, Tirana. This contract also indicates the illogicality and unreliability of the explanations given by Elizabeta Imeraj regarding this issue. Namely, if the husband had indeed represented [redacted] in a criminal case since June 2007, resulting in a debt to the husband, why would this loan agreement state that the husband had lent the sum of EUR 80.000 also to the [redacted] ? The IQC investigation does not clarify this financial arrangement with any confidence.

Furthermore, how could the husband and [redacted] already know in June 2012 that the total debt in the name of legal services provided until January 2013 (i.e., in the period of the following 7 months) would exactly amount to EUR 80.000? It is highly suspicious and noteworthy that the husband did not issue any invoices to [redacted] during the entire period of allegedly providing these legal services.

Even further, on 11 November 2012, the husband signed a notary declaration confirming that he had received the amount of EUR 80.000 from [redacted] that same day. It follows that Elizabeta Imeraj did not disclose that amount of EUR 80.000 in her vetting declaration. Asked to explain this, Elizabeta Imeraj stated that this amount of EUR 80.000 had never been paid to her husband, but by that document that amount was recognized as such because of the services provided by her husband to [redacted]. That was the supposed reason why she never disclosed this amount in her vetting declaration.

Also, considering this notarial declaration from 11 November 2012 in which [redacted] declared that he had received the amount of EUR 80.000 from [redacted] on that same day, there is no clear reason why said lands were swapped on 11 December 2012, when in that time there was not any debt from [redacted] to [redacted] (according to mentioned notarial declaration).

Thus, such explanations by Elizabeta Imeraj were not accepted by the Commission in its final report, concluding that it did not follow from the above that the husband really provided any legal services to [redacted]. Additionally, it has never been confirmed that the husband paid tax liabilities on such income derived from the provision of these alleged services. Therefore, this amount of EUR 80.000 was not accepted by the Commission in its final report as the legal income of the husband.

II. Background-related reasons:

There are strong indications that assessee Imeraj's ex-husband and ex-brother-in-law were convicted of Trafficking in Persons and Organizing Prostitution in Rome, Italy, in 2002. This raises very serious implications as to their comingled finances. More significantly, such a relationship presents grave concerns as to the contacts with persons who had been involved in organized crime. These contacts make it impossible for the assessee to retain her position and certainly jeopardized the public trust in the justice system. [Vetting Law, Article 61(3), (5).]

Throughout the vetting process the assessee claimed that her ex-husband and ex-brother-in-law were not the same individuals as those two convicted persons. However, the two relatives have *the*

same names as the two convicted persons. Moreover, the brother-in-law has the *same date of birth* as his convicted doppelganger, and the *husband has the same month and day of birth, with only the year of birth as listed differently.* Furthermore, there is other convincing evidence that is persuasive in showing the assessee's husband and ex-brother-in-law to be convicted persons.

The assessee has claimed that even if they are the same people, that is no cause for a dismissal, as she is now divorced from her husband and she had never been in a close relationship with her ex-brother-in-law. She makes this claim even though they had lived literally in the same house, as relatives.

The IQC failed to thoroughly investigate and verify the contacts between the assessee and the two convicted persons. In this appeal recommendation, the IOs strongly request a more thorough investigation on this issue, as the IQC investigation was incomplete, Imeraj's explanations were unconvincing, and such association would certainly undermine confidence in the justice system.

Furthermore, clarification of this issue is important not only regarding the background pillar of Elizabeta Imeraj, but it also is important in terms of the asset assessment. Namely, as she herself stated, the house in which she has lived since 2007 until today was also built and with the funds of *** ***, the ex-brother-in-law. This also follows from the donation agreement that her husband concluded with brother *** *** on *** January 2017. In that agreement, the husband donated the second floor of the said house to his brother *** ***, since, among other things in that contract, the house was also built from the income generated over the years by *** ***.

Therefore, if *** *** is a person who was convicted in 2002 of a criminal offense falling within the scope of organized crime, it is logical to conclude that *** *** earned illegal income as a member of an organized criminal group and that with this illegally acquired income, he invested in the construction of the house in which Elizabeta Imeraj still lives today. This conclusion is even more logical, if we consider the fact that the Commission accepted as credible the explanation that *** *** also invested in the construction of the said family house. But the Commission never conducted any financial analysis to determine exactly how much money *** *** invested in the construction of that house and whether it is possible to justify the legality of that income, as is required by law.

III. Proficiency-related reasons

In addition to the numerous financial questions raised, an appeal by the Public Commissioners is warranted because the assessee failed to properly investigate narcotics smuggling cases, calling into question her professional capabilities. As regards, the Proficiency Assessment, the IO's are of the opinion that the circumstances and reasons for Elizabeta Imeraj's conduct as a prosecutor in two criminal proceedings against citizen *** *** and citizen *** *** for smuggling narcotics within an organized criminal group, have not been fully clarified and that certain questions remain regarding the legality and effectiveness of Elizabeta Imeraj's actions as a prosecutor in these cases. These issues are highlighted in detail in the finding of the IO Prot. Number 646 from 06 August 2020 (annex 1, as attached).

IV. Overall assessment

Following the receipt of a denunciation dated *** August 2020, which alleged that the divorce filed by the assessee had in fact been fictitious in nature, the IMO verified the circumstances surrounding the divorce of the assessee. In particular, the IMO verified the stated reasons for the divorce, the duration of the divorce procedure, and the consequences of the divorce procedure. It now appears that:

- i) the assessee initiated the divorce procedure against her husband based on reasons of which she must have been aware long before they got married;
- ii) that the assessee enjoyed a preferential (expedited) treatment by the court in the handling of her divorce claim;
- iii) that after the divorce, the assessee continued to live with her (ex-)husband as a normal couple, despite having claimed in her divorce submission that she could no longer live with him; and
- iv) that no alimony had been paid to the children by the (ex-)husband for at least seven months, until the assessee became aware of the increased attention of IMO for her evaluation. The specific circumstances revealed by this verification into the divorce of the assessee are set forth in detail in the IMO Finding Prot. No.849 , dated 21 October 2020 (annex 2 as attached).

Considered in conjunction, the above elements strongly suggest that the divorce filed by the assessee was in fact a fictitious one, amounting to an attempt by the assessee to distance herself from the illicit actions of her (ex-)husband and to try and remove the latter from the scope of the vetting-related inquiries. This conduct by the assessee, that she would resort to such actions, raises very serious questions with respect to her ethical standards and moral integrity. As such, it should be considered as unethical behaviour of a level that seriously jeopardizes public trust in the judicial system.

Furthermore, it is also necessary to point out the inappropriate conduct of Elizabeta Imeraj during the IQC vetting process. During the vetting, the assessee personally or through other persons tried to exert an inadmissible and illegal influence on at least two persons involved in that process, in particular: *** ***, former IO; and *** ***, former IQC rapporteur assigned to her case. The way such influences were exercised is evident from the Declaration of the word of honour of *** ***, of ***September 2020, and the IQC Decision to grant the request of *** ***, for the recusal from the case of Elizabeta Imeraj, of *** December 2020.

Moreover, at the IQC hearing itself, the assessee behaved in a very unprofessional manner, refusing to answer questions of the International Observer, while responding with extraordinary rudeness and hostility, in a manner far from the minimum standards of her high office. This conduct, alone, is a sufficient basis for an appeal by the Public Commissioners as it tends to undermine confidence in the Albanian justice system.

5. Conclusion and Recommendation

Based on the above, the IO's conclude that there remain serious concerns about the assessee's asset assessment, background assessment, proficiency assessment, as well as the question whether she might have overall irretrievably jeopardized public trust in the judicial system. Thereupon, the IO's recommend the Public Commissioners to file an appeal against the decision of the IQC which confirmed the assessee to continue in duty.

This appeal would enable the Appeal Chamber to:

- evaluate asset-related issues and their impact in the re-evaluation process of the assessee;
- perform an accurate and comprehensive financial analysis;
- re-evaluate the assessee's background assessment as concerns her possible inappropriate contacts with persons involved in organized crime;
- re-evaluate the professional performance of the assessee, in particular in the cases mentioned above;
- re-assess whether the assessee has overall jeopardized public trust in the judicial system;
- provide an adequate reasoning for all the relevant issues at stake.

~~International Observer~~

~~International Observer~~

International Observer





Prot. No. 646

Tirana, 6 August 2020

To the
Independent Qualification Commission
Rruga e Kavajës no. 7
Tirana
Albania

Case Number **SCC-P/TIR/1/08**

Assessee **Elizabeta Imeraj**

FINDING

according to

Constitution of the Republic of Albania, Annex 'Transitional Qualification Assessment', Article B, paragraph 3, littera b and article 49 paragraph 10 of the Law No. 84/2016 'On the transitional re-evaluation of judges and prosecutors in the Republic of Albania' (Vetting Law).

Introduction

According to the Constitution of the Republic of Albania, Annex 'Transitional Qualification Assessment', Article B, paragraph 3, littera b: [International Observers]..are entitled to file findings and opinions on issues examined by the Commission and the Appeal Chamber and contribute to the background assessment regulated in Article DH

According to article 49 paragraph 10 of the Vetting Law: "A finding in the form of a statement, document, or the report by an international observer shall consist evidence establishing that a fact, condition, circumstance or legal standard exists or occurred. The finding shall present the circumstances that provide the basis for that finding. The Commission or the Appeal Chamber shall give it the deference of an expert report. The refusal of the findings shall be done in a reasoned decision of the Commission or Appeal Chamber".

Based on the above I herewith file the following:

FINDING

The International Observer files this finding in relation to investigations conducted by the assessee Elizabeta Ineraj in the cases involving citizen: *** ** (***) and criminal proceeding involving citizen *** ** (***)

1. Case involving *** ** (*** **)

After analyzing the files related to this case, it is found that the Serious Crimes Prosecution Office (SCPO) started an investigation against *** ** based on art. 283/2 of the Criminal Code, "Production and sale of narcotics", after the declared incompetence of the Prosecution Office of Gjirokaster (POGT) in July 2010. POGT started this investigation in June 2010 after an attempt (on 16.06.2010) of *** ** together with *** ** (** **) and *** ** (** **) to transport 110 kg of drugs, which failed due to the intervention of the police. Another person involved was *** ** (** **). All of the abovementioned persons were already under surveillance and wiretapping conducted by the Judicial Police Office (JPO) of SCPO, regarding some events of drug trafficking that took place in February and March 2010.

The SCPO (the assessee E.I.) first registered the criminal case no. **/2010 based on information from SHISH of February 2010 on people involved in drugs trafficking. The SCPO also registered the criminal proceeding no.***/2010 related to another attempt of drug trafficking which occurred on ** ** March 2010. The abovementioned names of the people involved in the illegal activity, were already in the records of the SCPO, due to wiretapping or reporting from the police/SHISH of the illegal activities.

Whereas, in June 2010, there was another attempt to transport drugs, which failed due to the intervention of the police, for which Gjirokaster PO registered the criminal case, and later declared incompetence by sending the case to the SCPO. The SCPO continued investigation also on this

case which directly involved *** (in the quality of seller of the drugs), *** and *** (as his collaborators in drugs transport¹), as well as

It should be noted that and appear also involved in the other cases (of March 2010) related not just to transport and selling of but also of trafficking of narcotics. Their involvement is referred in the investigation carried out by the assessee, who, firstly sends to trial on12.2010 for the event of March 2010 (drugs trafficking)². In June 2011, ... was also accused and sent to trial together with on grounds of drugs trafficking and production, by referring to both the event of March 2010 (trafficking) and the event of June 2010 (production, sale, transport). Again, in June 2011 was sent to trial, together with ... and ... for the event of June 2010 (production, sale, transport)³. The specifics of this approach, is that the involvement of the ... in the event of June 2010, is approached by the assessee as falling under the competences of the SCPO, notwithstanding the fact that is accused only for production, and not for trafficking, like the other people involved, and

The assessee decided in June 2011 to send (production as per June event), ... and (both for production and trafficking as related to March and June 2010 events), to trial, but she instead chose another procedural strategy for , who is separately being investigated only for production of narcotics (like)⁴, and notwithstanding the information of the involvement of also in the event of March 2010, or even before.

From June 2011-December 2011 there are several postponements of the investigation on , not justifiably reasoned, as well as not substantiated investigative steps, which in some cases might present also procedural flaws:

- The assessee requires information on activity and social circles on4.2011. The Ministry of Interior confirms his involvement in drugs traffic on4.2011. On4.2011 the assessee decides to wiretap
- Postpones investigation on on6.2011,8.2011,10.2011, until12.2011, based on the same motivation (further need to investigate), and also by referring to as *in absentia*;
- On6.2011 the assessee requested an order for arrest, granted by the court, but executed by her only on8.2011. The arrest was conducted after 2 months, although the law requires an immediate action from the prosecutor (art. 21 of the law on the execution of criminal decision);
In the meantime (August-October 2011) the assessee continues to refer to the arrested person as *in absentia*;

¹ Which is different from the drugs traffic, since the latter falls under the competences of the SCPO, whereas production or selling falls under the ordinary prosecution office competence. Nonetheless, when the cases are unified/investigated together, then the competence of the SCPO prevails.

² Proceeding no. ... /... under the main proceeding no. as registered for the events of March 2010.

³ Proceeding no. under the main proceeding no.

⁴ Proceeding no. ... /2010, as registered by the SCPO for the event of March 2010. The assessee shall continuously unify and divide the several related proceedings under proceeding no. ... /2010.

- The assessee requested the transcript of wiretaps on related to events of June 2010, only in October 2011;
- On10.2011 the assessee decided to unify the proceedings no. ... /2010, ... /2010, ... /2010 to the main proceeding no. ... /2010;
- On11.2011 the assessee ordered the collection of data from the arrested person (although the content of the order refers only to what the defense lawyer will provide).
- On11.2011 the assessee summons the son of , in the quality of the person having knowledge of the criminal offence (from the wiretaps it is understood that the son of coordinates the use of the car of his father, with eventual dealers, or other organizational/instructive activity for the traffic/production of drugs). No substantial information is retrieved from the son.

Finding on the way this investigation has been handled:

1. It is evidenced that the investigation and postponements are absolutely not substantiated/justified. Notwithstanding the above, on12.2011, the assessee decided to postpone investigation, to separate the case of from the main proceeding no. ... /2010, as well as to declare incompetence and transfer the case to the POGJ, by reasoning that the trial against , and related to the event of June 2010 (as well as to that of March 2010 for and) has advanced and reached such a phase, that makes it procedurally impossible for the assessee to address the court with a request for trial for as well. And since is only accused of production, according to the assessee, the criminal offence falls out of SCPO competences, hence she transferred the case to the ordinary PO Gjirokaster.
2. It is evidenced that the approach of the assessee towards is unjustified in comparison to at least one of the other investigated and accused persons - It should also be noted that after the transfer of the case of from the SCPO to the POGJ, the position of the investigated person was already more favorable. In 2012 the Court of Gjirokaster found not guilty.

3. Criminal proceedings involving citizen *****

The First Instance Serious Crimes Prosecution Office registered criminal proceeding no. of11.2013 for the offence of "Trafficking in narcotics", committed in complicity, provided by article 283/a/2 of the Criminal Code. The registration of the criminal proceeding against several citizens as (..... , , , etc.), was done following information from law enforcement. Because the suspicions involved many citizens allegedly collaborating with several others to traffic narcotics from Albania to Italy, interceptions were authorized and on-site movements of individuals were observed.

On10.2014 citizens , , , , , and were taken as defendants for the offence of trafficking in narcotics. They were arrested couple of days before in an attempt of trafficking of narcotics from Albania to Italy, discovered by both Albanian law enforcement authorities and the Italian Guardia di Finanza.

On *** 10.2015 prosecutor *** *** divided the criminal proceeding against the abovementioned citizens from the main proceeding no. *** of 2013, naming it criminal proceeding no. ***/*, for which it was deemed that further investigations were needed to identify other collaborators in this criminal activity for whom investigations continued. The separated criminal proceeding against the abovementioned defendants was sent to court on **10.2015.

The arrest of the abovementioned citizens occurred following the event of** 09.2014 in the place known as " *** *** " between Velipoja and Shengjin where the police found 7 bags with 201.5 kg of cannabis sativa having as destination Italy, and the next day on **10.2014 they found other 15 bags with 579 kg of cannabis sativa. The quantity of 780 kg cannabis sativa was accumulated on ***09.2014 to be trafficked in Italy as a result of the collaboration between ** ** , ** ** * and many other citizens whether fully identified or not at this moment.

The above citizens were found guilty and convicted through First Instance Serious Crimes Court decision no. * dated ***.05.2016. In this trial, the prosecution was represented by prosecutor *** *** who had been following the case.**

As per this court decision, the telephone communications of ** **, ** ** and ** ** had been intercepted from ** 09.2014 under a suspicion that they were organizing criminal activity in the area of trafficking in narcotics to Italian shores where defendant ** **, had consolidated ties with Italian citizens who were ordering the amounts of the narcotics. Around 4 months earlier defendant ** ** had mediated the connection between defendants ** ** , and ** ** with his friends in the Velipoja area (such as citizen *** *** and his friends) who allegedly had available amounts of narcotics to be trafficked.

It is described in the above court decision that at the end of September, specifically, ***09.2014 following order of *** ** , the defendant ** ** organized work with defendants ** ** and ** ** and other unidentified persons to pave and adjust the way at the shore of *** , Velipoja so that it would be possible for the vehicles transporting the narcotics to travel all the way to there.

From here the narcotics would be loaded to a speedboat. For favorable sea conditions, it had been decided that the narcotics would be loaded on ***09.2014. Defendant ** ** , being one of the organizers, went on site following coordination with other collaborators. Also, defendant ** ** went there in a Toyota vehicle with plates *** following connection with citizen *** *** who sent there defendant ** ** and defendants ** ** and ** ** (op. cit. court decision). Whereas defendant ** ** arrived from Montenegro with his speedboat. Defendants ** **, ** ** and ** ** and others loaded the amount of 780 kg of cannabis sativa in the boat that was being handled by ** ** and had two other people on board.

In the evening of ***09.2014 the Shkodra police arrested ** **, ** **, ** **, and ** ** and also citizens ** **, ** **, ** **, and ** ** but they were let free since narcotics were not found, but their movements were being monitored. Due to delays, impossibility to communicate with collaborators, chase by coastal guard, the defendant ** **, and the others on board of the

speedboat threw the narcotics into the sea. Following allocation and seizure of the narcotics between 09.2014 and 10.2014 all defendants were arrested.

Defendants [redacted], and [redacted] were found guilty and convicted by court decision no. [redacted], dated 05.2016. The case sent by the prosecution to the court was about these defendants. The Serious Crimes Appeal Court, through decision no. [redacted], dated 10.2016 affirmed entirely the first instance decision for 5 of the defendants, and affirmed the first instance decision as regards legal qualification and guilt for the other 2 but introduced changes in the duration of the imprisonment sentence.

Whereas for [redacted] and the others ([redacted] and [redacted]), also arrested in the framework of the event described above, investigations needed to continue (this case was not sent to court at this time). However, for [redacted], the first instance court decision, in addition to the abovementioned role, includes excerpts of the intercepted telephone and environmental conversations brought by the prosecution. In these interceptions, there are conversations when he speaks directly and others in which he is mentioned in conversations of the other defendants. [redacted] at al., were arrested on 09.2014, on the way to Shkodra, while travelling in a cargo van. In the cargo van, the police found a spare tire which had inside 4 unopened rolls of cello tape (Alb. Natriban, the narcotics found and seized were also rolled in this material), two used rolls of cello tape, 5 pairs of gloves, 3 rolls of plastic wrapping bags. 3 other pairs of gloves were found in the car door.

Specifically, it was found that defendants [redacted], in collaboration with [redacted] and [redacted] arranged the process to adjust and pave the way for the vehicle to transport the narcotics to the seashore by throwing there 20 trucks of sand and then level the sand so that it would enable smooth passage of the vehicles that transported the narcotics to the boat. As per intercepted conversations, defendant [redacted] reports to citizen [redacted] on this process. Whereas in another conversation between defendant [redacted] and [redacted] obtained through environmental interception, they refer to [redacted] mentioning the word "hoss" (like a boss). Another telephone conversation between the fiancé of defendant [redacted] and [redacted] is mentioned in which she informs [redacted] that [redacted] was arrested. All this data is mentioned in the court decision that found the above defendants guilty and taken into consideration in determining their guilt and their roles in the criminal activity.

• **Follow up on the case of [redacted] at al**

Following reassignment of cases in the Serious Crimes Prosecution Office, prosecutors Elizabeta Imeraj and [redacted] took over.

On 05.2017, prosecutors Elizabeta Imeraj and [redacted] issued an order to register the names of [redacted] and [redacted], and [redacted] in the register of the notifications of the criminal offences, in the framework of the proceedings no. [redacted] of 2013 as persons suspected to have committed the criminal offence "Trafficking in narcotics" of article 283/a/2 of the Criminal Code, in complicity (art. 22).

On ** .05.2017, the assessee prosecutor Elizabeta Imeraj filed with the court a request for imposing the precautionary measure of 'imprisonment arrest' against ***** , which was affirmed by the First Instance Serious Crimes Court through decision no. *** dated ** .05.2017. All the above-mentioned details about the role and involvement of ***** in the framework of the events that took place on** .09.2014 were part of the court decision on the imprisonment arrest measure, including what was found in the car and the conversation between ***** and the already convicted person in which the later reports to ***** on the adjustment and levelling with sand of the road that would enable the transport of the narcotics to the boat (a conversation which, as per this decision issued upon request of the prosecutor, indicates that the levelling of the road was an order of ***** . Additional details on the ties of ***** with the defendants are mentioned. Arguments on why ***** remains a suspect (reasonable doubt based on evidence) for the offence of trafficking in narcotics, in complicity, were brought.

On ***.06.2017, upon request of the prosecution (prosecutors Elizabeta Imeraj and ***** representing the prosecution), the precautionary measure for ***** changes to 'obligation to report' (court decision no. *** , dated ** .06.2017, upon request of the prosecution).

Whereas on ** :07.2017 the prosecution (prosecutors Elizabeta Imeraj and *****) takes the decision to notify the charges to ***** . The notified charges are not for the offence of 'trafficking in narcotics' but for the offence provided by article 300 of the Criminal Code 'failure to report a crime'. Because the offence of failure to report a crime is not within the subject matter jurisdiction of the Serious Crimes Prosecution and Court, the prosecutors (both Elizabeta Imeraj and *****) moved on with a decision, of** .07.2017, to declare lack of subject matter jurisdiction on the case. The same for the other two defendants arrested together with *****

The case was afterwards adjudicated by the Shkodra judicial district court which ultimately, based on defendant's guilty plea, convicted defendant *** for the offence of 'Failure to report a crime' and punished him with a fine of 200,000ALL.**

In the decision of prosecutors Elizabeta Imeraj and ***** of** .07.2017, with which they declare lack of subject matter jurisdiction on the case, the prosecutors argue that even though the defendant ***** is related and has friendly relationships with the individuals involved in the activity of trafficking in narcotics and there are communications, they only show that he knew about the crime, but his collaboration and an agreement with the persons found guilty is not proven and he also has not played an active role through concrete actions that would lead to the consequence from the offence. They continue arguing that no narcotics were found with this defendant and no dactyloscopic traces of the defendant were found in the seized narcotics so there is no direct connection between ***** at al., and the narcotics. With this argument, they conclude that he is only guilty for failure to report a crime so the case of ***** at al shall because of lack of subject matter jurisdiction be forwarded to the Shkodra prosecution as the competent prosecution office.

Finding:

on Elizabeta Imeraj's and 's decision to declare lack of subject matter jurisdiction on the case of

1. It remains inexplicable what further investigation (different from what was already known from the beginning) was performed and which evidence was found by the assessee and the other prosecutor that has led to the decision to declare lack of subject matter jurisdiction on the case of
2. It remains inexplicable why the prosecution (prosecutors Elizabeta Imeraj and ...
...) who issued the decision on lack of subject matter jurisdiction) stress the lack of the dactyloscopic evidence in the seized narcotics, when the roles in organized crime are different and not everyone necessarily is in the role of the one who executes the crime and therefore not every member's traces or fingerprints will necessarily be found in the seized narcotics, when they lack investigation and strong arguments on other potential roles. Furthermore, the fact that gloves were discovered in the van with which was travelling might explain the lack of fingerprints.
3. It remains inexplicable what other proactive investigative steps were conducted by the assessee, in the light of the already established findings and interceptions, to establish that there was no agreement between and the others to commit the offence, but he simply happened to know about it and failed to report it.
4. It remains inexplicable why the assessee and the other prosecutor only stress the fact that no narcotics were found in the van in which at all were travelling while they do not provide arguments on what was actually found in the van and explanations on why it seemed irrelevant to the prosecution. Specifically, why would the defendants have 4 unopened rolls of cello tape (Alb. Natriban, the same material used to wrap the narcotics found and seized), two used rolls of cello tape, 8 pairs of gloves and 3 rolls of plastic wrapping bags.
5. It remains inexplicable why the assessee and the other prosecutor are not analyzing why the convicted persons would report to any friend about how they were adjusting and levelling the road with 20 trucks of sand that would enable a smooth delivery of narcotics from the vehicle to the boat.
6. Ultimately, in the light of already existing (from 2014) evidence on the potential involvement of at all in the attempted offence of trafficking in narcotics, in complicity, the case was closed by the Serious Crimes Prosecution (prosecutors Elizabeta Imeraj and) for lack of subject matter jurisdiction and sent to Shkodra Prosecution Office:

- (1) without thorough and proper investigation that could have led to gathering of more evidence on establishing potential guilt for a serious crime offence and establishing the role of in the activity of trafficking in narcotics, and
- (2) with vague dismissive arguments on the already existing evidence.

Respectfully submitted,



International Observer

Attached documents:

- Case file re criminal proceeding ***/2013
- Case file re criminal investigation **/2010 and **/2010



Prof. No. 849

Tirana, 21 October 2020

To the
Independent Qualification Commission
Rruga e Kavajes No. 7
Tirana
Albania

Case Number: **SCC-P/TIR/1/108**

Assessee: **Elizabeta Imeraj**

FINDING

according to

Constitution of the Republic of Albania, Annex 'Transitional Qualification Assessment', Article B, paragraph 3, littera b and article 49 paragraph 10 of the Law No. 84/2016 'On the transitional re-evaluation of judges and prosecutors in the Republic of Albania' (Vetting Law)

Introduction

According to the Constitution of the Republic of Albania, Annex 'Transitional Qualification Assessment', Article B, paragraph 3, littera b: [International Observers] *are entitled to file findings and opinions on issues examined by the Commission and the Appeal Chamber and contribute to the background assessment regulated in Article DH* "

According to article 49 paragraph 10 of the Vetting Law: *"A finding in the form of a statement, document, or the report by an international observer shall consist evidence establishing that a fact, condition, circumstance or legal standard exists or occurred. The finding shall present the circumstances that provide the basis for that finding. The Commission or the Appeal Chamber shall give it the deference of an expert report. The refusal of the findings shall be done in a reasoned decision of the Commission or Appeal Chamber"*.

Based on the above I herewith file the following:

FINDING

The International Observer files this Finding in relation to a denunciation that has been reached IMO on ... August 2020 in which numerous allegations have been made re the professional behaviour and attitude of the assessee.

Amongst those allegations, the following can be read:

(...) It is crystal clear to those with Elizabeta Imeraj and anyone who has had the chance to meet her, even if only for a moment, that she fictitiously divorced her husband to use it to overcome the problem before the IQC. She divorced her husband when she found out that not even interventions worked. (...)

In view of a possible serious unethical behaviour by the assessee of a level that can jeopardize public trust, the IMO verified the allegation on multiple parameters to check in how far the 'legal reality' - the divorce decision of the District Court of Tirana dd. ** December 2019 - is matching with the 'de facto' reality. The following parameters have been used in this verification: reasons for the divorce, duration of the divorce procedure and consequences of the divorce decision.

1. Reasons for the divorce claim, filed by the assessee

According to the divorce decision (decision nr *** dd. ** December 2019), the assessee has based her claim on an issue that happened between her husband ***** and the former chair of the Independent Qualification Commission:

(...) During the judicial examination, the Claimant declared that the couple was married after they were introduced to each other. Her relationship with her spouse was good at the beginning, but recently they have had continuous disputes due to lack of sincerity, concealment of data that risk her professional life and career, bringing about as a consequence the impossibility to live together as a couple. According to the Claimant the relationship was good at the beginning but the disputes

started once she was made aware that the respondent, willingly or due to negligence, did not properly assess the re-evaluation process as an important process in her professional life and career (...) The Respondent confirmed also that there have been disputes between the spouses recently due to the fact that he had failed to inform his spouse of the verbal and physical conflict he had with Mrs ***** , member of the Adjudication panel , which is conducting the re- evaluation process of the Claimant. (...)

There are strong reasons to believe that the divorce claim is based on reasons which have been put together 'pour les besoins de la cause'.

The ' verbal and physical conflict' to which the assessee was referring to in her claim seems to be a fight between the former Chair of the IQC, Mrs ***** , and her spouse at the time that the first one was teaching as a professor at the University of Tirana while the second one was a law student at the time. These facts have happened in 1999 and were witnessed by many people. Following this event, the spouse of the assessee was suspended for 1 year.

According to the information in the investigation file, the assessee graduated at the University of Tirana – Law Faculty – in 2001 while ***** graduated one year later, in 2002, at the same faculty of the same university.

Based on these elements, it is very reasonable to conclude that both the assessee and her husband knew each other very well since they were students at the same university, at the same faculty in the same year (at least until ***** was suspended for one year).

Based on the assumption that fights between professors and students are not a daily event, the assessee has to make it acceptable that she was not aware of this incident at the time when it occurred. The statement of the assessee that she became aware of these facts shortly before she filed the divorce claim, cannot be supported at this moment.

2. The duration of the divorce procedure

According to the abovementioned divorce decision, the assessee has filed her claim, registered on ** October 2019. The divorce decision was taken on ** December 2019, which shows that the procedure was very short and might evidence that the procedure was speeded up for ' external reasons' and not for the fact that the couple could not live together anymore.

Confronted with these elements, IMO, with 'Official Request' dd.** August 2020, has requested from the Tirana District Court, inter alia, a list of all the divorce decisions ended in 2019 with the indication of the date of the start of the respective procedures. This list was sent to IMO on ** September 2020.

In order to verify the duration of the divorce decision in the case of the assessee, the IMO compared the length of the procedure in the case of the assessee with all the divorce procedures ended in 2019. Therefore 1201 cases have been examined by IMO.

This examination has led to the following conclusions:

- The median time for a divorce procedure in 2019 in Tirana District Court was **150 days**
- The divorce procedure in the case of the assessee took **43 days**.

These numbers might show that the assessee benefitted a preferential treatment in the handling of the case.

3. The consequences of the divorce

- **The payment of the monthly alimony for the children.**

In the Court decision of ** December 2019, can be read that, in her final conclusions, the assessee had requested to award her custody of both children as well as to order the respondent, to pay a monthly allocation for the children of 10.000 ALL per child (20.000 ALL for both children together).

From his side, the respondent declared that he agreed to award custody over the children to the assessee while he agreed to pay a monthly fee of 20.000 ALL in total while he invited the court to decide on his right to meet the children.

Apparently, at the end of the trial, the assessee and her husband agreed to a monthly allowance of 20.000 ALL per child and per month.

In its decision, the Court validated this 'agreement' between parties and ordered, to pay the monthly allowances as agreed.

Strangely, this Court decision was not implemented by the parties until July 2020 and no monthly allowance for the children was paid for almost a year without any formal agreement between the assessee and her spouse. On ** July 2020, - 7 months after the decision - when it became clear that IMO started to seriously dig into her case, an amount of 480.000 ALL was transferred to the bank account of the assessee.

This situation leads to the strong suspicion that it was never the objective of the couple that a monthly contribution for the children would be paid effectively since the reasons for the divorce are not reflecting the reality.

- **The separate living addresses of the assessee and her former husband.**

As already mentioned above, the assessee in her claim to the Court expressed her will to divorce, based on the reasons that it was no longer possible to live together with her husband,

Notwithstanding these strong words in her claim, the assessee limited her claim towards her husband to the custody of the children as well as to a monthly allowance for the children. The Court decision does reflect any claim of the assessee re living separately from her husband during the divorce procedure or after. From his side, the husband of the assessee expressed his willingness to provide the right to the assessee to use the marital apartment.

The assessee never asked from the Court that she would be granted a separate living from her spouse.

The fact that the assessee at no point has requested that her husband should be evacuated from the marital apartment, sheds a particular light on the situation in the household of the assessee. Even more now that it is a fact that the assessee and her former husband are still living together under the same roof of the same apartment amidst the other family members of her former husband living in the same building.

This factual situation is clearly fuelling the idea that the divorce procedure has been launched for other reasons than the one stated by the assessee in her initial claim.

It seems that the assessee is fully aware of the 'issue' since the letter from the 'Administrative Unit nr** of the Municipality of Tirana sent to the IQC on** September 2020 is stating that (...) pursuant to the decision of the Court dated **December 2019, it results that even the citizen *Elizabeta *** Imeraj, together with her children ***** and ***** have the right to live in the two rooms of this residential building (...)* while the Court decision of** December 2019 as such is not mentioning anything and is, on the contrary, completely silent in this regard.

As a conclusion it needs to be stressed that the Municipality of Tirana issued a document which is not reflecting the truth as such and seems to be 'fabricated' for the purpose of the vetting of the assessee and on her request.

Summarized, it is evidenced that:

- The assessee started the divorce procedure against her husband based on reasons she already was aware of before she got married to him;
- The assessee enjoyed a preferential treatment by the court in the handling of her divorce claim;
- The assessee, notwithstanding her divorce claim based on the fact that she could not live anymore with her husband, continued living with him as a normal couple, after they divorced;
- No alimony was paid for the children for at least 7 months until the assessee became aware of the increased attention of the IMO for her assessment.

In view of the assessment of the assessee and her ethical standards, this information is relevant and needs to be part of the deliberation file.

Respectfully submitted,

International Observer



Attached documents:

- Copy of the court decision of ** December 2020
- Assessment of the duration of the divorce proceedings finalized in 2019
- Letter from Tirana District court of ** September 2020
- Letter from Tirana Municipality of ** September 2020